

# DIVORCE MEDIATION GUIDE



CECONI & CHEIFETZ<sup>LLC</sup>

[firm@ccfamlaw.com](mailto:firm@ccfamlaw.com) • [www.ccfamlaw.com](http://www.ccfamlaw.com)

Phone: (908) 273-6300 • Fax: (908) 273-4797  
311 Springfield Avenue, Summit, NJ 07901

# A Principled Approach



There's something unique about a law firm, or any company for that matter, where one of the initial tasks of the founding partners was to set down their operating principles and a mission statement. There's also something particularly telling about a firm that begins its list of principles by stating: "We distinguish ourselves by satisfying our clients with great caring service and developing strong client relationships. Therefore, we try our best to respond to client inquiries the same day when possible."

Client service is just as important for the Summit, New Jersey-based firm of Ceconi & Cheifetz, LLC as its ten operating principles. When Lizanne J. Ceconi and Cary Cheifetz founded the firm in 1999, there were just three lawyers. Now there are eight, a number Ceconi believes is "just right." With that number, she says, "we've got tremendous depth and differing levels of experience and expertise, so that we can provide really good service to clients without them feeling like they are being thrown to the masses." And, Cheifetz adds, at that size, "you can offer diversity, without it being a place where you don't know who's going to return your call. You can still provide personal service."

Which leads to operating principle number 2: "Our staff is our most important resource and the backbone of our success. We select, train, develop, and motivate each person to be the best. If our staff is successful, we are successful. We are a team, and we support each other and work together to achieve common goals." The result, says Ceconi, is that they can draw on the expertise and experience of all in the firm when necessary. "This is all

about what's best for the client, not what's best for an individual attorney."

For the attorneys at Ceconi & Cheifetz, helping clients during a stressful period to see what is happening, realize what it is that they want, and get on their feet again is an important goal, which points to operating principle number 5: "We communicate leadership, vision, strategies, goals, and ideas." An attorney who exhibits these traits is invaluable. "We try to come up with creative solutions and to help them prioritize," says Cheifetz. "I think one of the most important things is helping a client decide what they really want, and then we figure out how to get that for them."

Arriving at a satisfactory end result may necessitate the use of outside experts such as family therapists, real-estate appraisers, accountants, and firms that do business evaluations. And whenever necessary, Ceconi & Cheifetz can turn to a well-considered roster of professionals.

In all its years, Ceconi & Cheifetz has developed a reputation for being honest, respectful, and effective, but it is the final paragraphs of the firm's mission statement that truly explain the reasons for its success. It is "our personal commitment to our client. That commitment is a pledge to counsel, to educate, and to work together to achieve realistic goals and objectives. We want to make a difference in each client's life."

It's an approach that seems to be working.



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Divorce can be a long, stressful, expensive, and emotional experience. When both spouses choose to resolve their divorce-related issues in mediation rather than litigation, however, the process is usually faster and much less costly in terms of both money and stress. In this **Mediation Guide**, you'll find articles, book excerpts, advice, and more to help you understand some of the benefits and limitations of this out-of-court dispute-resolution method. Together with other resources and experts, use the information here to help you decide if mediation is the best way forward for you, your family, and your future.



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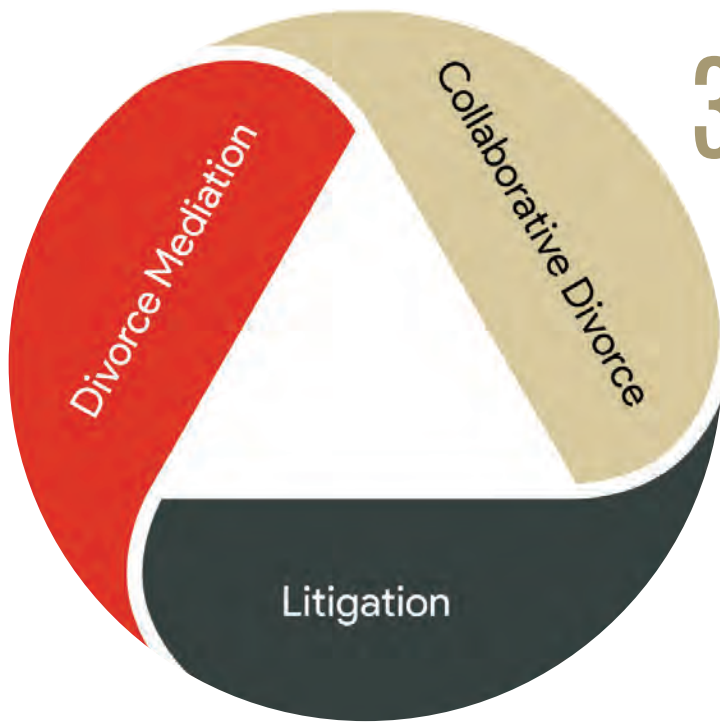
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# 3 Divorce Options

## Which One Is Right for You?

If divorce is in your future, you should understand your options, so that you can choose the process that will work best for you and your family.

By Joryn Jenkins, Family and Collaborative Lawyer  
and Certified Family Mediator

**D**ivorce proceedings are often fraught with emotion and angst. While couples who decide to end their marriages have choices as to which divorce process they utilize, too often they are simply unaware of the alternatives. Here's what you need to know about your three main choices in order of likely stress: Divorce Mediation, Collaborative Divorce, or Litigation.

### Option 1: Divorce Mediation

Mediation is a dispute resolution process in which an impartial person (the "mediator") facilitates settlement negotiations between the two spouses. The mediator may be an attorney, a licensed mental health counselor, a certified public accountant, or some other specially trained professional. The critical elements are that she is trained to mediate and to remain neutral; she does not represent either spouse.

When deciding which type of mediator to retain, consider the primary issues of your divorce. If you have children or a mentally ill spouse, for example, a counselor may be best because she is better trained to understand the developmental stages of children and how to most effectively

negotiate with an ill person. If your issues are primarily financial, you may wish to hire a financial professional of some kind.

In mediation, both of you, either together or separately, either with counsel or without, sit with the mediator to work out your agreement. If the relationship has become oppositional, then the mediator will often work with both of you at the same time, sometimes even shuttling back and forth between you in your separate rooms ("shuttle mediation").

Mediation is intended to be interest-based rather than positional. However, spouses often become positional as they succumb to the stress of negotiating the terms of their divorce. If so, it is likely because you are not able to back down from "positions" and to identify "interests" without the help of a very talented mediator.

In any event, an attorney will best understand the legal ramifications of your agreement. Even if you retain a counselor or financial professional to mediate the details of your divorce, you may still want to engage a lawyer to review your settlement agreement before it becomes official.

### Option 2: Collaborative Practice

Collaborative practice ("CP") is a negotiation process that also occurs outside of court, but is specifically structured to ensure respectful and efficient meetings between the two spouses. The focus and objective of collaborative practice is to produce solutions that meet the needs of both participants, as well as those of your children, if any, within a safe and confidential setting.

Most divorce processes address only the legal and financial separation between the parties. And many times, you, the spouses, have already taken care of the emotional element of dissolving your marriage. If not, the collaborative process will enable you to end your marriage legally, financially, and emotionally – without sacrificing those relationships that you value most, as so often happens in court.

CP is based on three primary principles: the spouses' pledge not to go to court (i.e. to war); their pledge to an open and transparent, but private and confidential exchange of information; and solutions customized by the clients to account for the highest priorities of the adults, their children, and any other interested persons.

In CP, the clients each retain a lawyer and they have the option to share a team of other neutral professionals – usually a mental health professional, a financial professional, and a child or parenting specialist, as needed. All team members, including the participants’ lawyers, should be trained in the collaborative paradigm. However, a team may agree to the participants’ choice of a professional who has not yet been trained collaboratively if its members believe that they can collaborate with the clients’ nominee and that he/she will contribute to a successful outcome.

CP consists of a series of meetings between each spouse and each neutral professional, between each spouse and his or her attorney, sometimes between both spouses and each neutral professional, and almost always with the full team (all of the professionals, the neutrals and the lawyers, and both spouses). These meetings are intended to be non-confrontational and to focus on the shared primary goal of finding an acceptable resolution between the spouses.

Like the neutral team members, collaborative lawyers are trained to work with one another and their clients to manage communications, ensure that each client is heard, and fully explore each issue and every possible solution. CP does not rely on court-imposed cookie-cutter resolutions but instead permits the participants to negotiate in a safe and structured atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well-being of their restructured family.

The critical element of the collaborative process that distinguishes it from any other is that the collaborative attorneys will withdraw and the spouses must retain separate trial attorneys if any adversarial proceedings ensue. This assures that everyone involved in the process is committed solely to the collaboration and its goals; no one splits his or her attention between collaborating and preparing for possible litigation in the event that the CP is terminated.

Some participants may be uncomfortable with the idea that they will lose their attorneys if they cannot reach a

settlement, but the fact that the attorneys must withdraw means that they will encourage their clients to accept a reasonable settlement rather than prolong the process.

