



crossroads

PRACTICAL INSIGHTS TO SHARE WITH CLIENTS
CONTEMPLATING DIVORCE

INSIDE FOR SEPTEMBER

NJ's Updated Alimony Law
Relocating Children Post-divorce

Mediation: Cost Effective Resolution
Court's View of Domestic Violence Claims

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Panelist/Mediator
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Union County Bar
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Trustee, 2016)

mediation



SOLUTIONS FOR ANY STAGE OF DIVORCE

For many couples experiencing marital difficulties and facing the end of their relationship, divorce mediation can be an appropriate alternative to litigation. Mediation may not fit every situation, but a mediator can often assist in achieving a resolution for couples who are prepared to address all of the issues related to their relationship.

Mediation Handles...

Mediation can cover all divorce issues such as custody, parental time-sharing with respect to children, the amount and type of alimony to be paid, child support obligations, the disposition of the marital home, the division of pensions and other retirement benefits and the equitable distribution of marital assets.

Mediation Happens When...

Couples can enter mediation before either spouse files for divorce, while they are in the process of litigating their divorce and even after their divorce has been finalized. Some couples choose to take a step back and "pause" their divorce litigation and retain a mediator to assist in the process. Increasingly I see that divorced individuals are mediating the disputes that naturally arise in the years following

their divorce. Ex-spouses will attempt to mediate such issues as responsibility for their children's college costs, the increase or decrease in alimony or child support because of a change in circumstances post-divorce and the finalization of pension issues.

Mediation Benefits...

- There is confidentiality between the parties and the mediator. The Mediator cannot be called to testify on what you say or the position you take.
- The parties retain control of the process.
- Each case is "personalized". Parties are not bound by the same standards that they could be in a divorce case overseen by a Judge. A mutually-acceptable settlement can be crafted by collaboration between the mediator and the parties per their particular situation.

After divorce, the median length of time until remarriage tends to be 4 years.

alimony revisions IN NJ

This September will mark two years since the New Jersey legislature made sweeping revisions to the state's alimony statutes. It is often necessary for individuals to examine these amendments while resolving their pending alimony issue or re-examining an existing court-ordered obligation to pay alimony. Below are a few examples of the alimony revisions.

Retirement

In a situation where a former spouse, who is obligated to pay alimony, decides to retire the Court must consider and determine an appropriate age of retirement. The Court will examine whether or not there are any facts which would make retirement prior to age 65 an acceptable reason for the Court to modify the alimony award.

Permanent Alimony

"Permanent alimony" is no longer permitted. In its place, for long term marriages, the Court uses the term "open durational alimony" which eliminates

the inference that alimony payments will be made in perpetuity. In cases where parties have been married for less than 20 years, the length of the alimony obligation cannot exceed the length of the marriage unless a judge decides there are "exceptional circumstances."

Cohabitation

As it relates to situations where a former spouse who receives alimony and is cohabiting with a "significant other", the Court can now modify existing alimony obligations. Previously, former spouses could avoid being found to cohabit with another by each party having a separate residences. Now, the Court examines the overall nature of the relationship including intertwined finances, joint responsibility for expenses, the sharing of household chores and other related factors to determine if and to what extent there is cohabitation. If the Court determines that there is cohabitation, it can reduce or eliminate alimony obligations.



Over the last 15 years there has been a **marked increase** in the number of individuals getting divorced **over the age of 50.**

For individuals **over the age of 65,** the divorce rate increase has been even higher.

domestic abuse

Domestic violence is a serious issue concerning all segments of our society. New Jersey courts take allegations of domestic violence very seriously and have established measures to protect victims.

Measure 1

In order for an act to be considered a domestic violence offense the incident must be committed against an individual designated under the law as a protected person. In order for an individual to obtain court ordered protection from acts of domestic violence, the violent act must have occurred between two people who have or have had one of the following relationships:

- Current or former spouse, roommate, girlfriend or boyfriend
- Two people who share a child, whether born or in utero
- Current or former living companion

A VIEW FROM THE BENCH

- any form of contact or communication with any other individuals named by the victim on the restraining order
- possessing any firearms or other weapons

3. Ordering:

- the defendant to pay the victim support and/or child support
- a weapons search at any appropriate location
- the defendant to attend professional counseling
- the victim use and possession of the home

Measure 3

When a complaint alleging domestic violence is filed with the Court, a Judge will enter a temporary



Measure 2

The most common domestic violence offenses alleged to have occurred include assault, terroristic threats, criminal trespass, harassment, criminal restraint and stalking. When an incident is found to have occurred or there is significant reason to believe that it has occurred, Judges have the authority to enter a restraining order. Such an order can provide various forms of relief on an interim or permanent basis such as:

1. Awarding the victim custody of the children
2. Prohibiting the defendant from:
 - returning to the residence of the victim
 - going to the victim's place of employment
 - returning to the scene of the domestic violence
 - any type of contact or communication with the victim (verbal, written, telephonic, text, email or on any form of social media)

restraining order if there is reason to believe the offense was committed. Approximately ten to fourteen days after the issuance of the temporary restraining order a hearing will be scheduled in Superior Court. At this hearing testimony will be taken from witnesses and the proceeding will conclude with the Judge issuing a determination as to whether or not a permanent or final restraining order is to be entered.

In doing so, the Court is to consider, but not be limited to, the following factors:

- Any prior history of domestic violence between the parties including threats, harassment or physical abuse
- The existence of an immediate danger to the person or property
- The best interest of the victim or any child
- Protection of the victim if there is to be a decision regarding custody and parenting time

Having a final restraining order entered against an individual means that he or she will be fingerprinted and have a record of committing an act of Domestic Violence. This could affect certain professional licenses, employment and prospects for future employment.



MOVING OUT OF STATE with children

Over the years there have been evolving standards used in judicial determinations as to what grounds will be sufficient to permit a parent to relocate out-of-state with their child. Presently, New Jersey has two different standards to apply when these types of matters come before the Court. A determination first needs to be made by the Court as to whether the parents have a traditional custodial relationship or whether the parents have a shared custodial relationship.

1 Traditional Custody

When one parent is clearly the primary custodian of the children (traditional custodial relationship), that parent must satisfy a two-step standard. He or she must demonstrate that they have a good-faith reason for their request to relocate and that their relocation will not be detrimental to the child's best interest. If the parent can satisfy the Court that they have met the standard, the Court will then examine factors as to whether or not to permit the relocation.

2 Shared Custody

If the parents have a shared custodial relationship with their child, then the right to relocate with the child from New Jersey requires an actual change in the custodial agreement between the two parents. If this is the case, the parent seeking to effectively change or modify the existing custodial relationship with the child has the threshold requirement to show that there is now a substantial change in circumstances and that the best interests of the child are served by a change in the existing custody agreement.

No matter which custodial arrangement exists these matters are extremely fact sensitive. Our Courts are constantly called upon to make such determinations and, as a result the law in this area is constantly evolving.

For more detailed family law assistance, contact James McGlew at 908.233.6800 or jmcglew@lindabury.com



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