

Thank you for considering my services to mediate your divorce. You should feel good about attempting to resolve your divorce in this manner. You are off to a good start.

Mediation is typically much less painful, less stressful, as well as less expensive compared to litigation. It increases the chance of finding a resolution that both parties are satisfied with, rather than having a judge, who is unfamiliar with the nuances of your case, make personal decisions for you.

The below information should help both parties understand the process, thus increase its chances for success. Also attached are several statutes that govern certain aspects of mediation. Please take sufficient time to read the below info, as well as the attached documents. If you have any questions or concerns after reading such information, please do not hesitate to contact me.

MEDIATION OVERVIEW

Mediation is designed to assist the parties in identifying the issues that need to be resolved before the court will issue a judgment of dissolution. For instance, parties typically need to address issues of custody, visitation, division of assets and debts, and child and spousal support.

The parties do not need to resolve everything in one mediation session. The parties can attend as many sessions as needed to work through all their issues. Of course, my objective as mediator is to help parties reach agreements as efficiently as possible. However, mediation is likely to be more successful if both parties don't feel overwhelmed, or that they need to swallow the elephant all in one bite.

Throughout the process, I help parties work together to resolve any conflicts, and hopefully reach a fair resolution and on all issues in an amicable manner. If that goal is accomplished, I can then prepare the "Marital Settlement Agreement" and all required court forms. That paperwork is then submitted to the court to obtain a judgment of dissolution.

Please note that if mediation is only partially successful in resolving some, but not all issues, I can still record any partial agreements in a document called a "memorandum of agreement." The parties can use that document to establish enforceable court orders.

Even if only certain issues are resolved via mediation, the parties have still benefited from the process, as they can address any remaining issues in another forum that they may chose, such as collaborative law or standard litigation. Sometimes, after having the opportunity to take a break, parties may decide to give mediation another try, and reevaluate issues they couldn't previously resolve.

It is important to note that as the mediator, I am prohibited from representing either party individually, or as a joint attorney. I do not represent either party at any time. I am also prohibited from representing either party in any subsequent forum, including any court proceeding.

At no time will I advocate for one party's position over the other, take sides, or do anything to interfere with my neutrality. Additionally, unless there are exceptional circumstances that warrant me communicating with only one party at a time (for instance, in an effort to resolve any impasse), as a general rule, I will only meet or communicate with both parties together.

DIVORCE AND MEDIATION PROCESS

The divorce/mediation process typically proceeds through the following steps:

1. Every divorce begins with one spouse filing a petition for dissolution. When this step has not yet been completed by the time of the first mediation session, I can assist in preparing the required documents. Once the petition and related papers are complete, the "petitioner" will then submit such documents to the court clerk's office, along with the county filing fee. I can explain this very simple court filing process when the time comes, or if agreed to by the parties, my office can file the papers with the court. Please note, however, that all court/county filing fees are payable directly by the parties.
2. In every divorce, each party is required to provide the other with certain disclosures. The disclosures are made via the following two forms: (1) Schedule of Assets and debts (i.e., a list of what one owns and owes), and (2) Income and Expense Declaration (i.e., a statement of one's income and expenses). These forms typically do not need to be filed with the court if the parties are able to reach agreements on all financial issues without court involvement. I can provide the parties with these forms and assist with filling them out properly.

When preparing disclosure forms, please bear in mind that each party is legally required to provide the other with all information relevant to the dissolution action. This information needs to be complete and accurate. As part of mediation, both parties agree to produce all pertinent information.

If relevant information is not forthcoming, or if one person provides information that is misleading, incomplete, or false, mediation will be terminated. It is important for both parties to understand that if after the divorce is final, one party discovers that the other did not accurately disclose required information, a court may find grounds to nullify any agreements that were reached. In other words, if a party enters into an agreement, while relying on inaccurate, misleading, or missing information in the other party's disclosures, the court can undo the agreement.

3. If the parties have minor children, then as part of the mediation process, they can establish a parenting plan. The parties should try to reach agreements about the children's primary residence (who will be the "custodial parent"), and establish a visitation schedule for the "non-custodial parent." Additionally, the court requires that child support and, if desired and warranted, spousal support, be established before a divorce is granted. I can assist with developing a parenting plan that is in the "best interests" of the children, as well as help resolve support issues.

4. As mediator, I can provide all the necessary court forms, as well as any needed guidance on how to complete them, so that the parties are in compliance with the court's filing requirements. If necessary, I may also provide the parties with "homework" between mediation sessions, which may involve gathering information, such as financial records and other information needed to complete the forms, and ultimately reach agreements.

5. Additional mediation sessions can be held after completing the "homework." The hope is that the process evolves smoothly, with both parties providing the necessary information that allows for agreements to be reached; for instance, on the value of various assets, what property is "community" or "separate," allocation of debts, and any other issues that need to be resolved. If the process runs into hurdles, my job as neutral intermediary is to help parties work through disputes in a way where one person doesn't dominate the other, but instead, where both parties' interests are addressed. I will also provide information about the law and how it applies to the parties' circumstances so fair settlement terms can be established.

6. This cycle (meeting with me to identify issues, receiving information and guidance, followed by any "homework", and then reconvening for further negotiation and resolution) repeats itself until all issues have been addressed and agreements reached. Although this process may include multiple sessions, and can take several weeks or months, the total time and money invested is significantly less than litigation, especially when represented by attorneys. It is also much less acrimonious and stressful than litigation.

That said, either party may, if desired, retain their own counsel to advise them throughout the process. Additionally, before signing any agreements reached in mediation, either party may hire their own attorney to review such agreements and advise them on proposed settlement terms. However, when it comes to attending mediation sessions, I have found that it is more successful for the parties when lawyers are not present, considering that many lawyers are often contentious by nature.

7. Once the parties have resolved all their divorce issues, at their mutual request, I can prepare the documents that reflect their agreements (e.g., the Marital Settlement Agreement and required court forms). After the Marital Settlement Agreement is signed by both parties, it is then submitted to the court with all the proper forms. The court will review all such final paperwork, and if everything is in order, issue a final judgment. That will legally end the marriage.

FINAL CONSIDERATIONS

There are some final aspects to be aware of. The first is confidentiality. Mediation relies on complete confidentiality. Both parties agree not to use anything said in mediation against the other in any subsequent legal proceeding. Each party waives the right to subpoena me or any part of my file at any time. Both parties make this covenant with each other and me as a condition of mediation.

Another consideration is the use of experts to help reach agreements. During the process, either party may want to utilize certain professionals, for instance, an appraiser to determine the value of an asset; an accountant to provide a tax analysis; or a therapist to help resolve a parenting issue. With the parties' mutual consent, such neutral experts can be retained and incorporated into the process at appropriate times.

Finally, mediation is voluntary. Either party may discontinue mediation at any time for any reason. If mediation becomes difficult, I may recommend that the parties take a timeout, and then reconvene at another time, rather than throw in the towel altogether. Sometimes certain issues may become difficult to address due to high emotions. That does not mean the parties should give up on mediation. Instead, at such times, it is helpful to remember that you chose mediation in the first place to settle your issues without the excessive cost and extreme heartache of litigation. Hence, it is wise to be patient with the process and give it a fair chance to work.

I have helped many people work through difficult and sensitive issues. If you have any questions about how I can assist you, please feel free to contact me. I look forward to helping you resolve your divorce as efficiently and amicably as possible.