Furthermore, while there are many ethical lawyers, some simply do not understand that we all have a conflict with our clients: we want to make money and our clients want to save money. CP eradicates this conflict by eliminating the lawyer’s ability to “stir the pot,” whether by design or by accident. The lawyer’s sole job in the collaborative model is to help the clients satisfy their interests and settle their divorce. If he fails in that task and the collaboration terminates, then he loses his job. The parties then proceed to Divorce Option #3: Litigation.

One last word about CP: as an experienced collaborative counselor, I have witnessed magic in these divorces – there is no other way to describe it. I have seen secrets shared, apologies made (and accepted), and ceremonies that left the full team in tears in which the participants thanked each other for their children, their love, and their time together. Only in the safe and protected cocoon that the CP team provides can such transformations take place, leading to stronger and better restructured – albeit divorced – families.

### Option 3: Traditional Courtroom Divorce (Litigation)

In spite of the plethora of divorce choices, today’s traditional divorce method is litigation – primarily because most couples are unaware of any other options they could exercise.

With the advent of the internet, people are becoming more educated about their options. Regardless, while the vast majority of litigating parties end up settling, many issues are still tried in the courtroom; settlements only come after interminable courtroom battles on which countless dollars are spent and endless time wasted. Rather than trying to settle matters amicably, attorneys file motions for even the simplest of issues.

Parties play “discovery” games, refusing to provide financial documents so that the other side has to chase them

down. The process tends to be expensive and hostile. Litigation can destroy families who are already emotionally taxed and at odds with one another. And it fails to account for the fact that, in family law, once the divorce is finalized, the parties still have to deal with one another if children are involved.

Studies that compare the collaborative divorce model with the conventional courtroom divorce demonstrate that CP:

1. costs less;
2. takes less time;
3. is private and confidential;
4. causes less stress;
5. preserves relationships; and
6. produces customized results that the former spouses are more likely to abide by going forward.

That last point is worth repeating: couples who negotiate their own dissolution of marriage agreements, rather than asking a judge to decide the details of their separation and their post-divorce lives, are more likely to abide by their settlement agreements. They suffer less post-divorce litigation because they “own” their agreements. Their agreements are decisions they have made for themselves and their families.

Further, judges are limited as to what they can rule, and couples who agree with each other have more leeway to formulate creative contracts that are more likely to fit their families’ specific and sometimes unique needs.

Divorce discussions usually first focus on agreeing how those negotiations should occur. Understanding the different process options is an important first step in resolving your divorce as quickly, inexpensively, and as free of stress as possible. ■



*Joryn Jenkins has practiced law for more than 40 years. Her experience includes working in a large national law firm; a mid-sized local law firm; and as a law school professor. Since founding Open Palm Law in 1994, she is also a small business owner. Joryn is certified in Family Mediation by the Florida Supreme Court. [www.openpalmLaw.com](http://www.openpalmLaw.com)*

# How to *Get the Most out of Mediation*

What you can do for yourself to make mediation as effective as it can possibly be – including tips to help you make the most of your mediation sessions.

By Family Law in Partnership



*Y*our mediator is a trained professional who is skilled at dealing with disagreements between divorcing couples – coping with raised voices, anger, and other emotions that will inevitably arise. This should not be seen as giving you the green light to spend all of your time in mediation criticizing, blaming, or insulting your ex.

Your mediator has two roles to play:

- 1. Manage the mediation process.** When the mediator is doing this, they are managing the conflict between the two of you. They will use tactics from time to time to reduce the acrimony, so everybody can move towards an agreement, which is the second role.
- 2. Making progress towards settlement.** Here, the mediator is helping you and your ex to move forward towards a settlement of the matters that have not yet been agreed upon.

Although both of these roles can be performed at the same time, little progress can be made on the second if everybody's time and energy are spent on the conflict management side. For this reason, the things that you and your partner say and do will determine the speed and amount of progress made from one mediation session to the next.

Raised emotions or voices are a normal part of divorce mediation. In fact, when arguments arise, one of the decisions that mediators have to make is whether they should let it continue, if doing so ensures that your concerns have been properly heard and acknowledged.

If the mediator has to spend too much time on conflict management, however, the process becomes inefficient. You'll be paying the mediator to listen to arguments that you've probably already had many times. It might even get to a stage where the mediator decides to bring the mediation process to an end.

You can help mediation run more smoothly by being aware of how each of you responds to conflict when it arises.

## How Our Brains and Bodies Respond to Conflict – and the Impact on Mediation

When we experience conflict, chemical and biological changes happen within us that can impact how we behave and our ability to make sense of what is going on.

We tend to experience conflict as a threat. That threat might be physical or emotional, or it might be a sense that our ability to have our needs met is being threatened. At these times, we can react instantaneously. A part of our brain, the amygdala, is triggered, which in turn releases a flood of hormones including adrenaline through our body. That provokes the famous "fight-or-flight" reaction.

In this state, we become mentally and physically prepared either to get away, or flee, from the perceived threat as quickly as possible, or to stand our ground and argue hard for what we want.

This reaction is automatic and involuntary. Unfortunately, it does nothing to help mediation to progress.

When we are in fight-or-flight mode, we can experience a sense of incredible strength. We can become acutely aware of everything around us. We can also experience a sense of courage or bravery that might be unfamiliar to us.

In mediation, this fight-or-flight response can be seen in several ways.

### Fight responses include:

- Raised voices.
- Overly assertive actions (jabbing fingers, for example).
- Physical changes (for example, reddened face, bulging veins).
- Leaning forward in a chair, almost as if trying hard to stay sitting down.
- Angry, insulting, and blaming words.

Your mediator will be trained in managing such incidents so that violence doesn't occur. If behavior is unmanageable, however, your mediator may resign and recommend other approaches.

### Flight responses include:

- Physically fleeing from the meeting room – walking out.
- Withdrawing from the conversation by becoming very quiet, uncommunicative, and unresponsive.
- Sulking.
- Becoming very passive or simply agreeing with anything or everything that is proposed, even when it is not in our best interests to do so.

A good mediator will control the process to allow your agitation to drop to a level where you're able to move forward again with more effective levels of communication and interaction.

If you have experienced violence in your relationship, or if you have reasons to think that violence could occur, you must bring this to your mediator's attention. In such situations, the mediator can take steps to ensure this doesn't happen – unless they deem mediation inappropriate due to safety concerns.

**You can help mediation run more smoothly by being aware of how each of you responds to conflict when it arises.**

### Know Yourself – What Pushes Your Buttons?

It can help to know where your trigger points are and what the warning signs for you look like. Ask yourself:

- Which issues are going to be the hardest for me to discuss?
- What happens when I get agitated?
- How might that lead me to react?
- Is that what I want to do?
- How else might I express myself, my needs, and what I am thinking or feeling right now?

### Practice Self-Awareness

A surprising finding has come out of online mediation, during which a separating couple video conference with



their mediator and their partner. Typically, each person has a computer or tablet with a camera and a microphone; each partner will be at their respective homes if they have already separated, or in a quiet room at their workplace. Likewise, the mediator will be at their office.

Each person's screen will have three or four sections showing you, your ex, the mediator, and a document or flip-chart section (if needed).

In a Canadian study of the efficacy of this model, one woman going through divorce mediation reported that she was shocked. What caused the shock? It was neither the actions of her husband nor the mediator. She was shocked at how she saw herself looking and behaving within the mediation session.

This online mediation model effectively held up a mirror to her and showed her what she looked like, what she sounded like, and how she behaved when these difficult conversations came up. Having seen herself in this perfectly natural state of being angry and anxious, she resolved that she wanted to find better ways to manage herself and her reactions.

This story illustrates the value of self-awareness: being aware of how you're acting and how other people might perceive you. Self-leadership – being able to choose another way of responding – follows self-awareness.

The mediator has a role in helping you both to be as effective as possible within mediation. They do this by observing what's happening; how your actions and comments reveal what you're feeling. Your mediator can take steps to influence these dynamics, but there are also steps you can take to help yourself.

## 2 Important Questions to Get the Most from Mediation

Ask yourself these two questions:

1. "What kind of conversation would I like to have?" and
2. "How would I like to see myself and my ex working together in this mediation process?"

People often use the following adjectives to set out

how they would like things to be:

- Reasonable
- Mature
- Calm
- Amicable
- Responsible
- Respectful
- Safe

These are noble aspirations. By asking yourself regularly, "How am I coming across right now?" you can sometimes stop a pattern of behavior or angry outburst before it happens.

## You Will Make Mistakes – and That's Okay

Don't worry about trying to be perfect in mediation. Doing so can lead us all into a kind of paralysis where we become overly concerned about doing or saying the right or the best thing. Mediation is a well-proven method. It is robust and flexible. Skilled mediators can respond to almost anything and continue to help you. If we spend too much time telling ourselves what we can and cannot do or say, then the conversation that drives mediation falters and can become unnatural or even dishonest. Before long, nobody says anything for fear of making a mistake.

