

Mediate to Mitigate: Why Divorce Mediation Makes Good Sense



Mediate to Mitigate: Why Divorce Mediation Makes Good Sense

No question, divorce is messy. The pathway to a divorce decree is paved with emotional and financial distress, which, unfortunately, altogether, often leads to physical health issues. The antagonistic nature of the typical divorce process can ratchet up the emotions and the turmoil – all while draining the assets you’re trying to split up. Sometimes it takes years for a case to complete its journey through the courts.



However long the journey through the courts, the vast majority of cases are settled before trial. So, in the 1970s, some lawyers and therapists wondered: Why waste time, money and anxiety preparing for a trial that will never happen?

Asking that question led to the rise of mediation as an alternative to litigating a divorce case. Compared with litigation, mediation is much less expensive, faster, takes less of an emotional toll on the participants – and keeps separating spouses openly communicating with one another, rather than dealing with each other only through their attorneys.

That’s why more couples are choosing trained mediators to guide them through the divorce process in a more nurturing, less adversarial setting.

What is divorce mediation?

In mediation, a neutral third party – the mediator – helps participants negotiate a voluntary agreement. The mediator’s goal is to guide couples to rational – rather than emotional – decisions. The focus is on working out division of assets, debts, and visitation schedules, not “winning” the case in one client’s favor.

The mediator acts as a facilitator, taking you through the issues one by one, helping you review the options. He or she can make suggestions, but will not advocate for either party. All decisions are up to the parties who are divorcing, rather than being dictated by a judge.

Mediation resolves all of the issues a judge would decide – while leaving those decisions in the divorcing couple’s hands. Mediation cuts out the middleman. You and your spouse know how your household operates, and all the details of your daily lives. Do you really need your attorneys to argue over who gets the couch and what happens on an afternoon when one child has a ballet lesson and another has soccer practice?

Mediation typically requires from four to 10 sessions, depending on the complexity of the case. The best predictor of how long mediation takes is your readiness to resolve the issues. Some cases take as little as one month, start to finish.

Only four essential issues need to be resolved in divorce cases:

- Child custody and support
- Spousal support
- Division of assets
- Division of debts

Once those issues are decided in mediation, a settlement agreement will be drafted. Once signed, it is filed with the court and becomes a binding judgment. You and your spouse never have to appear before a judge.



Among the benefits of mediation:

1. Paying two attorneys is significantly more expensive than paying one mediator – although you can certainly consult with lawyers and other experts as needed. In litigation, however, attorneys aren't the only costs you'll incur. You'll likely pay for experts and document reproduction. And then there are the indirect costs of leaving work to attend depositions, hearings or meetings with your attorney.
2. You don't have to take the stand in open court to discuss your personal finances and family life. And while information disclosed in court is open to the public forever, with mediation, you eliminate the risk that proceedings in open court could find their way into the media. Mediation is confidential: Whatever is said in a mediation session stays in that mediation session.
3. Because it is more informal – and less threatening – than appearances in court, mediation tends to be less stressful on all parties.
4. You don't have to wait for court dates to be set, or attorney's calendars to be aligned, so your case can be concluded more quickly than a litigated divorce.
5. You stay in control because you're not turning the decision-making over to the court. The courts apply set rules to cases and may not consider the issues you value most. Mediation allows you to design remedies to fit your unique needs, values and circumstances, permitting "win/win" solutions.
6. Because spouses work out their own agreements, mediation increases the likelihood of compliance and reduces the possibility of disputes after divorce.

Perhaps the most important benefit of mediation is the relationship you and your spouse will have after the divorce. Mediation keeps the lines of communication open, as spouses negotiate directly with one another. In litigation, spouses communicate through their attorneys. The goal is to win your case. You're fueled by emotion, and the need to settle an old argument or undo some past wrong; in short, you're out for revenge and willing to be aggressive in your litigation. This is not a good formula for mending fences.

In mediation, by contrast, you and your spouse will learn how to communicate respectfully and effectively with one another, diffusing the tensions that typically impede negotiations. The result is better cooperation after the divorce, leading to a better long-term relationship for you and your ex – and happier and less-conflicted children.

Statistics show that mediation succeeds 85 percent of the time.

Success is more likely if:

- Both spouses agree that a divorce is necessary.
- Neither spouse wants to reconcile.
- You are on good terms with your spouse.
- You are aware of your finances.
- Your spouse does not intimidate you.
- You and your spouse are willing to listen to one another, accept suggestions, and come to a compromise.



