

# Using Mediation



To resolve conflicts over animals.

Presented by  
Debra Hamilton, Esq.

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Hamilton Law and Mediation/Hamilton ADR-NC, LLC –  
Conflict Coach/Mediator/Collaborative Legal Professional

The Firm provides assistance in resolving disputes over animals worldwide including:  
divorce, pet service industry, veterinary malpractice, breeder/owner disputes.

Author –Nipped in the Bud Not in the Butt - How to Use Mediation to Resolve Conflicts Over Animals

<https://www.amazon.com/Nipped-Bud-Not-Butt-Mediation/dp/151502024X>

Podcast - Why Do Pets Matter? Whydopetsmatter.com

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I am often asked by people, *especially by lawyers*,  
do I separate the fighting dogs?

The answer is *No*.

I support mediation and collaborative discussions  
that help people who are fighting over the dogs.

(cats, birds, horses lizards, snakes, ferrets)

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# Attendee Questions

Please use the thumbs up icon if you:

Do you own a pet?

- A.) Yes
- B.) No

Have you mediated or litigated a conflict over

a pet/involving a pet?

- A.) Litigation
- B.) Mediation
- Both

Do you consider your pet a family member or personal property?

- 1.) Family member
- 2.) Personal property
- 3.) Both

What did your pet matter involve?:

- 1.) Divorce
- 2.) Neighbor conflict
- 3.) Breeder/owner
- 4.) Veterinarian
- 5.) Other service provider
- 6.) Dog park



In the chat - or open your mike,  
and tell us *briefly* how that went for you?

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Let me take a minute

and share my journey of bringing mediation to  
this emotional field of conflict.

Gary Friedman- The Center for Understanding.

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# How did I get here??

ADA  
AKC  
BOH  
AIG  
PTA  
= ADR

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These are my motivating forces.



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So, in 2010 I decided to be a pioneer and trailblazer and focus my mediation practice on conflicts over animals.



What I didn't realize was that people in animal law or conflict were not ready for mediation.



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# Now lets look at where conflicts over animals occur and where mediation may better serve the parties:

Divorcing with pets

Relationship break up with pets

Veterinary disagreements

Coop Condo

Trust & Estates

Dog parks

ESA/Service Animals

Contracts- Breeder/Owner/Rescue/Shelter

Domestic Violence & animals

Dog bites

Animal Rights/Welfare

Dog sports

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In conflicts over animals,  
litigation and setting precedent is preferred.

Animal Law's mantra is *being right* for the animals.

My mantra is *getting it right* for the animals.

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# What the emotion in conflicts over animals look like.

## Pet owners:

- need to feel heard.
- are fearful.
- terrible listeners.
- need to be pets champion.



## Other:

- service providers do not listen.
- afraid of the law, consequences.
- terrible listeners.
- need to win/be right



# Why mediation works.

People are assisted in actively listening.

They tell their side of the story.

They are given the opportunity to understand the other sides POV.

*The pets best interest are kept top of mine.*

Pets are not property in mediation.

It's confidential, user friendly and helps build a solution.

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Under the law,

Pets are property.

Only facts, not emotion, are requested/ considered.

However, to their people,

Pets are not property.

Pets does not hate your ex.

Pets need a plan for long/short term care.





Remember,

We do not/will not/can not walk in the pet owner's shoes.

Pet owners' need the opportunity to make a decision that reflects their own life experience.

Help them find the words that diffuse the anger and foster outcomes that serve them all.

*Do not presume to know what is best for them and/or their pets,  
regardless of your familiarity with pet ownership, behavior, breeding or the law.*

*Duct Tape  
STFU by Daniel Lyons\**

\*STFU: The Power of Keeping Your Mouth Shut in an Endlessly Noisy World Kindle Edition  
by [Dan Lyons](https://www.amazon.com/STFU-Power-Keeping-Mouth-Talking-ebook/dp/B09X427GK8) <https://www.amazon.com/STFU-Power-Keeping-Mouth-Talking-ebook/dp/B09X427GK8>

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Five states have codified, through legislation,  
the manner in which pets are to be treated in divorce.

Alaska- best -interest

Illinois – well-being

California – best-interest

New Hampshire – well-being

New York – best interests

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## Pros of new legislation

Pets are no longer simply property.

