

MEDIATION: A PEACEFUL PATH TO CHILD-FOCUSED DIVORCE AND POST-DIVORCE PLANNING

It is no secret that many children today experience the difficult reality of their parents divorcing and setting up two separate households. While these children may share this common ground, the range of their actual experiences can vary tremendously based on how their parents navigate their divorce and post-divorce planning. We know that children are incredibly resilient and can adapt well under reasonable circumstances, and while divorce may be one of the most profound stressors a child can endure, there are steps parents can take to minimize the turmoil. The process of mediation enables divorcing parents to problem-solve collaboratively, manage their conflict in a structured setting, and most importantly, keep their focus on the needs of the children.

What is mediation?

Mediation is a form of **voluntary dispute resolution** between two parties in conflict and a third **neutral** party—the mediator. Neutrality is an essential feature of the mediator—he or she must have no stake in the outcome of the mediation and no bias (positive or negative) toward either party. The process itself involves the mediator facilitating discussion of the issues the parties bring to the table for resolution, helping the parties generate options and come to agreement. The primary feature of mediation is that **the parties make all decisions themselves**. The mediator's role is not to make decisions, but rather, to help the parties structure their discussion, examine options, and identify areas of agreement.

What types of decisions can be mediated in divorce?

Divorce and post-divorce planning involves many decisions, spanning financial, educational, legal, emotional, medical, geographical, logistical, and psychological considerations. Any disputes the parties raise and are willing to discuss are mediatable. Typical issues addressed in divorce mediation include:

- Custody and visitation
- Parenting plan
- Child support
- Division of assets and liabilities
- Budgeting
- Alimony

Parties entering mediation may opt to mediate some or all of these issues. They may choose to mediate on some and go to court on others, namely those on which they absolutely cannot reach agreement. The decision of which issues to mediate is the decision of the parties, not the mediator. Some couples will mediate issues in great detail, if they have a need for significant structure, while others will develop a more general framework in mediation and agree to tweak things between themselves as needed.

Why mediate when I can go to court?

Mediation is the only form of dispute resolution in which the parties themselves maintain full control of all decision-making. Other options such as arbitration (similar to mediation, but with a decision-rendering arbitrator) or litigation (going to court) involve other third parties making final determinations. There is obviously risk to both parties involved in this, but more important, these decision-making authorities are not intimately acquainted with the family and the family's situation. No one is better equipped to make decisions affecting the family than the parents themselves, and this is exactly the opportunity they will have in mediation. Another valuable reason to pursue mediation is that it sets an important precedent for open and honest communication between the parties, which will be essential in their post-divorce co-parenting relationship. Often, parties in divorce mediation will remark that their mediation is the first time they've ever communicated quite so well, a skill they didn't know they possessed as a couple.

In most cases, both parties will have retained attorneys to represent them in the divorce, even if they opt for mediation. Any agreement reached in mediation will not become legally binding until it is reviewed by the attorneys, signed by both parties, and filed with the court. Parties may always return to mediation at a later time to address changes that have occurred in their lives or the lives of their children, or to re-mediate earlier agreements that are no longer feasible or satisfactory.

Is everyone appropriate for mediation?

In most cases, yes. However, special circumstances will need to be evaluated by the mediator prior to beginning mediation to determine whether both parties are able to participate effectively. Certain situations that may not be appropriate include: one or both parties being mentally incompetent, situations in which domestic violence and/or child abuse have occurred, or when one or both parties are impaired by substance abuse. It is critical that both parties be able to advocate for themselves, feel safe before, during, and after the mediation, and are able to reach and carry out agreements.

How will mediation benefit my children?

It is my contention that mediation is the most child-friendly and family-friendly path to divorce, a statement which I realize sounds somewhat paradoxical given that a family is being dismantled and reconfigured. But in no other divorce process do parents retain full decision-making control and ability to keep their children at the forefront of the decision-making process. Additionally, when parties opt to resolve their conflicts through open communication and negotiation, they model effective problem-solving for their children, demonstrate that they are willing to work together to meet the children's best interests, and show the children that they will remain a team as far as parenting is concerned. Mediation provides a forum where both parents can express their wishes in terms of how they will spend time with the children, discuss their respective parenting philosophies, and explore how they can maintain consistency between their two households. They can consider their children's individual needs as they negotiate with each other. Often, after a long period of

marital conflict, mediation offers the couple an opportunity to re-learn how to communicate, which will be an invaluable skill as they embark on a new relationship, not as spouses, but as dedicated co-parents of the children they will share for a lifetime.

Mediation proven to have enduring results...

It should come as no surprise that people are far more likely to adhere to agreements they have developed themselves than ones that other people have imposed on them. As human beings, we are generally uncomfortable being told what to do by others, particularly when the subjects at hand are those so deeply personal as our family life, our children's well-being, and our parenting philosophies. Mediation can certainly be challenging for the two parties—after all, divorce is an emotionally complex and usually painful process—but it provides the couple with a unique opportunity to share ideas, communicate, and problem solve in a collaborative environment. Agreements that are mediated have been shown to endure over time, and parties typically report satisfaction and feelings of success upon completion of mediation. Even if parties arrive at the conclusion that they cannot mediate together and that they will proceed with their divorce through other legal channels, at least that is a decision they will have arrived at together, which may very well be more successful than they have achieved as a couple in a very long time.

Transitioning from spouses to co-parents...

Although married spouses are certainly considered to be co-parents (two people parenting their children together), they are rarely thought of as such—this is just something taken for granted in intact families. However, once a divorce is underway, a new co-parenting relationship must be forged. These two adults will, in most cases, continue to share responsibility for their children and play pivotal roles in their lives. Maintaining two households where the children can thrive means achieving predictability and consistency with rules, limits, expectations, schedules, routines, parent accessibility, and communication. Doing this well demands that the parents are in regular contact with one another about the children and are able to interact civilly with each other, if not amicably. It is critical that children not be exposed to parental conflict, and also that they perceive their parents to be a united front when it comes to parenting. If they sense a divide, children are masters of manipulating situations to their advantage and playing one parent against the other. Establishing a positive co-parenting relationship at the time of separation sets the stage for ongoing teamwork and problem-solving between the significant adults in the children's lives. This can best be accomplished if the divorce proceedings occur in the same type of atmosphere. Mediation is not merely a set of exercises to sever a marriage, but also an opportunity to begin a new relationship—that of co-parents—on a less adversarial and more collaborative note. This is a true gift from parents to their children—one that will keep on giving for years to come.

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