We all go into mediation with the best of intentions. We all want to play our part well. It can feel as though the pressure is on – and when that happens, we often make mistakes. Maybe you, your ex, or the mediator says something clumsy, or something just comes out wrong or touches an unexpected nerve for one of you.

For these reasons, mediation conversations will always be perfectly human and imperfectly formed. ■

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*This article has been edited and excerpted from A Client's Guide to Mediation by Family Law in Partnership (FLiP) a specialist family law firm in London, England. FLiP takes a unique approach to family law, guiding their clients with exceptional legal expertise, integrity, and specialist emotional and practical support. [www.flip.co.uk](http://www.flip.co.uk)*

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# How Mediation Works

In this form of alternative dispute resolution, a neutral third party helps divorcing couples to negotiate and resolve their disputes – while avoiding the time and expense (emotional and financial) of going to court.

By Randall M. Kessler, Family Lawyer  
and Domestic Relations Mediator

**M**ediation is a form of alternative dispute resolution in which a neutral third party – known as a mediator, or neutral – helps parties negotiate their differences with an eye toward resolution and settlement. Stated another way, mediation is an informal, out-of-court process that includes rules, ethics, and a timeline by which parties can settle. There is no testimony or other formal means of presenting evidence during mediation, though it is a more structured process than a settlement conference.

Mediations are conducted by independent, third-party neutrals, whose purpose is to facilitate a voluntary agreement between the parties without necessarily rendering an opinion on the merits of the case. The mediator has no authority to force a settlement, but rather is to serve as a

catalyst for dialogue between the parties. Those present at a divorce mediation can include the mediator, parties, family members, significant others, expert witnesses, and lawyers (although most often only the parties and their lawyers attend). Everything shared during the mediation is generally kept confidential – unless there is a threat of violence, child abuse, or imminent danger. Under these circumstances, the mediator has an obligation to report such conduct or abuse. If the parties do not reach an agreement at mediation, the right to a trial is still available; however, the mediator cannot be called as a witness.

A key advantage to mediation is that the mediator can explore the underlying background and emotional history behind a case far more than a judge can or would, allowing the mediator to get to the root of the underlying conflict. Additionally, mediation can provide an invaluable opportu-

people, or even car-wreck victims may never have to interact with their opponent again once their case is resolved – but families must continue to communicate on a personal level after the divorce settles, especially where minor children are involved. Therefore, it may be more beneficial in the long run for parents to try to reach an amicable resolution without the time, cost, and emotional toll associated with litigating.

In the majority of cases, families simply cannot afford the costs associated with long, drawn-out litigation. They also do not have the luxury of time, since children need to know where they will live, what school they will attend, etc. Also, parents still have to communicate with each other to some degree following the conclusion of the case, which becomes much harder – if not impossible – once spouses have squared-off in the courtroom. For better or worse, this is the system that families are forced into if they wish to get

## **Settlement via mediation can save a divorcing couple a great deal of money by avoiding the costly nature of litigation, and it can also spare them the inevitable emotional drain of trial.**

nity to get an unbiased evaluation of the case from experienced judges and family law litigators, should the mediator fall into one of those categories.

The goal of mediation is ultimately to avoid the time and expense (emotional and financial) associated with litigation. However, there is never a “one size fits all” solution, and each case must be evaluated on its own merits to determine whether mediation would be fruitful. Cases involving violent parties, bullies, or the opposite (“pushovers”) may not be appropriate for mediation or may not be ripe for mediation unless and until the parties are truly ready to appropriately mediate in good faith.

### **Mediation vs. Litigation**

There are an abundance of reasons why mediation may be preferable to litigation. While litigation is a manageable and perhaps even a desirable forum for corporations and business people to resolve their disputes, their situation is not analogous to two individuals going through what is likely the most traumatic and stressful change of their lives.

Corporations typically have far greater resources and fewer time constraints to resolve disputes between themselves; a family is often just waiting in limbo for closure during their divorce or child custody matter, with the children left to suffer the collateral damage. Corporations, business

a divorce. Fortunately, mediation provides an alternative, allowing families to step outside of the system and resolve their disputes with less cost, time, and stress than full-blown litigation.

Aside from the time and expense savings, another reason that mediation may be a good alternative to litigation in family law cases is that it allows for a deeper examination of the root cause of the underlying issues that led to the marital discord in the first place. Mediation provides an opportunity to dig deeper into the background of the case, and for the divorcing couple and their lawyers to be heavily engaged in the settlement process. Such dialogue can affect how and when parties settle, and also the quality of the settlement itself. Ideally, it is an opportunity for the parties to address all of their desires in a more comprehensive settlement package than a court can offer. In the majority of family law disputes, it is better for parties to decide the outcome for themselves than to have a judge make the final determination. It also may give parties an opportunity to vent (hopefully while in caucus and not in front of the opposing party), which many need to do before being able to accept a final resolution and the termination of their marriage.

With regard to the quality and comprehensiveness of a settlement, there are many different terms that can be agreed upon through mediation that a court either cannot or

will not address. For instance, parties can address and craft their own resolutions surrounding complex issues like tax exemptions, parenting time, division of property, timing and conditions of property sales, religious upbringing of the children, and almost any other issue arising out of the marriage. For child support and custody, the court does have the discretion – and the obligation – to ensure that any agreement on these issues is in the best interests of the children. But, because courts and judges tend to only deal with the “here and now,” the ability to mold and craft customized settlement terms in mediation is highly advantageous.

Of course, there are also situations in which mediation is not a better alternative to trial. For instance, some lawyers and/or parties may choose to use mediation as an opportunity to posture and “gain an advantage” over, or intimidate, the other side. In such cases, mediation likely will be unsuccessful and may even be detrimental to the ultimate outcome of the case, since it may create even more anger and frustration than already exists. If you and your lawyer sense that this applies to your specific case, then it might actually end up being more cost-effective and efficient to take the case to trial. Outside of these limited situations, however, mediation should be explored by both sides in good faith as a valuable facilitator of settlement.

### When Is Mediation Appropriate?

Mediation is rarely considered “inappropriate,” as there are many advantages to at least attempting it in good faith. In fact, mediation is becoming increasingly required by many judges in all contested cases: many judges now expect parties to have attempted mediation prior to appearing before them for relief.

Of course, there are exceptions to the general presumption that mediation is appropriate, including those situations involving domestic violence or those where one side is clearly not going to participate in the mediation in good faith. In such cases, mediation may prove to be a fruitless endeavor that may not even be worth the time and expense of attempting. However, the specific circumstances should always be evaluated in each particular case, as it may still be appropriate to hold an abbreviated mediation to test the waters and perhaps even learn something valuable about the other side. There is very little risk in this strategy, as you can always leave the session at any time without repercussion if the mediation is futile. Ultimately, the decision of whether or not to mediate should be based on case-specific facts, but generally speaking, it is typically advisable to at least attempt it.

Even if a party lives out of town and cannot afford to travel for mediation and trial, mediation can still occur with

one party only being available by telephone. Of course, almost everyone familiar with mediation will agree that in-person mediation – which allows both parties to experience the true dynamics of the process – makes resolution more likely.

### Must the Case Settle at Mediation?

The case does not have to be settled at mediation under any circumstances; in fact, a good degree of caution should be exercised prior to reaching a final agreement in mediation. In some cases, settlement may be a goal, but the primary goal may be simply to acclimate the parties to the process of mediation in anticipation of future settlement discussions. If the parties learn how to negotiate in good faith the first time around, there may be hope that they will do so again in subsequent interactions and possible future mediations.

Even if the process ultimately breaks down, it is likely that the client will have walked away with more information and insight into the other side’s position than would have otherwise been the case. It has been said that mediation provides the most “bang for your buck” in terms of learning about the other side. There may be a tremendous amount of insightful information gained at mediation that may allow for a far more enlightened case strategy, should settlement negotiations ultimately fail.

During mediation, it might become clear what the other side’s “hot buttons” are, which allegations they acknowledge, which items of property they covet most, and who their potential witnesses may be. Settlement via mediation can save a divorcing couple a great deal of money by avoiding the costly nature of litigation, and it can also spare them the inevitable emotional drain of trial.

The vast majority of people who go through a full divorce trial walk away from it with a strong disdain for the process. Keeping this in mind, it is usually in the client’s best interests to attend mediation in good faith and in furtherance of settlement. If that fails, regroup and discuss what was learned at the mediation and how that information can assist in the case – either in litigation strategy, or in future attempts at settlement. ■



*This article has been excerpted and adapted from How To Mediate A Georgia Divorce (Institute of Continuing Legal Education in Georgia, 2015) by Randall M. Kessler. A distinguished family lawyer, he is also a domestic relations mediator with an active mediation practice in Georgia. [www.ksfamilylaw.com](http://www.ksfamilylaw.com)*



# BENEFITS of Divorce Mediation

Divorce mediation has many logistical, financial, psychological, and emotional benefits compared to a traditional, lawyer-driven divorce litigation process.

By Stuart Watson, Family and Divorce Mediator

An impending divorce is profoundly stressful. It exposes multiple vulnerabilities because of the potential loss and uncertainty about so many areas of life — including partnership, financial security, parenting time, home, family relationships, and future life plans.

