

What Is Divorce Mediation?

Chances are, you, or someone you care about, will get divorced. While this in itself is a sad reality, the picture gets much worse when you consider the trauma inflicted on the divorcing spouses and their family by the adversarial divorce process.

But if divorce is the inevitable result, then Divorce Mediation is an alternative to the trauma of litigated divorce, and a process that every divorcing couple should consider.

Gaining in popularity and prevalence in Connecticut courts, Divorce Mediation is a process in which both spouses voluntarily come together to work with an impartial divorce mediator - a lawyer specially trained in mediation - who helps the spouses find mutual solutions to the issues of divorce, such as property and debt division, alimony, custody and parenting time, and child support. This no-fault method of divorce strikes an advantageous balance between a traditional adversarial divorce (where both spouses hire attorneys to do battle on their behalf behind the scenes and in the courtroom, creating a litigious atmosphere), and pro-se divorce (where the spouses divorce without attorneys, but may have difficulty coming up with legitimate solutions and navigating the court process on their own).

Benefits of Divorce Mediation

The benefits of choosing mediation are compelling and numerous:

1. **Self-Empowerment.** In mediation, the spouses control their own decisions, rather than judges or attorneys. Contrary to popular misconception, the divorcing spouses need not be at the mercy of their respective attorneys and their abilities, or the Judge and his decisions, because in fact, the spouses are free to make their own decisions should they choose. When a couple mediates, they own and control their final agreement because it is not imposed on them by a third party.
2. **Compliance.** The spouses are far more likely to comply with the final agreements they have created because the decisions are their own. Post-divorce conflicts, relating to child support, parenting schedules, alimony or property settlement are less likely to occur. Indeed, a 1999 study of Connecticut divorce cases showed that post-judgment issues were raised in adversarial divorces 22% of the time, compared to just 9% of the time in mediated divorces.
3. **Time.** Mediation is faster than litigation. In a study of adversarial divorce cases in Connecticut settled in 2003-2004, nearly half lasted for more than a year, and some 20% dragged on for more than 5 years. The reason usually does not have to do with the spouses themselves, but instead with the attorneys who are communicating on behalf of the spouses and doing their fair share to add to the conflict. Unlike adversarial divorces, mediation offers an opportunity for the spouses to sit down with one mediator, leave fault at the door, put all the issues on the table, and work together to come up with final solutions. Therefore, a mediated divorce will typically take no longer than 3 to 4 months in total, which equates to the statutory waiting period. Nevertheless, if a quick divorce is not desirable, the mediating spouses are free to go at a pace in which they are most comfortable.

Benefits of Divorce Mediation (cont'd)

4. Cost. Mediation is less expensive than litigation. Instead of hiring two attorneys who drive up costs with conflicts as well as court time relating to pre-judgment issues and a potential trial, mediation requires one attorney, time-effective meetings with both spouses, and no attorney court time. The divorcing couple needs only to go to court once for the brief scheduled final hearing, and because they arrive with an agreement in hand, there is no need for the attorney-mediator to participate and thereby drive up costs. This consideration has become particularly important as the country's financial crisis continues to grow.

5. The ability to discuss emotional issues. Family and emotional issues do not normally have a place in a litigated divorce, as each spouse only communicates with his or her attorney. Mediation, on the other hand, allows the spouses to discuss their motives and viewpoints with each other, and get to the heart of the matter.

6. Communication skills. Communication between the spouses during mediation is practice for discussing issues that will come up in the future, such as matters relating to their children. Such communication is vital, because as the divorce moves forward, the spouses must continue to co-parent. In the litigious alternative, it is the attorneys who are doing the discussing, and the spouses may become so disenfranchised that further communication becomes impossible.

7. Reduced hostility. Mediation is likely the most civil way to divorce, as it minimizes and resolves differences, rather than exaggerate and inflame them. While litigation focuses on the past and the "fault" of each spouse, mediation focuses on the future and moving forward as a reorganized family. This benefits the spouses themselves, as well as their children. Indeed, studies indicate that children recover far more quickly from the divorce when their parents use mediation, thanks to reduced conflict and increased communication. A 2004 study on the long-term impact of litigated versus mediated divorce also concluded that parents who mediate have significantly more positive participation throughout their children's lives, post-divorce.

8. Fair outcomes. A good mediator is trained to balance the wants and needs of each spouse and thereby achieve a fair and equitable settlement that the Court will approve without reservation. Research shows that the terms of settlement in divorce mediation are not significantly different from those reached through litigation, and that neither spouse has an advantage or disadvantage due to his or her gender. To ensure this fairness, spouses are free to consult with their own individual attorney at any time throughout the mediation process should they desire.