Pet are now recognized/considered family members/companions.

Evidence is taken on the parties' relationship with the pet.

- This includes where the animal thrives, is loved and feels loved. *Raymond v Lachmann* (264 AD2d 340 [1st Dept 1999])

Calls for more oversight by the court.



## Cons of new legislation

No shared custody has been awarded to date.

Often awarded to party where the pet resides.

(One case in NY awarded the pet to the party who stole it. *Acosta v. Shaw* (Case No. 71730/2020))

Judges usually make their decisions based on a one day presentation of information.

(*Travis v. Murray*-2013 N.Y. Misc. LEXIS 5508; 2013 NY Slip Op 23405)

Purchase/Ownership documents are not dispositive.

No plan for long/short term financial care of the pet.

No right of first refusal/return upon death of possessory owner.

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Court decisions being made under these new directives are:

- subjective.
- apply only for full custody.
- do not leave a first right of refusal.
- financial assistance communication ended.
- no discussion of return upon death of possessory owner.



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Each State's Legislature created the guideline requiring judges to consider the *well being* or *best interests* of a pet in divorce.

What they did not create was a uniform method of evaluating the process the judges use to consider pet ownership.

Eliminating subjectivity, perspective, bias and perception from the judges evaluation will be impossible as they apply these new guidelines.\*

**This is why mediation can be so important for a better outcome for all.**

\*Cal.Fam.Code S 2605(West), AS S25.24.160, 750 Ill. Comp. Stat. Ann. 5/502, N.H. Rev. Stat. S45816-a, N.Y. DR 236 Part B 5d-14-15

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Limited case law suggests that in the future,  
states may follow the best interest standard over the well-being standard.  
(Travis v. Murray was best for all concerned-that disappeared)

And

**Visitation in court decisions might not be included or enforceable.**  
**Courts are unwilling and unable to monitor it.\***

\*<https://www.animallaw.info/article/detailed-discussion-divorce-and-pets>

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As mediators our role is that of :

- an active listener.
- providing a venue in which the parties find the best outcome on their own.



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The Court in Laconte v. Kayungmi Lee put a fine point on why it is necessary to have an informal agreement for the pets.

“Parties should have an informal agreement because legislation has not provided guidelines for the courts to use as a “catch-all” to address specific facts of each case.”\*

Laconte v. Kayungmi Lee, 935 New York, NYS2D842 8,44CIVCT 211



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## What mediators should help Judges do when they are faced with a pet disagreement in a divorce/relationship break.

- Strongly suggest parties participate in mediation to decide who gets the pet.
- Require that an animal behaviorist evaluate the pet.
- Not automatically decide the pet remain in the marital home.  
(The 'Lovey' standard where pets are left in the place they have been loved and felt love.  
This is only one evaluative piece of the judges deliberation. (*Raymond v. Lachman* 695 N.Y.S.2d 308 (N.Y. A.D. 1st Dept. 1999) (*Travis v. Murray* 2013 N.Y. Slip. Op. 23405 (N.Y. Sup. Ct. 2013)).
- Arrangements should be made to assure the pet is maintained in its current standard of care, physically and financially.
- The pet should be returned to the ex-pet owner if the possessory pet owner can no longer care for the pet.

Mediation of pet conflicts allows for the discussion of:

- Uncomfortable present and future challenges.
- Information and reduces reactivity and defensiveness.
- Full participation by all in the solution.
- Appreciation, accountability and responsibility.

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Consider this statement in a 2020 Time Magazine article:

Paul Giarrusso rarely cries. But the 59-year-old from Rhode Island wept after his ex-wife decided that he could no longer see their two dogs, Marox and Winnie. “It tortured me,” he says. “In our whole divorce, that was the only thing that could hurt me.”

Pets Are Part of Our Family. Now They're Part of Divorce.

Melissa Chan-Jan. 22, 2020

<https://time.com/5763775/pet-custody-divorce-laws-dogs/>



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In Mitchell V Schneider, 41 N.Y.S. 3d 450 (Civ. Ct. 2016), the court applied *the best for all concerned* standard of Travis v Murray (and Mitchell was a relationship break-up not a divorce).