You both have to want to be in mediation, be prepared to negotiate like adults, and show up for your sessions in good faith.

However, not every couple are candidates for mediation. Mediation can't be effective unless both parties can express their needs and negotiate freely on their own behalf.

Mediation is less likely to work in cases where:

- One partner is addicted to drugs or alcohol.
- One partner is mentally ill.
- One partner has been subjected to domestic violence.
- You suspect your partner is hiding assets from you.

However, with a skilled and experienced mediator, you should still be able to successfully mediate your case.

Hiring a mediator:

Choosing the right mediator is crucial.

A mediator doesn't have to be a lawyer. But he or she should be well-versed in divorce and family law, and have significant experience mediating divorces. It's a good idea to interview a few mediators before making your choice. If you're already working with a divorce attorney, ask for a referral.



While no training or licensing is required of mediators, training courses are available. Find out whether your prospective mediator has taken a basic training course (typically 40 hours of training), and inquire about continuing education. In addition, be sure to ask how many cases he or she has mediated – and how many of those were mediated successfully.

Ask for references. Mediation is confidential, so most likely the mediator won't give you the names of clients. However, you can ask for other mediators, therapists or attorneys who can vouch for his or her qualifications.

Is your mediator an authority? Has he or she written any articles on mediation or trained other mediators? Do you feel comfortable with the mediator? How does the mediator feel about your working with other attorneys? Can he or she refer other related professionals, such as finance professionals, child specialists and mental health experts?

Preparing for mediation:

1. **Create a list of all your assets and possessions**, as well as all your debts. Include all real estate, personal property (yes, that means books, DVDs, furniture, artwork, jewelry), vehicles, bank accounts, credit cards, retirement accounts, life insurance policies, annuities, stocks and other financial products. Account for everything you own.

The same goes for your liabilities, including mortgage payments – and the balance on your loan, car loans, health insurance costs, food, utilities, student or home equity loans, and credit card balances.

You'll also need proof of income for both you and your spouse. That includes items such as paystubs, pension disbursements and Social Security, along with tax returns.

2. **Create a budget.** Know how much money you spend on a monthly basis and how much money you will need to pay your living expenses.
3. **Decide what's truly important to you**, and what you can live without. You'll probably want to create another list. Know ahead of time what you hope to get – and what you won't walk away from, no matter what.
4. **You'll need a clear head.** Put your emotions aside and be prepared to participate in a negotiation process. If you need to vent, get a therapist or join a support group. Being emotional will only work against you, preventing you from making rational, reasonable decisions.

5. **Express any concerns you may have**, so you and your spouse can discuss them. Some parents are concerned about future travel with the kids. Others are worried about a specific family member. And sometimes there are concerns about introducing children to a new significant other. Everything is relevant. The goal is productive co-parenting and peace of mind.

No matter how you go about achieving it, divorce is difficult. But, like everything else in life, you can decide how difficult you want to make it simply by becoming educated about your options.

Mediation can make the process less of a battle and more of an equal exchange of ideas, focused on the best interests of all family members.

If you'd like to be connected to a Trusted Local Professional that specializes in Divorce Mediation, you can [click here](#) and we'll provide a personal introduction.

Or you can find all of our Trusted Local Professionals on our [web site](#).



About Dino Katsiametis

Leading the industry through his innovative approach, Dino Katsiametis has over 17 years of extensive experience within mortgage, banking and real estate. His passion for the collective financial and investment services sector combined with his distinct insight, has catapulted Money Matters with Dino onto the forefront of personal financial education.

Money Matters with Dino currently airs on Clear Channel's "The Patriot" KEIB AM1150. He believes that being able to impart his knowledge on a broad scale is the key to anyone in need of financial expertise in multiple areas and any investment climate.

An intense listener by nature, Dino stays current with what's going on in personal finance by interviewing and asking all the pertinent questions every investor wants to know and what every individual should know. His down to earth approach and commitment to doing the right thing has allowed him to build quality, trustworthy relationships throughout the financial and personal wealth community.

In an effort to better serve his clients, Dino continues to develop his circle of influence with trusted advisers and vendors. With a vetted list of CPA's, Financial Planners, Attorneys, Accountants, Real Estate and Banking Professionals, Dino is able to connect the right personal finance resources with those who seek help.

Dino lives in South Orange County close to family and church, which he considers the foundation of his character. He is a husband to his beautiful wife and the father of three wonderful children.