

Is Mediation for Us?

Separation and divorce will bring both emotional and physical changes for families. When couples separate, they need to discuss many issues, including plans for parenting their children, division of property and future financial arrangements. Stress and conflict may result from these discussions. The manner in which these conflicts are explored and resolved greatly influences a family's adjustment to separation or divorce.

Conflict may bring about a productive airing of differences that may have otherwise been left unsaid, however, conflict is also frightening for many people. It may also lead to creative solutions that address the changing needs of all family members. All too often, while lawyers, judges and the court system determine a family's future, family members feel like bystanders in their own separation or divorce.

Mediation is a way for family members to resolve their conflicts during and after a separation or divorce. It is possible to come to an agreement that balances the interests of every family member, even in the face of anger, fear and hurt. Mediators are neutral professionals. They help participants clearly define the issues in dispute, keeping open the lines of communication, and promoting rational discussions and acceptable agreements. Mediators do not make decisions for the family. They help participants make the decisions the parties believe to be in the best interest of their family.

Mediation may not work for all families. Participants must be willing to work whole-heartedly to resolve their conflicts. This brochure is intended to help you decide whether or not mediation can be of help to you.

Some Questions and Answers About Mediation

Q: What is mediation?

A: Mediation is a cooperative problem-solving process in which a neutral professional helps people in conflict clearly define the issues in dispute and to reach agreements that are in the best interests of their family. Mediators help participants resolve misunderstandings and communicate more clearly with each other by reducing hostile and competitive feelings.

Q: How does mediation work?

A: The disputing individuals meet together with the mediator, a person who is trained to help parties resolve problems in a cooperative manner. The mediator guides the communication process so that everyone has a chance to be heard. Issues are discussed one at a time and a variety of solutions are explored to help reach the best possible agreement. Some mediators help parties develop options while others offer some suggestions; but the final agreement is always up to the parties.

Q: What types of disputes can be resolved in mediation?

A: Mediation can be helpful for resolving relationship and marital conflict between partners and other types of family disagreements. Mediation is often very helpful for couples experiencing conflict during and after a separation or divorce, especially when children are involved. A mediator can help parents understand the needs of children and make decisions that are in their children's best interests. Mediation can help people work out solutions for the day-to-day care of children, division of property and financial arrangements. Communication skills established during mediation often help with future planning and can establish a foundation for cooperative relationships following separation and divorce.

Q: Do we both have to participate?

A: Yes. Because mediation is a joint, cooperative problem-solving process, it is necessary for both spouses to participate. Participants need not feel friendly toward one another but should be willing to work together to find solutions that will meet the needs of everyone involved.

Q: Can mediation help us get back together?

A: Mediation is not couples counseling. Feelings about the marriage and the decision to separate or divorce may be discussed, however, the focus of mediation is to find solutions and reach agreements so that family members may better adjust to the separation or divorce and resolve future issues as a family. If there are any doubts about the separation or divorce, you should talk with your spouse about counseling as an activity separate from mediation.

Q: Are children involved in the mediation process?

A: In some cases teenage children may participate in mediation so that parents can better understand and consider their children's needs and feelings as they develop their plans for the future of their family. It can be very comforting for children to see their parents working together in their best interests, rather than fighting and competing. Children may be participants depending on the subject matter of the mediation, the wishes of their parents, their own wish to participate and their age or maturity level.

Q: Do I need an attorney?

A: Each party in mediation should have the opportunity for their agreement to be reviewed by an attorney of their choice. Mediation is not a substitute for independent legal advice. Lawyers can help their clients understand the law, make informed agreements, draft the final agreement and complete the legal divorce process. The mediator focuses on helping participants reach their own agreements and does not represent either party.

Q: Are mediation agreements legally binding?

A: A mediation agreement may be drafted by mediators and the parties as an informal working agreement or filed with the court as a legal contract. When an agreement is incorporated into a court order or divorce decree it becomes legally binding and subject to the approval of a judge. Any change to an agreement previously approved by a judge must be filed with the court in order to be legally binding.

Q: What if we cannot work it out?

A: The mediation process may not resolve all issues, but even partial agreements can help participants narrow the issues and limit the time and expense of going to court. Sometimes it is helpful to suspend mediation and participate in individual or couple counseling, or consultation with your attorney. Parties are then often able to return to mediation and resolve the remaining issues. Issues that cannot be resolved in mediation can be returned to the court for resolution.

Q: How much does mediation cost?

A: Court-connected mediation services are frequently provided free of charge or for a small user fee. Mediators in private practice charge an hourly fee, which is typically shared by the parties. Mediation is often less costly, both emotionally and financially, than litigation.

Q: How do I find a mediator?

A: Mediation services are available from many court-connected mediation programs or from mediators in private practice. In many locations, mediation is required by law or by court rule when families have a dispute about plans for children. Professional mediators in your community may be listed in the telephone directory yellow pages. You can also consult your local bar association or family lawyer for a referral. Most court-connected services can advise interested parties of the types of mediation services that are available in the community.

Q: Are there times when mediation is not a good idea?

A: Mediation works best when both parties are able to fully express their needs and interests and are capable of following through on any agreements that they reach. Mediation may not be the best choice if there are concerns about domestic violence, child abuse, mental illness or abuse of drugs or alcohol. Consult your attorney or local court-connected mediation service to determine the best available method of dispute resolution.

It is important to remember that family conflicts are natural and normal. Strong feelings are not unusual when there is a separation or divorce. However, conflicts that linger over time can make a family's adjustment to separation or divorce much more difficult. Settlements that are reached by one party winning and the other losing rarely last and can create additional conflict. The goal of mediation is to effectively manage the emotions of separation and divorce so that disputing parties can better communicate. Better communication leads to better agreements. Mediation may be an effective way for you to settle the disputed issues of your separation or divorce. If you have any additional questions about the mediation process, please contact an attorney experienced in the practice of family law or a court-connected mediation service in your area.

*Developed by AFCC member Ann Milne (1987).
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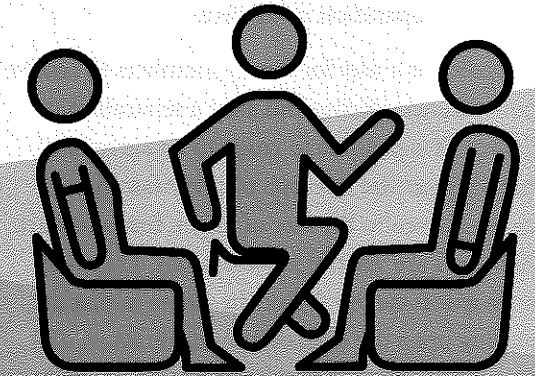
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