

### MEDIATION

#### What is divorce mediation?

Divorce mediation still feels like a new idea in some parts of the country, but it's increasingly well-known and widely accepted. Mediation means different things to different people. In mediation you and your spouse will sit down in the same room with each other and with a *neutral* mediator. With the mediator's help, you will work through all the issues you need to resolve so the two of you can get through your divorce.

Divorce mediation allows both parties to identify, negotiate and resolve the issues raised by the decision to divorce. This neutral person establishes firm ground rules and a confidential environment so that emotionally charged issues can be talked about safely. The mediator helps both spouses gather necessary information and review it systematically. At times, the mediator helps formulate a more creative solution than the court could offer. When parenting agreements and financial distribution plans are made by the spouses themselves, there is a better chance of meeting the needs of the entire family.

*Mediated divorces have a higher rate of long-range parental cooperation and a lower frequency of costly returns to court!!*

Mediation is flexible and confidential. It gives you and your spouse a way to settle the conflict between you, which is natural and inevitable, in a way that helps you to work together after your divorce.

The mediator remains neutral between the husband and the wife. That means the mediator can't give advice to either party, and also can't act as a lawyer for either party.

What the mediator can do, though, is to point out in open session to both spouses things that each of them should be aware of about what they're trying to accomplish. That open and free exchange of information frees up both spouses to negotiate with each other in confidence. Because both spouses are working with the same base of information, it usually takes far less time to negotiate a resolution that makes sense to both spouses.

Mediation is voluntary. It continues only for so long as all three of you - you, your spouse, and the mediator -- want it to. Your mediator has to have a good reason to withdraw. You or your spouse can withdraw from mediation at any time, for a good reason, a bad reason, or no reason at all.

Does mediation really work? In a word, yes. Statistics indicate that when you compare couples who have mediated their divorce with couples who go through an adversarial divorce, mediating couples are more likely to be satisfied with the process and the results; likely to take less time and spend less money; and are less likely to go back to court later to fight about

something.

### **What are the benefits of divorce mediation?**

- The parties control their own decisions.
- Because the decisions are their own, the parties are far more likely to comply with their final agreements. Post-divorce conflict, with potential litigation and additional costs, is less likely to occur.
- Mediation is *faster* than litigation.
- Mediation is generally *less expensive* than litigation.
- The parties can discuss emotional issues and have those issues considered in making their decisions.
- The parties can use their improved communication skills and enhanced understanding of each other's concerns to reduce stress in post-divorce dealings.
- *Children benefit* from reduced tension and hostility between parents both during and after divorce.
- The main advantage of mediation is that it keeps you and your spouse in control of your own divorce. That can make all the difference in your recovering from your divorce and moving on with your life. Mediation allows the two of you to get through your divorce with less conflict than you would experience in an adversarial divorce. Because mediation is all about working with shared knowledge, mediation also often allows you and your spouse to work together to lower your legal costs ... which translates to more money for you.

DIVORCE MEDIATION resolves the issues of custody, visitation, equitable distribution, child support and separation all *without the high cost of litigation*. At the conclusion of mediation, the parties are in every way as divorced as the couple who has emotionally battled it out with litigation.

### **How does divorce mediation work?**

Learn what it's all about: At the first session, the parties talk about their reasons for seeking mediation, and the divorce mediator provides the parties with a detailed outline of how the mediation process works. At this session, the mediator will also set forth the guidelines for the mediation process. The parties and the mediator will identify the information that needs to be exchanged and discuss and agree upon any necessary ground rules.

Identify issues and develop understanding: The parties and the mediator will specify each of the issues to be resolved. On an issue by issue basis, the mediator will attempt to understand as fully as possible each party's point of view as well as his and her needs, interests, and priorities. The mediator also assists the parties in understanding each other.

Explore interests and consider options: With further discussion, the parties explore their

interests, and, in view of their own priorities, develop various options that best serve their present and future needs.

**Resolution and consensus:** During the last step, the parties consider possible options and choose those that work for them and that do not cause the other party to give up something that is important to him or her. These options are then incorporated into an agreement that is drawn up by the attorney mediator. The parties have their independent attorneys review the agreement. If the agreement is satisfactory to both parties, they sign the agreement and move on to the next phase of their lives.

### **Who handles the court process?**

Although the mediator does not act as an attorney for either spouse in the court process, the mediator can prepare court documents for the spouses' signatures.

## **Mediation FAQs**

### **- What is mediation?**

Mediation is a process in which disputing parties meet with a neutral third party, a mediator. The mediator will assist the parties in resolving their differences through negotiation.