Given these circumstances, the choice about how to get a divorce is all the more crucial. Listed below are ten benefits of divorce mediation as compared to a standard, lawyer-driven divorce litigation process.

## 1 Save Money.

Country-wide surveys demonstrate that the divorce costs through mediation are \$1,500 – \$3,000 for both parties, approximately 10% or

less of divorce costs through litigation (typically \$15,000 – \$40,000). This is a significant benefit of divorce mediation, as families already experience financial strain when they begin supporting two homes; decreasing divorce expenses is a smart, practical business decision.

## 2 Protect the Children.

The most significant divorce factor impacting children's psychological and emotional health is the amount of conflict between the parents. The adversarial, litigated approach escalates conflict and stress and can leave lasting scars, thereby putting children's well-being at risk. This is particularly the case when children are involved in a high-conflict custody battle. In contrast, divorce

mediation is professionally guided, geared towards problem-solving, and oriented towards meeting the whole family's needs.

## 3 Save Time and Stress.

While the average overall time frame for a litigated divorce is nine months to two years, the average overall time frame for the divorce mediation process is two to four months. Mediation's streamlined approach to information-gathering and decision-making provides reassurance through the progress. It shortens the amount of time all family members have to endure the anxiety of unresolved issues and unknown futures.

## 4 Remain in Control (Empowerment).

Divorce Mediators guide and educate people through their parental, financial, and legal options. This



allows them to make their own informed decisions about what is best for themselves and their family, instead of attorneys and judges taking control and making those decisions for them. Rather than blaming and fault finding, mediators help ex-spouses communicate clearly and effectively, consider and discuss options, and take responsibility for their choices.

## 5 Create Customized Solutions.

A litigated divorce provides a cookie-cutter approach to tasks like selling the house, splitting the retirement, and establishing a traditional parenting schedule. Divorce mediation can benefit ex-spouses by enabling them to think outside the box and develop a fair settlement agreement that reflects their own and their family's unique needs and goals. For example, they may trade retirement for house equity, so that one spouse can retain the house, or develop a parenting schedule that creatively maximizes children's time with each parent while reducing the time the children spend in paid childcare.

## 6 Retain Privacy & Confidentiality.

Family matters are sensitive and should remain private. In mediation, you will never set foot in a courtroom. Unlike a litigated divorce, your divorce process in mediation will not have hearings open to the public and become part of the public record. State laws protect your confidentiality during divorce mediation. All verbal and written communications, draft agreements, and disclosures are confidential.

## 7 Avoid Future Legal Battles.

When major parenting and financial decisions are made by others – such as attorneys and judges – and imposed upon people, they are much more likely to be resentful

and resistant to the court's judgment. They find a myriad of ways to evade following the judgment and sometimes repeatedly file for legal appeals and modifications. This type of protracted long-term legal conflict depletes families emotionally and financially. In contrast, research has demonstrated that people are more invested, satisfied, and far more likely to follow through with agreements they voluntarily participated in developing.

## 8 Set the Foundation for Positive Parenting.

The adversarial threat, demand, and counter-demand inherent in a litigated divorce establishes a pattern of high conflict and mistrust during the sensitive time of establishing a new post-separation parenting relationship. Conversely, a significant benefit of divorce mediation is that parents are guided and supported in making proposals and mutually acceptable agreements about difficult topics. This collaborative problem-solving approach provides parents with the skills and positive experience of respectfully working with each other and establishes a positive co-parenting relationship to handle future challenges.

## 9 Preserve Community Relationships.

One of the greatest casualties of a conflict-ridden, lawyer-driven divorce is the relationship between a spouse and their in-laws, extended friendships, and community. The negativity of a legal battle forces other people to choose which spouse to support and retain as a friend, and which spouse to blame. The more collaborative divorce mediation process demonstrates to family and friends that the spouses are working together with mutual respect and integrity to make the difficult decisions required by an unfortunate divorce.

## 10 Achieve Closure.

People often hire lawyers with the erroneous assumption that a judge will hear their case and validate the rightness of their position. In truth, only 10% of litigated divorce cases actually go to trial. Oregon, where I practice, is also a “no-fault state,” meaning that the spouses' wrongdoing towards each other is largely irrelevant to the court's decisions. Conversely, a well-trained divorce mediator can assist willing parties in discussing the decision to divorce, and in being heard about, and bringing closure to the wounds of the relationship.

## Choose the Right Divorce Mediator.

The benefits of divorce mediation are a natural result of the mediation process itself. However, there are variations in the style and approach mediators can take that may augment or diminish some of these benefits. That makes it important to choose a mediator whose style and approach feel comfortable for both spouses.

If you've both retained family lawyers, you may want to ask whether the mediator has a positive working relationship with those lawyers – or at least knows them by reputation and feels comfortable working with them.

Finally, many mediators offer quick phone consultations or 30-to-60-minute phone, video conference, or in-person consultations at no charge to help divorcing couples find the right mediator for their family. ■



*Stuart Watson is a family mediator with Oregon Divorce Guides and Progressive Mediation in Portland, Oregon. For nearly 20 years, he has been assisting couples and families through the divorce and separation process in a way that best supports them legally, emotionally, and spiritually.*

[www.divorceinoregon.com](http://www.divorceinoregon.com)

# Choosing the Right Divorce Mediator

Before you meet with a prospective divorce mediator for the first time, you should prepare a few questions relevant to your own situation. Here are ten suggestions to get you started.

By Diana Shepherd, Divorce Financial Analyst

**M**ediation has become a popular way to settle a divorce. With the help of a third-party mediator, you and your spouse work together to negotiate how to live successful lives apart. Divorce mediation can save time and money and is usually less emotionally damaging than a full-blown court battle. Together, you and your spouse work out an agreement you can both live with from the same side of the mediation table rather than from opposing sides of the courtroom.

Your mediator will draft a “Memorandum of Understanding” (MOU) that incorporates all areas of agreement you and your ex reached during your mediation sessions. The MOU is not a legally binding document – but when both of you sign it, you are agreeing to have your MOU incorporated into your legally binding settlement.

Mediation isn’t an option in all divorce cases, but when both parties are willing to look at the actual issues instead of the emotions that cloud the issues, mediation is worth a try.

Statistics show that when a case is negotiated through a mediator, the parties tend to stay out of court in the future. Another benefit of a mediated settlement is that you and your spouse will learn powerful new communication techniques, which is particularly important if you have children or shared business interests.

## Finding Your Divorce Mediator

Most people are referred to a mediator by their lawyer, a trusted friend, or a colleague. Some will ask for recommendations on their social media pages; others will do their own research, looking at mediation websites and reading online reviews; and others will ask their therapist, pastor, or marriage counselor for a referral.

Before selecting a mediator, carefully scrutinize the individual’s qualifications. Ask to see a resume or CV, and find out how they’ve been practicing and whether they have ever mediated a case like yours. Mediators must be impartial, so



they should not have had prior professional or social relationships with you or your spouse. Mediators are trained to watch out for and manage their own biased thinking; despite their best efforts, however, one or both spouses may think that the mediator is biased in favor of their ex at one time or another.

The following organizations can point you in the direction of a qualified, competent mediator in your area:

- The Academy of Professional Family Mediators (U.S. and Canada)
- Mediate.com (U.S.)
- Family Mediation Canada

## 10 Questions to Ask a Prospective Mediator

Look for someone you can trust and communicate with, and who is empathetic to your concerns. Don't pick someone lightly, or based on the cheapest rate, because they'll be helping you create an agreement you may have to live with for the rest of your life.

Before your initial consultation, you should prepare some questions relevant to your own situation to see whether the mediator is a good fit for you. Here are a few suggestions; feel free to tailor this list to your own circumstances.

### 1. What is your training and experience?

Ask about direct experience dealing with cases like yours, especially if there are aspects that make your case unique.

### 2. Do you have any special skills I might need?

Do you speak another language? Since mediation is based on clarity of communication, it may be important for you to conduct your mediation in a language other than English. Or if your case is financially complex, you may want a mediator who is also a financial professional to understand and explain your situation to you.

### 3. What is your approach?

Some mediators may want to meet separately with you and your spouse before sitting down with the two of you together; others may always work with a co-mediator with a different skill set (e.g., a lawyer-mediator and a financial-mediator may team up to offer more complete service to their clients); still others may offer "shuttle mediation" (where each of you is in a different room and the mediator shuttles between the two spouses) for high-conflict clients. Find out which techniques they'll use and how they'll conduct your sessions.

### 4. Do you have any biases that could affect our sessions?

We all have certain viewpoints that cloud our judgment, and mediators are not exempt. You should ask if your mediator has any strong views about the role of mothers

or fathers, gay marriage, mixed-race couples, or whatever applies to your unique situation.

### 5. Are we good candidates for mediation?

For mediation to be successful, you and your spouse need to be able to communicate. If you can't talk to each other without fighting, will you allow the mediator to control your sessions such that both of you can make requests and concessions to find a workable solution? Both of you must be willing to divulge all your financial information and commit to absolute honesty and transparency for mediation to be successful.