Frequently Asked Questions

Answered by Sarah H. Shapiro, Attorney-Mediator

Q. My spouse wants to get divorced, but I don't. What can I do?

A. The best thing couples can do is seek the advice of a trained marriage counselor or individual therapist. I encourage all of my clients to do this before they go through with filing for divorce. But if divorce has become inevitable, the reality is that if one person in the marriage wants to get divorced, it will likely be granted to him or her eventually (as nobody can be forced to stay in a marriage that he or she does not want to be in). The question, then, is whether the reluctant spouse cooperates in the process? My experience as a mediator is that even couples who start out in an adversarial divorce are much happier and find peace more quickly when they switch to mediation. Additionally, I have had several couples get back together in the midst of mediation (a good decision for those couples in particular), something that probably would not have been possible in a hostile adversarial divorce.

Q. My spouse and I are getting divorced. What am I entitled to?

A. Connecticut is an all-property equitable distribution state. Any property, regardless of when or how acquired, is subject to division, and the division is based on a concept of fairness. There are many factors that are looked at when deciding what is fair, such as the length of the marriage, the cause of the break-down of the marriage, what each spouse contributed to the marriage (financially or otherwise), etc. There is no black-and-white law or mathematical formula that defines what each spouse should get. So what does this mean? In a typical adversarial divorce, the attorneys for each spouse argue that their client is entitled to more than the other spouse in consideration of each factor, including fault. After presenting their arguments, they settle or a Judge decides which side is more credible. Conversely, in mediation, the same factors are looked at by the spouses themselves, including what each spouse needs, until an agreement is reached and the Judge approves it. (Note that fault is not a factor in mediation: rather than looking back and blaming someone, mediation promotes looking forward toward a brighter future for both parties.) Because the Judge has the final say in all scenarios, the settlement results of an adversarial divorce and a mediated divorce are usually not significantly different; it is the process in getting there that is different. But please note that in both adversarial and mediated divorce, the Best Interests of the Children standard always dictates regarding issues relating to children.

Q. My friend recently got divorced. She had to go to court many times throughout her divorce to decide issues like where the kids lived, who got to stay in the house, and how much money her husband paid her. The Judge decided all of these things. If I mediated, how would these things get decided?

A. Your friend went to court many times on Pendente Lite motions, or motions pending the final decision. In mediation, none of these motions are typically necessary, because the spouses are free to decide on their own after mutual consideration what happens in these various situations, even before the divorce is granted. As an example, if a couple has trouble deciding where the children live during the divorce before the issue is ultimately decided in the final divorce agreement, then the issue is presented to the mediator and a solution that serves the best interests of the children as well as both parents results. By not having to go to court like your friend, you will likely save time, attorney's fees, and heartache for you, your spouse, and your children. Most importantly, discussing the issue and coming up with a solution on your own serves as good practice for issues that lie down the road, even after the divorce.

Frequently Asked Questions (cont'd)

Q. Do I have to go to a court hearing at all if I choose mediation?

A. Yes, just once. When a final agreement is reached by the parties, the mediator will contact the court to schedule a private uncontested final hearing at a date convenient to both parties. It is at this final hearing that the Judge will review the agreement written by the mediator outlining the terms of settlement. The Judge will also review each spouse's financial affidavit, the child support calculation (if applicable), and any other necessary documentation prepared by the mediator. The Judge then looks to make sure that the final agreement is fair and equitable by questioning each spouse regarding its terms. When he or she is satisfied that it is fair and both parties entered into the agreement voluntarily with full understanding of its terms, the divorce will likely be granted and the Judge will enter a decree incorporating their written agreement into his or her judgment. On average, my clients typically spend approximately 1 hour total in the Courthouse.

Q. If it's the Judge who decides, how do Judges feel about mediation?

A. I have been told by Judges that they love people who mediate. Why? Because people who mediate are taking personal responsibility for themselves and their families, and their final agreements are as good, if not better, than any other.

Q. Are there any limitations to mediation?

A. An attorney-mediator can do anything that any other divorce attorney can do, with the exception of advocating for one party over the other - because the mediator must remain neutral at all times. As a safeguard, the individual parties are free at any time to contact another attorney (or trusted friend or family member) to get advice or review the final agreement before it is signed. Furthermore, if at anytime the mediation process is not completely satisfactory for whatever reason, the parties are free to leave mediation (with any work product that has already been produced) and pursue alternative legal services, knowing that everything that was discussed in mediation is confidential.

Q. What are the fees of mediation?

A. Clients are charged on an hourly basis. This is usually done against a retainer collected at the beginning of the mediation, or in special circumstances, after each mediation session. Depending on the issues, a typical mediation will involve 3 to 5 mediation sessions and 10 to 15 hours of my time in total. Besides the mediator's fee, there is also a \$350 court filing fee, and a possible \$30 - \$50 Marshal's fee to serve papers (although many jurisdictions are now allowing mediating couples to waive service if they file at the clerk's office in person). If you have minor children, both parents must also attend a mandatory parenting education class offered by the courts at a fee of \$125 each. I encourage spouses to share the total mediation expenses equally in the interest of promoting fairness and neutrality. There is no charge for a consultation.