

Frequently Asked Questions About Divorce Mediation

What is divorce mediation?

Mediation is an informal, voluntary and confidential way to resolve disagreements without giving the decision-making power to someone else, like a judge. A neutral person, called the mediator, helps people: figure out the important issues in the disagreement; explain and understand each others' needs; clear up misunderstandings; explore creative solutions; and reach acceptable agreements. Most importantly, the mediator does not tell the parties what to do, or make a judgment about who's right or wrong. Decision-making stays with the divorcing couple.

What is the role of the mediator?

The mediator is a neutral party trained to help couples resolve the inevitable disputes that arise during separation. He or she helps the couple explore all options and their consequences. The mediator brings knowledge and experience that provides a context for decision-making. When necessary, the mediator will refer the couple to third party experts for services such as appraisals. At the

end of the mediation, the mediator will prepare a Memorandum of Understanding that summarizes the agreements reached in the process. For couples who have the ability to resolve their differences themselves, mediation services can be used to assure that the substantive terms of their agreements are fair.

Mediation is an informal, voluntary and confidential way to resolve disagreements without giving the decision-making power to someone else, like a judge. Divorce Mediation is recognized by the New Jersey Supreme Court as the preferred way to resolve the issues in a divorce.

Does the New Jersey Supreme Court recommend divorce mediation?

Divorce Mediation is recognized by the New Jersey Supreme Court as the preferred way to resolve divorce issues. New Jersey adopted the Uniform Mediator Act, N.J.S.A.

2A:23C, on November 22, 2004. This act expressly creates a Mediator Privilege in New Jersey, assuring the confidentiality of mediation sessions. It also codifies the practice of most mediators by requiring disclosure of conflicts and requiring that the mediator be neutral.

What are the advantages of mediation compared with divorce litigation?

Using mediation to negotiate a divorce agreement can take less time, cost less, and result in less aggravation and a more solid agreement than using a lawyer to take the same case through the courts. When you are going to have an ongoing relationship with your ex-spouse, such as when you have children together, mediation can help to improve communication and make your future interactions a little bit easier.

For some couples, however, negotiating directly with each other, even with the help of a mediator, is not possible -- either because of problems in the relationship (such as do-

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mestic violence or substance abuse) or because a spouse is unwilling to mediate. Even if you decide to mediate, you may want to hire a lawyer in a limited capacity to consult with you outside of the mediation. Many mediating spouses find it helpful to work with a consulting lawyer who can offer legal advice and review the settlement agreement before it is signed.

Doesn't the divorcing couple need to work things out before they make an appointment for mediation?

No. Helping separating spouses by using specialized communication and problem-solving skills is the "value-added" product that mediators can provide. By trying to work out everything before the divorcing couple comes to mediation, the couple runs the risk that the reasons for the separation, such as unresolved marital issues, hurtful behavior, etc., may interfere with their ability to look at and respect each other's underlying needs, interests, values and goals.

What preparation is needed for the first mediation session?

No special preparation is needed for the first session. No "evidence" is collected or viewed during the course of mediation by the mediators. If you have information that you feel the other spouse needs to make a decision or would be

persuasive to him or her, you may bring that to mediation to discuss, share and use in your negotiations. During the course of mediation the mediators may ask you to complete "homework" assignments, such as collecting financial information.

When and for how long do

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the divorcing couple and the mediator meet in mediation?

The divorcing couple and the mediator usually meet weekly in two hours sessions to resolve separation, divorce and parenting issues. These sessions can be scheduled as the divorcing couple prefers, in the mornings, afternoons, evenings or Saturdays. Depending upon the issues which the divorcing couple identify and how much they need to negotiate to reach an agreement, three to five sessions are typically needed to reach an agreement. Sometimes as few as one or two sessions are required, or as many as ten or twelve. On the one hand, mediators don't want to keep the divorcing couple in mediation longer than necessary to reach

agreement. On the other hand, mediators feel that the process is "owned" by the parties, so the parties can determine how much time to spend discussing each issue.

What exactly happens in a divorce mediation?

Mediation generally moves through six successive steps: First, the mediator will meet with both parties together to go over the principles of mediation, stress the mediator's role as impartial facilitator, discuss any ground rules for the mediation, answer any questions and go over the Agreement to Mediate form. During the course of mediation, the mediator may meet with each party separately.

Second, the mediator will want both husband and wife to tell briefly, but fully, exactly what brings each of them to mediation - the history of the marriage, what they are hoping to achieve, and facts about their current situation. Before moving on to the next step, the mediator will want to make sure he or she has correctly heard all that the couple have said, so he or she may ask the couple questions, and ask the couple to confirm or correct the mediator's understanding.