### 6. If there has been domestic violence in our household, can we still mediate our divorce?

Some mediators are confident in their ability to mediate a divorce involving domestic violence; others won't touch it with a ten-foot pole. You need to advise your prospective mediator about any violence or power imbalances in your marriage so they can decide whether mediation will be both safe and productive, or whether you'd be better off having a lawyer negotiate on your behalf.

### 7. Should a new partner(s) be involved in the process? If so, how?

### 8. How many sessions and how much time is the process likely to take?

This will depend to a great extent on you and your ex. How much time will you spend fighting, and how much will be devoted to finding solutions during each session?

### 9. How much is it likely to cost?

Again, this will depend to a great extent on you and your ex. But ask about hourly rates, packages, and how/when you will be invoiced.

### 10. What is the role of my lawyer during the mediation process?

Even if your mediator is also a lawyer, they will likely strongly advise or even insist that each of you retain your own lawyer to offer legal advice, explain your rights and obligations, and either draft the divorce agreement from your MOU or carefully read it over and explain it to you before you sign on the dotted line. ■



*Diana Shepherd (CDFS®) is the Content Director and Co-Founder of Divorce Magazine. An award-winning editor, published author, and a nationally recognized expert on divorce, remarriage, finance, and stepfamily issues, she is a frequent lecturer on the topics of divorce, finance, and marketing. [www.DivorceMag.com](http://www.DivorceMag.com)*



When emotions run high, intelligence tends to run low. Use these ten simple tips to help you keep your cool when the conversations get heated.

By Carolyn Ellis, Divorce Coach

*Patricia was negotiating a separation agreement with her soon-to-be ex-husband with the help of a mediator. After months of mediation sessions and mounting legal bills, she felt like abandoning the negotiations and taking her ex to court. "I don't even recognize who this man is anymore. How did I ever decide to have two children with Frank?" she asked during one of our coaching sessions. "All I'm trying to do is what's in the best interest of our kids and obtain the kind of support that the law requires him to pay. But Frank is being so belligerent and disrespectful!"*

*At this point, Patricia was too upset to negotiate calmly; she wanted to "give Frank a taste of his own medicine" by becoming equally belligerent and disrespectful to him. This could have derailed the mediation process and ended with the two of them slugging it out in court. Instead, Patricia worked to control her emotions to prevent the heat of the moment from undermining her long-term goals, and she was able to negotiate a settlement that both of them could live with.*



**T**here aren't many people who jump for joy at the prospect of having a potentially contentious and heated conversation with someone they used to love. It can be very unsettling, profoundly frustrating, and deeply disappointing. The unfortunate reality for the vast majority of divorcing couples is that tense moments, conflicts, and arguments are inevitable during your divorce journey; but it is how you handle the conflict that will help to determine how long and how difficult the process will be.

Negotiating your separation agreement requires you to make decisions about crucial factors that will impact you and your family for years to come – such as division of marital assets, child custody, and financial support. When emotions run high, intelligence tends to run low. During divorce, you're asked to make decisions about your life when you're least equipped to do so.

Brain science helps to explain why it's so hard to make complex and challenging decisions when you're in a place of emotional upset. When faced with situations that create fear or insecurity, the amygdala in the limbic brain is triggered and sets off the "flight or fight" response. Adrenaline floods through your body, creating physiological responses to ensure your physical survival. For example, breathing and heart rates increase, sending blood to your limbs so you can run or go into battle.

Instead of being able to respond, you can only react when you are hijacked by your amygdala. The cerebral cortex, the part of your brain that governs reasoning and logic, is hard to access; however, this is what you'll need to call upon the most when you're in the midst of finalizing your divorce or co-parenting agreement with your ex.

Use these ten simple tips to help you keep your cool when the conversations get heated.

### Tip 1 – Take Some Deep Belly Breaths

Nothing helps prevent you from spiraling into emotional reactivity like taking a few deep breaths. Plus, this strategy is free, easy, and something you can do any place, any time.

Studies show that taking deep, conscious breaths for even one minute can help you feel more grounded quickly. Breathing like this helps to dial down the amygdala response that triggers the "fight or flight" response so you can better access the part of your brain that governs rational thought.

Most of us tend to breathe more shallowly, using primarily the chest cavity. It can take a bit of an adjustment to learn how to breathe more deeply, using your full lung capacity. To help you get the deep breaths going, place your hand on your navel and breathe deeply right down into your diaphragm. When you inhale, imagine you're sending your breath right down to your hand. You're on the right track when you see your hand moving outwards with your inhale, and then back in towards your body on the exhale.

### Tip 2 – Move Your Energy

To help express yourself clearly in your negotiations, it's important to get your energy clear. Past upsets and grievances, unexpressed emotions, worries about the future, or feelings of anger, sadness, guilt, or fear create static that can make it harder to get your point across effectively.

If you're feeling angry, write an angry letter (don't send it, however!), write about your feelings in a journal, take your dog for a walk, or work up a sweat at the gym. If you're feeling sad, spend time with people you love or do some yoga. To get a fresh perspective, take a nature walk, or get creative in the kitchen or with a hobby. Finding ways to move and release pent-up emotions before you have your tough conversations makes it easier to speak your truth when it really counts.

### Tip 3 – Get the Big Picture

When you're deep in the trenches of negotiating your divorce settlement, it's so easy to lose perspective. Everything feels urgent and high-stakes. It's important to take the time to get the big picture.

One of the most effective ways to do this is to look out into the future: imagine what you want your life to look and feel like 20 years from now. Do you want to be upset and still resentful about your ex, or do you want to feel more peace and clarity in your life from all the wisdom you're gaining from this divorce experience? If you have children, what do you want the day they graduate college or get married to be like? Keep the big picture in mind and do your best to let that vision pull you through the stress and conflict you might feel today.

### Tip 4 – Don't Give Away Your Power

When it comes to a divorce, everyone has an opinion for you. We hire lawyers; we talk with therapists or coaches; we poll friends, family, and neighbors for their experiences and suggestions. We devour self-help books and attend workshops to try and find our way through the divorce maze. But at the end of the day, you are the world's best expert on you and what's right for your life.

When you decide to take responsibility for your choices, you put yourself in the driver's seat of your life. When the heat is on and the conversation gets tough, it's tempting to give your power away to others in order to avoid conflict. Your lawyer may be an expert on the law, but you and your family are the ones who will have to live with the consequences of your legal decisions. Your ex-partner will know what buttons to push to upset you; during your marriage, you may have backed down when he or she pushed those buttons. Today, don't take the bait. You have both the power and the responsibility to give input on decisions that will affect the rest of your life.

## Tip 5 – Pick Your Battles

What tends to surprise most people is how grueling it is to actually implement the decision to end your divorce. Especially if you have children, there are a lot of major issues that need to be negotiated such as child support and custody, spousal support, and division of assets and debts.

It's crucial to pick your battles. You'll get exhausted if you go to the wall on every single issue that arises. Brainstorm a list of all the issues that you can think of – holiday schedules, education choices for the kids, what happens when one of you loses a job or when a new partner comes on the scene, and how to handle it when your teenager wants to get tattoos and a few piercings. What's negotiable for you? What's a deal-breaker issue for you?

Get clear on your core issues and set some priorities. You'll need to have some give and take in your relationship with your ex, particularly if you are co-parents. Learn to become strategic and identify where you're willing to get creative or compromise in order to build good-will for the long run.

## Tip 6 – It's Not Personal

One big trap that is easy to fall into is taking interactions and choices made by your ex-spouse personally. Especially in situations of conflict, people will inevitably have different opinions and strong emotional reactions. Allow others to have their own emotional upsets. Doing your own emotional homework with a therapist or coach can help you defuse some of those "hot buttons" that ex-partners are so skilled at pushing.

Realize that what your ex-partner thinks of you is no longer any of your business. The degree to which you continue to respond and react to what your ex thinks, says, or does is the degree to which you help create your own suffering. In the words of spiritual teacher Matt Kahn, "What others think of you is their journey. What you think of yourself is yours."

## Tip 7 – Own Your Part

We are human beings, not saints. Particularly when under stress, we're likely to do or say things that we may regret later. Help keep your negotiations moving in the right direction by taking responsibility for your actions and how you may have contributed to the conflicts you're trying to resolve.

In negotiations, take ownership for your feelings when you speak. Avoid blaming statements such as: "You're being unfair!" Instead, take responsibility for your feelings by using "I" statements, such as: "I feel upset when XYZ happens."

When you do find yourself making a misstep or losing your cool, show yourself compassion. See these "mistakes" as enormous learning opportunities.

## Tip 8 – Get Support

Einstein said that problems cannot be solved at the level of thinking that created them in the first place. Learn to ask for help and support; if you don't ask, the answer will always be

no. If you do ask, the chances are great that you'll be able to break through whatever problem is keeping you stuck.

If you reach an impasse with your ex-spouse, get help when you need it. You may need to enlist a third party (counselor, mediator, lawyer, etc.) to help resolve difficult issues. It's critical that you find effective support in your social network during your divorce process. Find a trusted friend or divorce "buddy," a divorce coach, therapist, or a community support group.

