

Matrimonial and Family Law Mediation – Resolving Conflict Wisely

Matrimonial Mediation

I am a lawyer experienced in divorce and family law and trained in mediation, offering divorcing, separating or other couples a fair process in which they can discuss and decide for themselves, with professional help, arrangements for their children, child support, maintenance (alimony) and property/debt division. For divorce or legal separation, the husband and wife jointly hire me to act not as the attorney for either or both, but as a neutral mediator. During a series of meetings, the couple and mediator work out a mutually satisfactory plan covering the children's living arrangements, the financial needs of each member of the family, the home and other assets of the parties. Orderly communication occurs between the parties so that each party's needs and concerns are expressed and determined without intimidation or unwanted interruption by the other party. Both parties are encouraged to consult with a lawyer or other advisor at any time. Although not the norm, should they wish, parties can bring their attorneys to one or more sessions of mediation. The process is designed to reduce the adversarial element often encountered in a divorce proceeding, and also to save time and money.

Once a separation or divorce agreement is reached, I will prepare a proposed written draft agreement. If they have not done so already, the parties are to then get advice from their lawyers about the legal issues before signing it. If they do not have an attorney, my office can provide names of good matrimonial attorneys that are “mediation friendly” and reasonably priced for them to consider. I require obtaining outside legal advice so that parties can make their final agreement with their “eyes open”— although I do teach the parties about the clear, relevant law during the process, I am not allowed to give “legal advice” (for example, I cannot suggest to a party to take a course of action, approach or strategy in the negotiations given the law, or to tell the parties what I think is fair). Obtaining legal advice from independent counsel allows parties to make a more informed agreement. Whether or not they follow the legal advice is up to each party. The parties then come back for what is usually the final session to either renegotiate or tweak the terms of the draft agreement, and then, if they are ready, to sign it. The completed and signed agreement is enforceable and, if part of a divorce, is submitted to the court for approval and incorporation into a divorce judgment or decree. If the parties wish to not pursue a divorce, the agreement is a legally binding and enforceable contract.

Other Family Law Mediation

I also offer mediation in non-matrimonial family law cases, such as:

- Post-divorce child support modification or enforcement cases
- Child support cases involving out of wedlock children

- Paternity issues
- Child custody and child access (visitation)
- Grandparent visitation
- Negotiating pre-nuptial (antenuptial) agreements

The Requirement of Commitment

The Mediation process will work only if each party is willing to attend the session(s) to make a good faith effort to communicate constructively and reach agreement.

However, there is no legal obligation to agree; any commitment to the process and its result comes voluntarily from the parties involved.

The Benefits of Matrimonial and Family Law Mediation

When compared to the traditional adversarial attorney approach and litigation processes, mediation is:

- Almost always less expensive
- Almost always less time consuming
- A private, confidential process—no “dirty laundry” is publically aired
- More likely to allow parties to leave a marriage with dignity
- More likely to end in a mutually satisfactory agreement
- Less likely to result in multiple future trips to court—having “authored” the agreement, parties are more likely to be satisfied with its terms and comply with its requirements. Also, future issues are more likely to be successfully mediated, as the parties were successful mediating the first agreement and realize that the mediation process works.
- More likely to result in an agreement with terms that address parties’ individual needs with creative solutions appropriate to their unique circumstances (versus a cookie-cutter approach that is sometimes imposed by a court). The structured mediation process allows each party to establish their own goals and, with my help, design an agreement that most appropriately suits the needs of their particular situation.
- Not coercive—no one will be unduly pressured into an agreement
- Better for children. Studies indicate that when children are involved, divorce agreements mutually agreed upon by the mother and the father are usually better for the children than terms imposed by court order. Parents that have mediated are more likely to have a more successful future relationship than if they litigated.

The Cost of Mediation

Our firm charges \$280.00 an hour for my services as a mediator, including my time involved in writing your agreement. Most (but not all) couples take about ten to twenty hours of a mediator's time to complete their final agreement. An \$1,800.00 retainer is requested at the outset, to be applied against billed time and expenses. If more funds

are needed given the time expended, we submit additional bills and the clients will pay monies beyond the initial retainer. If the mediation ends in less time than what the retainer covers, we reimburse money not earned or spent on necessary expenses. People save money in mediation because much of their problem solving and negotiations are done with the help of one professional, instead of two—thus, during the mediation sessions, one hourly rate is being charged instead of two. Although each party sustains their own additional attorney's fees for review and advice of the draft Agreement arrived at in mediation (and if they choose, for their own advice between some of the sessions), this cost is substantially less than the attorneys fees charged in the traditional litigation process.

SOME OBSERVATIONS ABOUT MEDIATION*

- The family usually knows better than anyone else what is best for its members.
- When spouses can decide divorce and separation issues for themselves, there is a reduction in feelings of frustration, anger, and helplessness.
- When spouses can talk and listen to each other, each feels less threatened by the other.
- Self-determination, rather than orders imposed by a court, reduces conflict and increases the chance for compliance with a plan developed by the parties themselves.
- When parents can reduce their conflict over any issue, their children benefit directly.
- The children's and the parties' needs will change during and after the separation and/or divorce. A plan worked out by the parties can be more flexible in adapting to such changed circumstances.
- By hiring a mediator to help them work out an agreement, parents can save themselves time, money and frustration.
- Studies show that divorce mediation results in increased personal adjustment and significant financial savings both during and after the separation and divorce.

*Based on material from Association of Family and Conciliation Courts, and reports from experienced mediators.

TYPICAL CONCERNS YOU MAY HAVE AT THIS TIME—DO YOU WORRY THAT. . .

- You cannot afford to get divorced?
- The amount of support will be unfair?
- Too much of your money will go to attorneys?
- You cannot communicate with your spouse?
- Your children will suffer?
- You do not know what is fair?
- You need more knowledge concerning finances?
- You won't get accurate legal information?
- Tax consequences will not be considered?

- You will end up with a court battle?
- It is going to get worse?

If you answer “yes” to one or more of these questions, please explore how mediation can address each of these worries and allow you and your spouse and/or co-parent to arrive at an agreement that you both can live with. I provide a free 30 minute consultation for you and your spouse or co-parent to express your needs and assess whether the mediation process can best meet those needs. If you both wish to proceed after that consultation, you retain me, schedule several appointments into the future (as often as weekly should you desire) and take home financial affidavit worksheets and financial disclosure homework I will provide you.