

## **DIVORCE MEDIATION**

Mediation is a dispute resolution process where two or more parties voluntarily agree to meet to resolve their differences. Unlike any other dispute resolution process, the parties remain in control of the outcome at every point in the process. If one or more of the parties abandons the process at any time, then the mediation is over and the parties are free to proceed in any other way they chose.

Mediation for divorce is far superior to any other proceeding. Unlike other types of disputes, divorces are highly emotional and have impacts on many others, principally children, who have little or no say in the process. Mediation is a non-adversarial process where the parties are not required to “prove their case” or constrained by strict rules of evidence or case law. The parties are free to make agreements that best suit their individual needs and circumstances.

### **Role of Mediator**

A trained divorce mediator is able to inform the parties of their legal rights as a benchmark for decision-making. However, the parties are free to divert from the standard benchmarks to suit their individual needs and circumstances.

The primary benefit of mediation for divorces is the ability to deal with underlying communication issues that will continue to plague the parties long after the divorce if not resolved. The mediator acts as a facilitator to help the parties negotiate a settlement. Mediation eliminates the need to treat the other spouse as the enemy to be annihilated at trial. The mediator helps the parties focus on the important issues (custody of children, support issues and financial assessment) and avoid unnecessary conflicts that do not help the process. The mediator encourages the parties to work cooperatively rather than competitively (as required in a trial) to accomplish their goals.

### **Mediation is Cost-Effective**

Mediation is much more cost effective than divorce through the courts. Rather than pay two attorneys to fight over depleting assets, the parties pay a mediator. Rather than taking many months or years to finalize the divorce, mediation typical takes a few weeks or several months at most. Rather than pay two attorneys to develop aggressive positions for trial, the parties spend their own time discussing the assets and having them fairly appraised by trained experts. All in all mediation results in a much more economical and satisfying process.

### **Joint Session: Re-establishing Lines of Communication**

The first session in divorce mediation is a joint session between the mediator and the husband and wife. During the joint session the mediator (i) explains the general format of the mediation, (ii) the fact that all communications are confidential and cannot be used against the parties later, and (iii) sets the stage for the parties to begin communicating with each other.

With the mediator's help, the parties begin to honestly and openly discuss some of the issues that have been plaguing their marriage. The purpose is not to resolve the issues, but to re-establish open and honest communication. As the parties go forward in their separate lives, they will need to communicate with each other from time-to-time. They need to learn appropriate means of communication and set reasonable boundaries with each other. By learning how to communicate over difficult issues, the parties are able to lead much more productive and satisfying lives.

Re-establishing communication is particularly important when children are involved. The impacts of divorce on children are tremendous. (See Article on Website entitled "Good Reasons to Stay Married.") Mediation allows the parties to deal with critical issues of child support, custody and visitation directly. Since these issues will continue for a period of time after the divorce decree is finalized, any issues of bitterness or resentment should be dealt with at this point in time. Otherwise, unresolved anger over these issues will become a source of irritation and hindrance in the parents' efforts to raise healthy and well-adjusted children.

### **Private Session: Confidential Sharing of Hopes and Fears**

It is not unusual for the parties to have difficulty discussing certain issues in front of the other spouse. Private sessions, also known as caucuses, afford the opportunity to broach sensitive subjects with the mediator before discussing them in joint session. The mediator's role is to assist the parties overcome obstacles to communication and help them find solutions to areas of disagreement. Often the parties have a difficult time reaching agreements for fear they will be taken advantage of in the process. The mediator provides an important sounding board and wise counselor to develop options that are more acceptable to both parties. If the parties cannot reach an agreement on a particular issue, then the mediator can help locate additional resources that may offer other solutions to the problem.

### **Financial Assessment: Planning for the Future**

An important part of divorce mediation is a financial assessment. Preparing to split two people's lives and life savings is a tremendous responsibility for everyone involved. The courts have established many rules and procedures that help the parties make better decisions about how the assets should be divided. Trained experts with experience in these rules and procedures are vital to any divorce mediation. Before the parties can make

decisions about division of assets, they must understand how the courts are likely to resolve questions of ownership and valuation of assets.

Whenever money is involved, there are always issues of ownership, entitlement and protection. The Bible warns that “the love of money is the root of all evil” and that “some people, eager for money, have wandered from the faith and pierced themselves with many griefs.” (1 Timothy 6:10.) If one party or the other is having an unhealthy and unbiblical attachment to money, then this issue can be dealt with during the mediation. Although the parties may have decided to separate from one another, they cannot use the divorce process to take unfair financial advantage of the other spouse.

### **Marriage Settlement: Finalizing the Agreements**

Once the parties have re-established communication, worked through issues involving child support and custody and reached agreements on the financial issues they are ready to proceed with finalizing the divorce. In a contested divorce, the parties must appear before a judge who makes rulings that become a part of the final divorce decree. In a mediated divorce, the parties reduce their agreements into a Marital Settlement Agreement which is filed with the court. The advantage of a Marital Settlement Agreement is that the parties have the opportunity to discuss each of the items and reach consensus. Neither party is left to feel like the “winner” or “loser”. Rather the parties have a sense of accomplishment after working through negotiation and compromise to reach a mutually agreeable settlement.

### **Conclusion: Moving Forward in Agreement**

Marriage involves the joining together of two lives. The Bible says that when a man and woman are married they become “one flesh”. (Genesis 2:24.) Separating a marriage requires major surgery not unlike removing an arm or a leg. If it is not done carefully and skillfully, the result is painful and leaves an ugly scar for life.

Divorce mediation is the only solution that makes practical sense for unwinding a marriage in a compassionate and thoughtful manner. Divorce mediation is more economical, more reasonable and more successful than any other means of separating a marriage. By re-establishing communication between the parties, considering the impacts on the children and making reasonable financial arrangements, the parties emerge from mediation with a much greater sense of peace and hope for the future than if they had divorced through the court system.