## Tip 9 – Talk It Out

When you have big stakes on the line, it's best not to "wing it" and hope it all turns out the way you want. Taking time to prepare yourself in advance helps give you the confidence and clarity that can make all the difference.

One way to do this is to write down all the key points you want to make. Get some of those nervous jitters and hesitations out of the way before the meeting even starts by practicing out loud. You can even do this in front of a mirror to take your "talk it out" strategy to an even deeper level.

## Tip 10 – Surrender

Anyone who has ever tried to paddle a canoe or swim upstream can confirm that going against the current can be exhausting. When you make the choice to surrender, you let go of needing to know or control everything all the time. Surrendering isn't a sign of weakness: it doesn't mean you're giving up your position or your beliefs. Sometimes, the best choice about "what to do" is simply to breathe and stay in the present moment; stay open to learning any wisdom this situation has to offer you.

Before you head in to your next tough conversation, take a moment to close your eyes and get centered. Create an intention that you can come back to when you feel challenged or unsettled, such as: "Let this be resolved in the highest and best interests of all involved" or "Let me speak my truth powerfully and clearly today." You can even anchor this intention by holding a small object, such as a small crystal or stone, in your hand. Bring this object with you to your meeting to help you stay centered and remind you of your intention to surrender your desire to control every aspect of the negotiation. ■



*Carolyn Ellis is an award-winning coach, transformational expert and author of the award-winning [The 7 Pitfalls of Single Parenting: What to Avoid to Help Your Children Thrive After Divorce](#) and [The Divorce Resource Kit](#). She specializes in helping individuals navigate change and uncertainty by tapping into their own inner brilliance and emotional resilience. To learn more or to book a session, please visit [www.ThriveAfterDivorce.com](http://www.ThriveAfterDivorce.com) and [www.BrillianceMastery.com](http://www.BrillianceMastery.com).*

# Mediation Checklist: Interests & Objectives

By Deborah Lynn Zutter, Family Law Mediator

Use this checklist to gain insight into what is motivating you, to make your best guess about what is motivating others who are involved in the dispute, and to brainstorm creative ways to meet all of your objectives.

## Checklist: 9 Key Questions to Overcome Obstacles

Write out or type your answers to these questions. Your answers aren't written in stone: they may change and evolve as you move through the mediation process. Check off each item as you complete it.

### 1. Your Objectives.

- ☐ What are your objectives?
- ☐ Rank them in order of importance.
- ☐ Distinguish between essential and "wish list" objectives.

### 2. Other Objectives.

- ☐ What do you think the other objectives are concerning this dispute?
- ☐ Rank them in order of importance.
- ☐ Distinguish between essential and "wish list" objectives.

### 3. Identical Objectives.

- ☐ What objectives do you seem to have in common?

### 4. Complementary/Independent Objectives.

- ☐ Which objectives appear to be complementary to or independent of each other?

### 5. Incompatible Objectives.

- ☐ Which objectives appear to be in conflict?
- ☐ In what creative ways could these be overcome?

### 6. Hunches.

- ☐ How can you check out your hunches about the other side's objectives?

### 7. Trades.

- ☐ What do you have that you believe the other disputant wants or could benefit from?
- ☐ What does that other disputant possess that you could benefit from?
- ☐ How might a trade work?

### 8. Timing.

- ☐ Can the timing of events be structured to meet both your objectives and those of the other disputant?

### 9. Laws and Rules.

- ☐ How can laws and rules, such as income tax, be applied for mutual gain? ■



A retired lawyer with 33 years of experience, Deborah Lynn Zutter (LL.B., LL.M.) practices mediation in West Vancouver, B.C. Certified as a Comprehensive Family Law Mediator with Family Mediation Canada, she is also the author of *Divorce Mediation: What You Need to Know* (Abundance Solutions, Inc.).

# How to Handle an Angry Ex

## During Divorce



Out of all the emotions that can arise between exes during divorce, perhaps the hardest one to deal with is anger.

By Dr. Deanna Conklin-Danao,  
Clinical Psychologist

**D**ivorce can stir up a wide range of complicated emotions, some of which include sadness, anger, hurt, and fear.

Most people would say they are not their best selves during a divorce. Out of all the emotions that can arise between exes during divorce, perhaps the hardest one to deal with is anger, and what can be even more frustrating is figuring out just how to handle an angry ex.

What can you do if you are trying to co-parent with your ex and he or she is still angry about the divorce?

Here are four tips on how to handle your angry ex-spouse during divorce.



1

### Start with Empathy.

It's important to remember that anger is a secondary emotion. Behind anger is often sadness and grief. It is not uncommon for one person to push for a divorce leaving the other spouse to catch up to those feelings. The person who wanted to save the marriage is usually slower to complete divorce tasks and can struggle during and even after the divorce to come to terms with the fact that the marriage has ended.

That struggle can lead to anger. Time can be helpful. As the person starts to get his/her life back on track, the anger may diminish and your co-parenting relationship may stabilize. While maintaining empathy won't erase your ex's anger, it can help de-escalate tense interactions.

2

### Focus on Communication.

When dealing with difficult people, keep communications BIFF: Brief, Informative, Friendly, and Firm. "Most people have a hard time responding to personal attacks in emails, texts and other communication because it puts them in react mode instead of respond mode," notes Bill Eddy (LCSW, Esq.), the author of *BIFF: Quick Responses to High-Conflict People, Their Personal Attacks, Hostile Email and Social Media Meltdowns* (Unhooked Books) and *BIFF for CoParent Communication: Your Guide to Difficult Texts, Emails, and Social Media* (Unhooked Books).

"Learn how to write (or speak) using the BIFF Response method to help bring an angry exchange to a quick conclusion, without losing it yourself."

You want to ensure that communications are to-the-point, focused on the issue at hand, and have a clear request.

Don't engage in topics that may elicit unnecessary emotion, such as why the marriage fell apart – stick to the matter at hand (like figuring out sick childcare or soccer schedules). Look over texts and emails before you send them and ask yourself if you would send it to a coworker. This lens will help you frame your communication in a productive way.

3

### Maintain Clear Boundaries.

If someone is lashing out at you, you are allowed to set a limit. It's perfectly appropriate to say something like, "I will not communicate with you when you are yelling at me. I will be available to talk about this later when you have calmed down."

Make sure your kids don't get stuck in the middle trying to facilitate communication or make everyone happy. Keep such discussions between you and your co-parent. You can also set limits on topics you are

**Having a respectful working relationship with your co-parent will benefit you and your kids moving forward.**

willing to discuss: "I will not talk with you about my personal life, but we can talk about anything related to our kids."

4

### Get Professional Help.

If you try these steps and still can't figure out how to handle an angry ex – or even your own anger – seek professional help. Working with a therapist who can help you establish respectful, effective communication will be worth it in the long run.

You and your ex-spouse will be lifelong co-parents, so learning new ways to communicate will benefit everyone. In very high-conflict cases, couples can utilize a professional parenting coordinator to navigate the parenting conversations, but this is a much more extreme intervention.

The above tools are designed for dealing with a person who is angry, but still in control. If there is any history of domestic violence or other violent behavior, your first step needs to be towards both professional legal and mental health advice. Safety – for yourself and your children – is the primary concern.

## Anger Is Common During Divorce

It is normal for couples going through divorce to struggle with how to handle an angry ex. Anger is a common feeling during divorce and people often do and say things they regret when they are angry. If you lash out at your ex-spouse, apologize and try to get things back on track.

If they frequently lash out at you, use the above tips to manage the interactions and keep the communication productive. Having a respectful working relationship with your co-parent will benefit you and your kids moving forward, so it is worth addressing this issue, even if it is difficult to do so. ■



Dr. Deanna Conklin-Danao, Psy.D., has been in private practice since 2006. She sees children, adolescents, and adults individually and in family and couples therapy. Her experience and training have provided Dr. Conklin-Danao with the skills to work effectively with clients as a divorce coach and therapist. [www.drconklindanao.com](http://www.drconklindanao.com)



# 3 Common Misconceptions About Divorce Mediation

Don't let these misconceptions get in the way of using mediation to resolve the issues of your divorce.

By Susan E. Guthrie, Family Lawyer and Mediator

**A**s a family law attorney and mediator for almost 30 years, I spend a great deal of time educating prospective clients and the public about the many benefits of choosing to mediate their divorce rather than selecting the more traditional litigation path. Even though divorce mediation is much less costly, less time consuming, and less divisive and stressful than the adversarial model of litigation, I often hear the same three concerns raised about mediation.

In reality, because mediation is such an adaptable and holistic approach to divorce, these common concerns are all well-handled in the mediation setting. In fact, almost any divorce case, or really any family law matter, is suitable for mediation, and the parties can successfully resolve their issues without the great expense and emotional costs of litigating.

