

# FAMILY AND DIVORCE MEDIATION

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## A NON-ADVERSARIAL APPROACH TO FAMILY TRANSITION

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### How Does Mediation Work?

Mediation is a process in which divorcing or separating couples meet with an impartial, neutral person to assist them in negotiating with each other by facilitating communications and problem-solving until an agreement is reached. Often the parties have so narrowed the view of possible solutions to their situation that it becomes difficult, if not impossible, for them to stop arguing long enough about their positions to look for a solution that works for everyone. As we become accustomed to talking about the problem in black and white, we overlook all the shades of gray that are available to us.

Mediation is designed to examine those shades of gray for possible solutions. During mediation, the parties and not the mediator are the decision-makers. The mediator helps the parties to identify the issues and set an agenda for the mediation. With the help of the mediator, the parties will be able to explore the many sub-issues which can cause divorce, separation, and child-related cases to be so difficult and emotional. Often the parties find that once they are able to communicate their needs and interests surrounding a particular issue, more solutions seem possible and they are able to fashion an agreement that is acceptable to both of them.

While there is no one correct way to hold a mediation, the mediator will generally meet with both parties together initially to explain the mediation process, establish the ground rules for the session, hear initial statements from each party begin to identify the problems and the issues, clarify the needs of the parties, and help keep the parties focused on interests and needs rather than positions. There might be times during the mediation when the mediator feels it could be beneficial to meet with each party separately. An individual

meeting such as this is called a caucus, and can be used to allow parties to express themselves more openly, explore options they don't yet feel comfortable exploring in a joint session, address non-productive behavior, allow the mediator to clarify details or obtain additional information, or give the parties time to think away from the other party. Each mediation session, even those involving the same participants, is unique. Caucuses are just one tool used by mediators. In some mediation sessions, no caucus will be used and in others, several caucuses might be used.

Mediation is a voluntary process that allows divorcing and separating couples, or parties with child-related issues to craft their own settlement rather than to advocate against each other and have decisions imposed upon them by a judge or magistrate who probably does not have the time to learn the fine details of the issues at hand. Because no one knows the issues in an individual case better than the participants, the parties, themselves, are in the best position to find solutions that best address their interests and needs. Mediation is less formal than litigation, is more confidential because the mediation discussions are not allowed to be used in court should an agreement not be reached, and is generally more satisfying to the parties because they have created their own solutions. Having worked together to craft an agreement that is mutually satisfying, the parties are more likely to comply with the terms of the agreement and less likely to maintain hostile feelings toward each other and the agreement in the future. Because mediation is a voluntary process, it can be discontinued at any time the participants or the mediator feel that the process is unproductive.

## Can We Mediate If We Don't Get Along?

Parties do not have to be best friends or even particularly friendly to successfully mediate the terms of their divorce, separation, financial, or child-related issues. The mediator can help diffuse the emotions and anger that are so often associated with relationship, financial, and child-related issues. This allows the parties to focus on needs, interests, and the process instead of on positions. The goal of mediation is not to assess blame, but to solve problems.

## Will The Mediator Advise Me About My Legal Rights?

It is important to understand that mediation is *not* the practice of law. Mediators come from many different backgrounds. Some mediators, like Mary Wollard with Family Solutions Center, LLC, are attorneys who have special training in mediation. While an attorney mediator might provide general legal information, s/he is acting as a neutral in the mediation process and not as an attorney or legal advisor. The attorney mediator does not:

- represent the mediation participants in their legal action,
- offer legal advice or provide legal counsel to the parties regarding their legal rights and obligations, or
- offer advice as to how the court might rule on a specific issue.

Mediation does not eliminate the need for lawyers, it simply changes the role of lawyers from being adversarial to being legal consultants and advisors. Throughout the mediation,

the parties are encouraged to at least have the final agreement reviewed by a lawyer and/or financial advisor before signing it.

## **What Are the Advantages Of Direct Negotiation Through Mediation?**

Mediation often provides a quicker, less expensive, and more satisfying resolution of the financial and child-related issues associated with divorce and separation. Resolving these issues through mediation in the beginning provides the parties with an on-going foundation for addressing and resolving child-related issues as they arise in the future. When parents resolve issues together and maintain long-term cordial communications, children are often better able to cope with divorce and separation.

## **How To Get Started**

If you would like to explore the possibility of mediation, please call Family Solutions Center at 303-455-6300 or email [mary@cofamilysolutions.com](mailto:mary@cofamilysolutions.com) for a free telephone or email consultation.