

By Hadrian N. Hatfield

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Divorce Mediation

Last month we saw how important the choice of process is to a divorce. We reviewed the available choices, and saw that they can differ in terms of approach, cost, level of control, and quality of outcome.

Among the various options discussed, divorce mediation stands out as one of the most versatile, efficient, and effective. Of course, one-to-one communication between the couple offers the most direct, inexpensive, confidential and individually tailored process imaginable. Unfortunately, once the couple is in the separation/divorce stage, this option usually is no longer possible. Some form of outside help is needed.

This is what leads many couples to explore divorce mediation. It is one of the first process options tried after direct discussions fail. Many people in the midst of separation or divorce have already heard of mediation. Yet, few have actual experience with what it is, what makes it different, and how to find the right mediation for them.

So what is divorce mediation? And what makes it a good process choice? In short, divorce mediation is a voluntary and confidential process where couples meet with a trained neutral mediator, who helps them talk about their options and find solutions that both consider fair.

The process is flexible. It can bring in other neutral professionals, such as appraisers, accountants, parenting specialists and even mental health professionals, if needed. The process can be very open, and include discussions with children, other family members, or even new partners. Or it can be limited to just the two parties and the mediator. It can be directive, where the mediator suggests solutions, or more self-determinative, where the parties decide the content and context of discussions, with only limited guidance needed from the mediator.

The process is comprehensive. The mediator helps the parties gather needed information, identify goals and priorities, and develop practical solutions. The mediator can also help the parties confront and work through the emotional barriers that block them from resolution. Mediation thus is designed to produce a lasting agreement that can address all elements of divorce, from practical and legal to emotional and psychological.

The cost of mediation is modest. Mediation fees can vary significantly from case to case, but usually are less than for other processes, especially litigation. Parties typically pay for the mediator and for their own attorneys. The attorneys' role, however, often is limited compared to other process options. The main variables include the number of sessions the couple needs to reach agreement, the level of involvement they want from their attorneys, and whether they choose co-mediation or a single mediator.

Both the level of control left to the parties and the quality of the outcome can be very high. Mediation is by nature a purely voluntary process. This is boon and bane. The focused and committed couple with a skilled mediator can use the limitless possibilities of mediation to craft a unique personalized solution; the rudderless couple and inexperienced mediator can founder from insufficient direction.

Some caveats: mediation is not for everyone. The participants must be able to say, “no, that option won’t work for me.” They must be able to speak-up for themselves, and sometimes take direction on communication techniques. Both parties must be emotionally and psychologically willing and able to reach agreement.

Also, mediators come in many different styles, backgrounds, and experience levels. Some are more directive, others more laissez-faire in their approach. Some are experienced attorneys. The role of the mediator, however, is to remain neutral and avoid offering legal advice. Some mediators are mental health professionals. Mediation, however, is not therapy.

In summary, mediation offers many advantages over other process choices. It is no cure-all, though, and should be explored thoughtfully and deliberately.

Next month I will examine attorney-to-attorney negotiations.

NOTICE

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