## **Misconception #1: Mediation Won't Work in High-Conflict Cases**

Probably the most common misconception that I hear from people about divorce mediation is that they believe it is only suitable for couples that are very amicable. Their perception is that since they are not getting along very well with their spouse, they can't sit down together and discuss anything, let alone issues regarding their money

and children. In fact, mediation is very well suited to helping high-conflict parties work through their differences and come to a reasonable solution.

While it may be true that the two people are too emotional to sit down together alone, in mediation they work with their mediator, a trained professional and neutral third party, who has experience and training to help them focus on the issues at hand, and to work together to resolve them. The mediator has many tools available to assist when emotions run high, such as caucusing by meeting with the parties in separate rooms or using an online platform until emotions have a chance to settle down. The mediator is skilled at helping the people to focus on the issues at hand and the future rather than the things that happened in the past that brought them to divorce in the first place.

Another helpful approach for very high-conflict cases can include bringing an additional professional into the mix, such as a marriage and family therapist, who can meet with one or both parties in the mediation session or separately, as appropriate. The goal of the therapist is not to reconcile the parties, but to help them develop a better ability to communicate around the emotional roadblocks that they are facing. In the end, by going through the mediation process together and reaching reasonable solutions to the issues facing them, parties that mediate learn new ways of working together as they go forward into their new future. This is a huge benefit, especially when children and co-parenting are involved.

### **Misconception #2: The Mediator Makes Decisions for You**

The belief that the mediator will act as a quasi-judge and tell the people what they are going to do is another very common misunderstanding that I hear about the divorce mediation process. In actual fact, one of the greatest advantages of the mediation process is that the parties themselves retain control over all decisions made and agreements reached. This is very different from the litigation model where a

judge, essentially a stranger in a black robe, imposes orders and judgments on the parties.

In mediation, the mediator's role is not decision-maker; instead, they act as a neutral support system for both parties equally. The mediator helps the couple identify all the issues that they need to resolve around their divorce, gives them information and education about the law and other facts around those issues, and facilitates their discussion of those issues so that the parties themselves can decide what is the best course of action for them.

It is understandable that when people reach agreements together based upon what they think is right and fair, their agreements are much more sustainable going forward than court orders that tell the parties what they must do or not do, pay or give to the other party. In fact, a great advantage of mediating your divorce settlement is that you will make all the decisions together about what is best for you both and for your children as you go forward.

### **Misconception #3: You Don't Need a Lawyer if You Are Mediating Your Divorce**

Finally, the parties in mediation are often surprised to hear their mediator suggest that they consider retaining consulting attorneys. The thought is that they chose to mediate to avoid fighting their case out with attorneys and they don't want that extraordinary expense. However, the role of a consulting attorney in mediation is very different from the role of a litigation advocate, and is a very helpful assistance when mediating.

In the mediation process, your mediator will provide you with much of the information and legal background that you need to discuss your issues. At times, though, because the mediator must remain neutral, they cannot give either party advice specific to their best interests because that would be against the interests of the other party. Here, a consulting attorney whom is accessed on a limited, as-needed basis,

can provide that specific legal advice to help a party decide how to best move forward in the negotiations.

The small hourly cost for the attorney's time is well worth the expense as it helps the client to make decisions and thereby move the mediation forward. In addition, at the point in the process when the parties have finalized all their agreements and a draft Separation Agreement is prepared, it is advisable that both parties review that agreement with their own attorney before they sign it. After all, this document will have a lasting impact on their finances, their children, and their lives for some time to come, and it is prudent and wise to be sure that they both fully understand the terms in the agreement, and that it accurately reflects their wishes.

In the end, the use of a consulting attorney in mediation only as needed will cost far less than full-scale divorce litigation representation and is well worth the expense to ensure that both parties are fully advised and supported, and the divorce mediation can be successful.

To sum up, these misconceptions about divorce mediation really highlight some of the many advantages of mediating your divorce. Because the format is highly adaptable and collaborative, the mediator will support and assist you and your ex-partner to work cooperatively to resolve your issues. Through the process, you will make agreements that you choose to live by, which will prepare you to go forward in a productive and positive manner. Best of all, you will have avoided the expense and stress of a long, protracted court battle. In the end, almost every divorce case is suitable for mediation – despite these common misconceptions. ■



*As a divorce mediator, Susan Guthrie brings her wealth of knowledge and experience in the family law and divorce arena to the table in assisting the parties in coming to agreement in mediation.*

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# *Could Marital Mediation ? Save Your Marriage !*

Marital mediation – using mediators to help repair a marriage instead of ending it – has often succeeded in resolving relationship conflicts when other interventions have failed.

By Jacqui Atcheson, Family Mediator and Coach

**S**tarting out in the mid-1990s as a Certified Mediator through the Staten Island Community Dispute Resolution Center, my classmates and I were considered “pioneers” in the arena of mediation. Alternative Dispute Resolution (ADR) had been gaining momentum for years through arbitration, and now there was another process to help couples craft an agreement and divorce without going to court.

Before family mediation started gaining in popularity, the courts were getting clogged with matters that could and should have been



## When you go to court, there is only a win/lose outcome – which can't help your relationship evolve, especially when there are connections that will be there for life.

handled in a non-legal way. They then introduced mediation training programs and found that mediation worked best for family issues (family court) and neighbor disputes (small claims court).

These lawsuits are extremely personal and are best served when the parties resolve the issues together with the assistance of a neutral third party. When participants show understanding, empathy, and a willingness to compromise, the odds of the agreement lasting are extremely high.

### Win-Win vs. Win-Lose

When you go to court, there is only a win/lose outcome – which can't help your relationship evolve, especially when there are connections that will be there for life.

Divorce mediation and coaching are peaceful processes for turbulent times. Individual clients may see a coach while they are still deciding whether to stay together or split up. Some desperately want to keep their marriages together, especially for their children, but they also want to be happy.

While I work with my clients to improve their communication skills, address the areas of friction in their relationship, and develop new skills, there is always the missing piece: the other party. As a divorce mediator, many of my clients told me they wished they had learned about conflict resolution earlier on in their relationship; if so, they might not have ended their marriage.

### About Marital Mediation

This process is for couples who are experiencing problems but want to stay together and work through their issues in a constructive way. It is a practical, solution-based approach to conflict resolution in which the couple identifies, brainstorms, negotiates, and creates their own solution(s) with the help of a trained mediator.

A couple will typically see a marriage mediator at the same time they are in couples or individual counseling. While trying to save a marriage, it is important to

utilize as many professionals as possible. This offers the couple the opportunity for healing and learning new coping, communication, and conflict resolution skills. This is not about choosing one method over another.

Common themes that destroy a relationship can be dealt with in mediation to save your marriage. Financial issues, job loss, bankruptcy, inheritance, spending patterns, and adultery can cause distrust. Moods, emotions, different patterns of communication, problems with children, and problems with mingling new families in second and third marriages can be managed. These can all be discussed and resolved in mediation.

When working with a marital mediator to save your marriage as opposed to ending your marriage, think about the following:

- Divorce is expensive and will impact every family member's standard of living.
- Divorce wreaks havoc with your emotions.
- Divorce (in most situations) has parents putting their children in the middle.
- Divorce has friends and family taking sides.
- Divorce has you looking into new relationships. Is the grass greener?
- Divorce just brings out the "ugly" in good people.

You don't have to choose between staying in an unhappy marriage and having happy children or leaving the marriage and having unhappy children (in fact, statistics show neither is true). Marital mediation has often succeeded in resolving relationship conflicts when other interventions have failed – using mediators to repair a marriage instead of being part of its demise. ■



*Jacqui Atcheson is a Certified Divorce Coach®, Certified Divorce Mediator, and Marriage Mediator who helps clients gain clarity regarding their goals, control over their future, and peace of mind knowing they made the best possible decisions. [www.betterpathtodivorce.com](http://www.betterpathtodivorce.com)*



# The Benefits of Co-Mediation in Divorce

Working with a co-mediation team of professionals during divorce provides you with additional benefits beyond working with a single mediator.

By Dr. Deanna Conklin-Danao, Clinical Psychologist

**A** mediated divorce uses a neutral third-party mediator to help the parties resolve issues that arise during the divorce. The mediator is not there to make decisions or mandate outcomes. Their role is to help the parties collaborate respectfully to reach mutually agreeable solutions. Co-mediation is a model that uses two professionals – often a mental health provider and a lawyer or financial neutral – who work as a mediating team.

## Benefits of Mediation in Divorce

The main benefit of a mediated divorce is that it allows the parties to maintain control of the decision-making in their divorce as opposed to having those decisions made by the court. Other benefits include the following:

- **Increased control over the divorce process:** Allows the parties to maintain control of the divorce settlement in terms of the process and the outcome
- **Improved communication:** Promotes a collaborative decision-making process, which can benefit post-divorce interactions

achieving this. Co-mediators can help model how to effectively communicate and solve problems in real time.

- **Increased potential for connection:** Mediators have different personalities and differ in terms of gender, race, and age. Similar to other relationships, a key aspect of success in mediation is “fit.” If a client feels that a mediator understands them and is neutral, it helps the process. Co-mediation creates more opportunity for a client to feel that there is a good fit.

