

Thank you for considering my services to mediate your divorce. You should feel good about attempting to resolve your divorce in this manner. You are off to a good start.

Mediation is typically much less painful, less stressful, as well as less expensive compared to litigation. It increases the chance of finding a resolution that both parties are satisfied with, rather than having a judge, who is unfamiliar with the nuances of your case, make personal decisions for you.

The below information should help both parties understand the process, thus increase its chance for success. Also attached are several statutes that govern certain aspects of mediation. Please take sufficient time to read the below info, as well as the attached documents.

MEDIATION OVERVIEW

Mediation is designed to assist the parties in identifying issues that need to be resolved before the court will enter a judgment of dissolution. For instance, parties may need to address issues about custody, visitation, division of assets and debts, or child and spousal support.

The parties do not need to resolve all issues in one mediation session. The parties can attend as many sessions as needed to work through all their issues. Of course, my objective as mediator is to help parties reach agreements as efficiently as possible. However, mediation is likely to be more successful if both parties don't feel overwhelmed (you don't need swallow the elephant all in one bite).

Throughout the process, I help parties work together in a civil manner to understand each other's rights, resolve any conflicts, and hopefully reach a fair resolution and on all issues. If that goal is accomplished, I can then prepare a "Marital Settlement Agreement" and all required court forms. That paperwork is then submitted to the court to obtain your judgment of dissolution.

Even if mediation is only partially successful in resolving some, but not all issues, I can still record any partial agreements in a document called a "memorandum of agreement." Parties can use that document to establish enforceable court orders. In this situation (where only some issues are resolved), parties still benefit, as they can address any remaining issues in another forum, such as collaborative law or traditional litigation.

That said, after having an opportunity to take a break and re-evaluate unresolved issues, parties often decide to give mediation another try. Such follow-up attempts are often successful at resolving any outstanding issues.

It is important to note that as the mediator, I am prohibited from representing either party individually, or as a joint attorney. I can never represent either party at any time.

At no time can I advocate for one party against the other. I can't take sides, or do anything to interfere with my neutrality. Additionally, unless there are exceptional circumstances requiring communications with only one party (for instance, in an effort to resolve any impasse), as a general rule, I will only meet or communicate with both parties together.

DIVORCE AND MEDIATION PROCESS

The divorce/mediation process typically goes through the following steps:

1. Every divorce begins with one spouse filing a "Petition for Dissolution." When a Petition has not yet been completed by the time of the first mediation session, I can assist in preparing the required documents.

Once the Petition and related forms are complete, the "Petitioner" will then submit such documents to the court clerk's office, along with the county filing fee. I can explain this very simple court filing process when the time comes. If agreed to by the parties, my office can also file the papers with the court.

2. In every divorce, each party is required to provide the other with certain disclosures. The disclosures are done by exchanging the following two forms: (1) Schedule of Assets and debts (statement of what each party owns and owes), and (2) Income and Expense Declaration (statement of a party's income and expenses). These forms do not need to be filed with the court if the parties reach agreements on all financial issues without court intervention.

When preparing disclosure forms, each party is legally required to provide the other with all information relevant to the divorce. This information needs to be complete and accurate. As part of mediation, both parties agree to produce all pertinent information. If necessary, I can assist with filling out these forms properly.

It is important for both parties to understand that after the divorce is final, if one party learns that the other did not accurately disclose required information, a court may nullify settlement terms. In other words, if a party enters into an agreement, relying on inaccurate, misleading, or missing information in the other party's disclosures, the court can undo the agreement. Additionally, if relevant information is not forthcoming by one or both parties, or if one party provides information that is misleading, incomplete, or false, mediation will be terminated.

3. If the parties have minor children, then as part of mediation, they can establish a parenting plan. The parties should try to reach agreements about the children's primary residence (who will be the "custodial parent"), and establish a visitation schedule for the "non-custodial parent." Additionally, the court requires that child support be established before a divorce judgment is granted. I can assist with developing a parenting plan that is in the "best interests" of the children, as well as help resolve support issues.

4. As mediator, I can provide the necessary court forms, as well as guidance on how to complete them, so that parties are in compliance with the court's filing requirements. If necessary to advance the mediation process, I may also provide the parties with "homework" between mediation sessions. This may involve gathering information, such as financial records and other information needed to complete the forms, and ultimately reach agreements.

5. Additional mediation sessions can be held after completing any homework. The goal is to advance the process efficiently, with both parties providing information necessary to reach agreements. For instance, agreements regarding which property is "community" versus "separate;" property value(s); debt allocation; or any other issues. If parties reach an impasse, my role, as neutral intermediary, is to help parties work through disputes in a way where both parties' interests are addressed. I can also provide information about the law and how it applies to the parties' facts/circumstances so fair settlement terms can be established.

6. This cycle (1. identify issues, 2. provide information and guidance, 3. "homework," and 4. reconvening for further negotiation and resolution) repeats itself until all issues have been resolved. Although this process may take several sessions, the time and money invested is significantly less than litigation. It is also much less acrimonious and stressful than litigation.

That said, either party may hire his/her own attorney to provide advice throughout the mediation process. Additionally, before signing any agreements reached in mediation, either party may hire their own attorney to review such agreements and advise them on whether the proposed settlement terms are appropriate. However, when it comes to mediation sessions, they are typically more productive when lawyers are not present, given that many lawyers are often unnecessarily contentious.

7. Once parties have resolved all their divorce issues, at their mutual request, I can prepare a Marital Settlement Agreement and required court forms. After the Marital Settlement Agreement is signed by both parties, it is submitted to the court with all the required final forms. The court will process such papers, and issue a final judgment. That will legally end the marriage.

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FINAL CONSIDERATIONS

Mediation relies on complete confidentiality. Both parties agree not to use anything said in mediation against the other. Additionally, each party waives the right to subpoena me or any part of my file at any time. Both parties make this stipulation with each other and me as a condition of mediation.

Another consideration is the use of experts to help reach agreements. During the process, either party may want to utilize certain professionals, for instance, an appraiser to determine the value of an asset; an accountant to provide a tax analysis; or a therapist to help resolve a parenting issue. With the parties' mutual consent, such neutral experts can be retained and incorporated into the process at appropriate times.

Finally, mediation is voluntary. Either party may discontinue mediation at any time for any reason. If mediation becomes difficult, I may recommend that parties take a timeout, and then reconvene at another time, rather than throw in the towel. Sometimes certain issues may become difficult to address due to high emotions. That does not mean parties should give up. Instead, at such times, it's helpful to remember that you chose mediation in the first place to settle your issues without excessive cost, time, and stress of litigation. It's wise to be patient with the process and give it a chance to work.

I've helped many people work through difficult and sensitive issues. If you have any questions about how I can assist, please feel free to contact me. I look forward to helping resolve your divorce as efficiently and amicably as possible.