It discussed the following intangible factors that need to be considered in determining which party will better promote the well-being of the animal:

Where the dog, “has a better chance of prospering, loving, and being loved in the care of one party, or the other.” “Who is in the best position and able to meet the dogs daily, physical and emotional needs based on a healthy active lifestyle, time constraints, type of home and yard, emotional bond, safety concerns, financial ability opportunities to socialize with other dogs, access to dog, friendly parks....feeding, watering, walking, grooming, bathing, petting, playing training, taking the dog to the veterinarian, access pet stores, engaging in outdoor and other recreational and dog friendly activities.”

Mitchell V Schneider, 41 NYS 3D 450 (CIV. CT. 2016).  
Travis v. Murray, -ny-slip-op-23405 (2013)

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By facilitating mediation of these questions,  
you more fully address the care of a pet in a conflict.

Mediators are in the best position to foster an intentional discussion,  
about a beloved pet, that assures the well-being of the pet  
(and not the anger of the break-up or conflict over possession)  
is kept top of mind.



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Although courts now have the ability to consider  
the ‘best-interests’ or ‘well-being’ of your pet,

as Judge Doug Mintz said on the Why Do Pets Matter podcast,

“Why would you give the decision making power, for the future care of your  
beloved animal, to a person because they wear a black robe?”

WhyDoPetsMatter.com; Episode 209

<https://podcasts.apple.com/us/podcast/why-do-pets-matter-hosted-by-debra-hamilton-esq/id1487330694>

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# STOP. DROP. & ROLL\*

STOP talking and listen.

DROP the need to be right.

Let what they say ROLL off your back.



\*Nipped in the Bud Not in the Butt-<https://www.amazon.com/Nipped-bud-not-butt-mediation/dp/151502024X>

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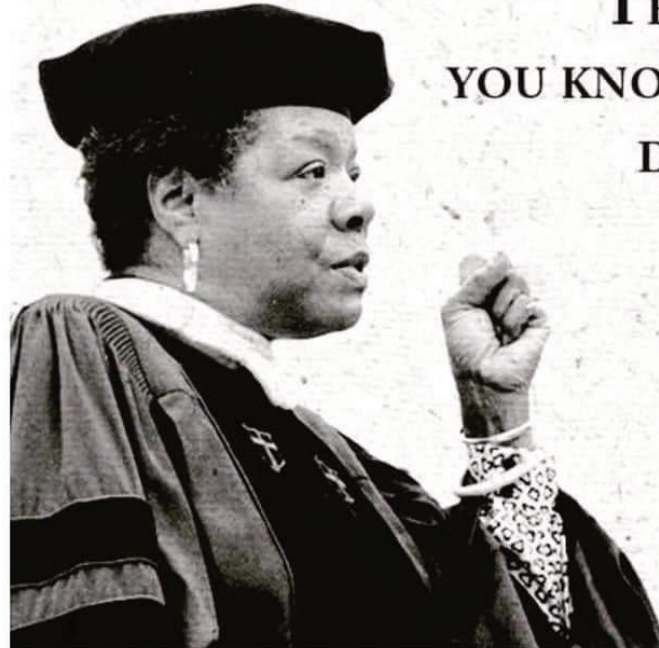
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**DO THE BEST  
YOU CAN UNTIL  
YOU KNOW BETTER.  
THEN, WHEN  
YOU KNOW BETTER,  
DO BETTER.**

MAYA ANGELOU



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**Debra Vey Voda Hamilton  
Hamilton Law & Mediation, PLLC**

**"Fostering New Ways to Address Conflicts Between People over Animals"**

**Tel. 914-552-5021**

**email: [dhamilton@hamiltonlawandmediation](mailto:dhamilton@hamiltonlawandmediation) | [www.hamiltonlawandmediation.com](http://www.hamiltonlawandmediation.com)**

Author: Nipped in the Bud Not in the Butt-<https://www.amazon.com/Nipped-bud-not-butt-meditation/dp/151502024X>

Pod-cast: <http://whydopetsmatter.com/>

Twitter - [@HLawMediation](https://twitter.com/HLawMediation)

FB : [www.facebook.com/HLawMediation/](http://www.facebook.com/HLawMediation/)

Linked in: [www.linkedin.com/in/debrahamilton413](http://www.linkedin.com/in/debrahamilton413)

Instagram: [@WhyDoPetsMatter.com](https://www.instagram.com/WhyDoPetsMatter.com)

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