### **- What Happens in Mediation?**

At the mediation, the parties will sit down with the mediator in private and explain the problem as they see it and how they think the matter could be resolved.

The mediator oversees the discussion to allow each party a full opportunity to be heard in an atmosphere of cooperation and respect. The parties are encouraged to generate solutions with both parties' interests in mind.

### **- What is the role of a trained mediator?**

Throughout the mediation process, the mediator remains a neutral party. This means that the mediator is not acting as advocate, judge, or jury. Rather, the mediator's purpose is to assist the parties in identifying and clarifying the issues that must be resolved. He or she will help to develop a constructive dialogue that examines each issue with a focus on the parties' needs, interests, and priorities.

The mediator will not decide if either party is "right" or "wrong." The mediator will not force any party to accept a settlement that is not agreeable to everyone. The mediator cannot give legal advice.

- **Will I need an attorney?**

That is up to you. At the beginning of the mediation process, each party is advised to hire independent counsel to advise and consult with throughout the mediation process. The number of hours each party's attorney spends as a consultant is usually significantly less than would have been spent during adversarial negotiations or court proceedings. A party may have an attorney or support person accompany him or her to the mediation but a party is not required to bring someone with them.

At the end of the mediation, if the parties have settled on the terms for a separation agreement, the mediator drafts the agreement. Each party then has his or her attorney review the agreement.

- **If we cannot communicate with each other, how will we be able to communicate through the divorce mediation process?**

The divorce mediator is specifically trained to help couples with communication problems.

- **By choosing mediation, do I give up any rights that I or my children may be entitled to?**

No. Divorce mediation is an alternative to adversarial proceedings or negotiations. All issues that would normally be addressed in adversarial proceedings or negotiations (child and spousal support, parenting arrangements, division of marital assets, tax implications) are discussed by the parties. Neither party should need to relinquish any of his or her entitlements, but instead of litigating issues, you and your spouse privately work through your differences with the goal of reaching an agreement that will best serve your present and future needs.

- **Can I withdraw from mediation if I am unhappy with the results?**

Yes. Divorce mediation is a voluntary process. This means that both you and your spouse must be willing participants. If you or your spouse are not happy with the progress of the mediation, either one of you can withdraw at any time.

- **How does mediation address power imbalances between spouses?**

Not all couples are suited for divorce mediation. For a mediation to be successful, both parties must make their voices heard. In situations where there are serious power imbalances between spouses, divorce mediation may not be appropriate. At the initial session as well as during the course of the mediation, the trained mediator together with the parties will assess the suitability of the couple for mediation.

Also true is that the process itself can be an empowering one and that a spouse who at first may perceive himself or herself at a disadvantage actually develops or discovers strong bargaining skills.

- **Are there situations when divorce mediation is not recommended?**

Yes. Divorce mediation is not appropriate for all couples. For example, divorce mediation is not recommended in situations involving domestic violence. It is also not appropriate when one spouse overpowers the other or refuses to participate honestly. In addition, if one spouse refuses to divulge all financial information or fails to cooperate with the mediator's guidelines, mediation is not appropriate.

- **What are the benefits of divorce mediation?**

Through divorce mediation, you and your spouse privately work through your differences and make decisions about your present and future needs. Generally, this process facilitates communication, promotes cooperation, reduces tension, and makes the inevitable separation easier. Divorce mediation is also a cost-effective alternative to traditional divorce litigation.

- **How long does divorce mediation take?**

Sessions usually last one to two hours. The number of sessions varies depending on the complexity of the issues and the needs of the parties. Successful mediations usually take from three to 10 sessions.

- **How much does it cost?**

The parties are charged on an hourly basis.

- **Do I have to worry that what I may say during mediation may be used against me later?**

In most cases, statements made during the mediation cannot be used as evidence in any subsequent trial. Under Ohio law, with certain exceptions, mediation communications are confidential to the extent agreed to by the parties (O.R.C. §2710.01). Ohio law also provides that parties and mediators are protected from having to testify about a mediation communication in a subsequent legal proceeding, again with some exceptions such as communications about threats of harm, crimes and child or elder abuse (O.R.C. §2710.05).

### Contact the Law Office of Michael J. Davis

To talk to Michael J. Davis about your legal concerns, please contact us by calling 513-604-8391 or emailing us at [davislaw01@gmail.com](mailto:davislaw01@gmail.com)

Michael J. Davis is located in Mason, Ohio, and serves clients throughout Ohio, including Lebanon, Maineville, Mason, Morrow, Springboro, South Lebanon, West Chester, Warren

County, Butler County, Hamilton County, Clermont County and Clinton County, Ohio.