## Considerations in Hiring a Co-Mediation Team

So, let’s say you and your spouse are interested in pursuing a co-mediated divorce. What should you look for in assembling a team? Here are some things to think about:

- **Good fit:** As previously mentioned, it is important that both parties feel comfortable with their mediator(s). This doesn’t mean that you will like everything you hear from them or that you will always get your way. Instead, you want to look for mediators that make you feel comfortable and safe. Mediation will involve difficult conversations, so

**Utilizing a co-mediation team allows you to gain insight and expertise from legal, financial, and psychological backgrounds.**

- **Privacy:** Maintains the privacy of the parties as everything but the final decree occurs outside of the courtroom
- **Decreased cost:** Reduces the cost of the divorce process compared to litigation

## Benefits of Co-Mediation in Divorce

Working with a co-mediation team provides some additional benefits beyond the use of a single mediator. These benefits include the following:

- **More expertise:** When you have a team that includes a mental health professional and a lawyer and/or financial neutral, you benefit from the specialized expertise of each professional. With each professional acting in a neutral capacity, their knowledge facilitates discussions and moves conversations forward.
- **Checks and balances:** Having multiple professionals at the table creates a checks and balances system. Each professional can promote neutrality and keep the process on track. We are all human and have the potential for bias. Co-mediation reduces the likelihood that any unconscious bias enters the process.
- **Role modeling:** One of the goals of mediation in divorce is helping parents learn how to co-parent effectively post-divorce. The ability to communicate effectively is key to

that type of fit is critical. If you are using co-mediation, it is also important to feel that the co-mediators work well together. Feel free to ask them about their previous experience working together.

- **More expensive:** It is more expensive to use co-mediation as you are paying multiple professionals. While it may end up being more efficient to utilize professionals with specific expertise, the hourly rate will be more expensive than a single mediator.

Getting a divorce is a difficult, painful process and many decisions need to be made while you are mourning the loss of your marriage. Mediation allows you to create solutions that meet the unique needs of your family. Utilizing a co-mediation team allows you to gain insight and expertise from legal, financial, and psychological backgrounds to promote a respectful, collaborative, and productive process that sets you up for the future you want. ■



*Dr. Deanna Conklin-Danao (Psy.D.) is a Clinical Psychologist and Divorce Coach. She has been in private practice since 2006, seeing children, adolescents, and adults individually and in family and couples therapy.*

[www.drconklindanao.com](http://www.drconklindanao.com)



# How to *Let Go* of the Past After Divorce

Moving on after divorce can be difficult, but there are actions you can take to make the process smoother. Try the following suggestions and start looking forward to a happy future!

By Wendi Schuller, Therapist and Author

**I**t can be hard to let go of the past after divorce. Focusing on what was instead of what is can hinder you from moving on post-divorce. Divorce may come as a shock, and fixating on what used to be gets in the way of taking action now.

Some people interviewed for this article said they kept dreaming about the past – likely through the lenses of rose-colored glasses – as the present was too painful to think about. Others felt that if they denied what was happening (i.e., that their spouse was leaving them), things would go back to the way they were.





One sign that a person is hanging on to an ex-spouse and not letting go is talking endlessly about them. An acquaintance went on and on about her former husband until somebody else changed the subject. She did not date but instead wallowed in that relationship which she failed to leave behind post-divorce. There were no children and it was a clean break. I occasionally run into her former husband; he has never brought up his ex in conversation with me, and he was able to move on with his life. He is happily remarried and is a proud step-father.

You must realize that you can and must choose whether to stay mentally and emotionally attached to a former partner or face the cold truth of reality that they are not coming back.

## How to Let Go and Move On

Part of getting beyond reliving the past is filling the void left by your divorce. When an old life and marital relationship ends, something has to fill this gaping hole. This was the problem with my acquaintance. She did not try to meet people, take a class, or pursue new endeavors. The void remained.

## Instead of focusing on what you're missing, look for the silver lining in your divorce cloud.

One of the first steps to moving on is replacing the loss of friends (those who departed from your life with your ex) with new friends, pursuits, hobbies, and adventures. Expand your social circle by joining a special interest group or renewing friendships that may have fallen by the wayside when you got married. I joined travel and book clubs. Other divorced pals are in film and hiking clubs.

If you haven't already done so, go find your "tribe!" There are many studies globally that show the health benefits of being connected to others, so you must leave the (depressing) safety of your sofa by enjoying pleasurable outings with like-minded people.

## Stay (or Get) Mentally and Physically Active

A new job during the early phase of my divorce proceedings was mentally stimulating, and it gave me less time to think about my losses. Others have taken courses or changed career paths after a divorce. Take up a sport for a physical challenge (start slow if the only "sport" you've engaged in for years is

channel surfing). The goal is to keep mentally and physically active to fill the void and find life more satisfying. When your agenda is crammed full of entertaining events and pleasurable pursuits, looking ahead instead of behind becomes much easier.

Some divorced individuals told me that they became more active in their churches, synagogues, or mosques. The support received helped them realize that they were not alone and that other people care about them. Divorced people in the congregations offered advice and shared their own stories. One divorced friend even met her next husband in her church's singles group.

## Start New Traditions

Rituals and routines can keep one rooted in the past. If you always went out for Sunday brunch with your spouse, make it a Saturday brunch with friends. Discover different dining or coffee venues. Doing the same activities at the same places that you did when married triggers memories.

My boys and I dropped some routines that we did with their father. Instead, it was exciting to dream up fresh ways to have family fun and create new experiences after divorce. My sons and I shook up Christmas rituals by leaving town over the holidays several times. Think about what no longer serves you or keeps you tethered to your former spouse, and drop those traditions, habits, and routines like a hot coal.

## Focus on the Positive

Being in the company of positive people can help you leave the past behind and notice what good things lie ahead. They tend to look at the bright side of life and not dwell on the negatives. Emotions are contagious, and being around these people is uplifting.

Instead of focusing on what you're missing, look for the silver lining in your divorce cloud. I gave up being on the party circuit and entertaining, which we did to further my husband's career. After divorce, I realized how draining the constant parties were and am so glad to have given them up. I have more time for my sons, which resulted in a closer relationship with them.

Think about what aspects are better in your life now, and keep looking forward to your next adventure. ■



*Wendi Schuller is a nurse, hypnotherapist, and certified in Neuro-linguistic Programming (NLP). Her most recent book is The Global Guide to Divorce, and she has over 200 published articles. She is a guest on radio programs in the US and UK. [www.globalguidetodivorce.com](http://www.globalguidetodivorce.com)*



# Major Principles of Divorce Mediation

Just a few of the many benefits of choosing mediation over litigation during your divorce.

By Nicole Gussick, Divorce Mediator

**T**here are quite a few ways to get divorced these days, so how do you know which way is right for you? In divorce mediation, a neutral third party, chosen by the parties, facilitates conversations that address all issues of divorce.

Mediation is non-binding unless a mutually agreeable settlement is reached. Unlike litigation, the parties, not a judge, control the outcome. This can have great appeal to couples that want creative solutions pertaining to their particular needs. Also appealing, the proceedings are private and are not a matter of public record. This is again in contrast to litigation, which is public.

There are five major principles of mediation: it is voluntary, private, confidential, self-determined, and based on informed decision-making.

## 1 Voluntary

Attendance at an initial meeting may be mandatory if ordered by a judge, but continued participation is strictly voluntary. A resolution cannot be imposed on either party, and any resolution reached must be mutually agreed to and voluntary.

## 2 Private

The mediation only involves those necessary to come to an agreement. This includes the two parties, the mediator, and any other professionals – such as a coach or financial neutral – agreed to by the parties. Any records or notes cannot be used in any future court proceeding, which is public record, should the mediation break down. Most mediators destroy all records of the mediation once complete for this reason.

## 3 Confidential

All mediation sessions are confidential and, as stated above, limited to only professionals agreed to by the parties. The parties must sign a waiver allowing access to information for a requesting party. The parties must also agree that it would be beneficial or there are compelling reasons to limit confidentiality in order to do so.

## 4 Self-Determination

The parties are responsible for their own conflict, behavior, and solutions. A third party will not determine or enforce resolutions. It is up to the parties to create their own solutions and be accountable to the decisions reached.

## 5 Informed Decision-Making

Each party must have the necessary information needed to make an informed decision with regard to their conflict's resolution. This will sometimes require a professional to "level the playing field." For example, a financial neutral can ease the anxiety by providing scenarios that even a party less confident in financial matters can understand. In this way, all parties can rest assured that the information was received and understood, and an informed decision can then be made.

Mediation may work for your situation, but it may not. It can work for couples that are looking for a more cost-effective way to divorce and are focused on a better long-term relationship in order to co-parent. However, one spouse may not agree to mediate. If this is the case, collaborative or litigated divorce may be a good alternative. ■



*Nicole Gussick is a former Certified Financial Divorce Practitioner® and Certified Divorce Mediator. She enjoyed helping couples going through divorce take ownership of the process and make decisions that worked for their situation.*