Third, the mediator will use the information the couple has given them to identify the issues that need to be decided, the very important considera-

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tions the couple has in making those decisions, and some of the areas of agreement the mediator has picked up on in listening to the couple.

Fourth, the mediator will ask the couple to discuss some of the options the couple believe will resolve each issue. This is a brainstorming session - the couple is free to propose ideas and solutions that they might not even agree to - just to get the ball rolling.

Fifth, the mediator will facilitate the couple's efforts to put these ideas and possible solutions into proposals, working through the problems and objections as they go.

Sixth, the mediator will take the proposals the couple have agreed to and begin the process of writing them up into the couple's agreement, using plain language and confirming your choice of words and the substance of each agreement before each is finalized.

Can one spouse dominate the other spouse in a mediation?

A good mediator pays close attention to the power balance between the spouses and uses specific techniques to address any imbalance. If one spouse persists in dominating behavior, the mediator will call a stop to the mediation rather than allowing it to continue. One caveat: Even the best mediator can be unaware of a power imbalance if it only goes on out-

side of the mediation sessions and the spouses don't let the mediator know about it.

Does mediation make the divorce take longer than it would if the couple litigated?

No. In fact, mediation almost always takes less time than litigating a divorce. Unless the spouses have worked everything out ahead of time, litigating the divorce will almost always take substantially longer than mediating, even if the lawyers are able to settle out of court.

Mediation helps a divorcing couple with children make a successful transition to parenting-apart because the mediation process helps the couple develop communication and problem-solving skills useful in the future.

Is mediation is always the best option for every divorcing couple?

Mediation works for most divorcing couples. As long as both spouses are able to speak up for what's important to them, and can behave themselves appropriately in mediation, the process can work for them. On the other hand, mediation may not offer enough protection and structure for some couples. For example, a couple with domestic violence or substance abuse issues

may need to have lawyers speak for them instead of trying to negotiate directly. In addition, some spouses may prefer to assume the risks and cost of adversarial litigation in order to make a point or assert a legal right rather than compromise in a settlement.

Should each spouse involved in a mediation hire an attorney?

Yes. Lawyers who understand and support mediation can help mediating spouses in several ways: by informing them of their legal rights and options, by coaching them through the negotiations, by coming up with creative settlement ideas, and by preparing the necessary divorce paperwork once an agreement is signed. Many consulting lawyers charge a reasonable hourly fee, and a spouse pays for only as much consulting time as is needed.

Assuming that the divorcing couple chooses to litigate their divorce rather than mediate, will all the issues in the divorce be decided after a trial?

Probably not. Strange as it seems, although people typically fight fiercely during contested divorce litigation, nearly all divorce cases end in a settlement rather than a trial. This happens because marriage is an emotional bond and in the great majority of cases, neither party has adjusted to or accepted that divorce will be the

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inevitable outcome of their marriage. Consider these statistics:

- * New Jersey Dissolution Cases – 32,000 in 2001 (over 149,000 additional non-dissolution cases for support, visitation and so forth).

- * New Jersey Divorce Trials – 234 to conclusion by trial in 2001. Thus, only .7 of 1% are not settled. The statistics today are similar.

- * Average Marriage Length - Most Marriages Last 7 years.

Does the bargaining process in mediation differ from the bargaining process in a contested divorce?

Yes. The divorce mediation process helps the parties to work together to minimize conflict and arrive at a result that is fair and cost effective. The bargaining process is quite different in divorce mediation than in hard ball negotiations typical in a contested divorce.

Divorce mediation does not use the positional bargaining

process to arrive at an agreement. The divorce mediation process is not adversarial, nor does it assume that one party must give in for the other party to have his or her requests addressed. Thus, regardless of experience, personality or intention, professional mediation provides a process that is fair, safe and cost effective.

How does mediation help the divorcing couple with children make a successful transition to parenting-apart?

Mediation helps develop communication skills and respect for the former spouse. Mediation provides the following guidelines for a parenting-apart partnership:

- A. Make a conscious decision to create a successful partnership to achieve your mutual parenting goals.

- B. Be business-like with your child(ren)'s other parent.

- C. Respect your child(ren)'s relationship with the children's other parent.

- D. Make appointments to

talk about the children.

- E. Be polite. Don't use bad language or name calling.

- F. Give the benefit of the doubt.

- G. Do not expect approval (get your needs fulfilled elsewhere), but do acknowledge positive words or deeds of your partner.

- H. Respect the privacy of your child(ren)'s other parent. Don't seek to know the details of his or her life or intrude on his or her territory.

- I. Make all agreements explicit and communicate directly.

- J. Keep agreements. Do not break appointments.

- K. Consult with your partner and the child(ren) so that the best, most workable decision can be made. Do not make unilateral decisions.

- L. Don't insist on what does not work. Be flexible.

- M. Above all, cultivate good will in the partnership. ☒

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