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This Is When To Bring Up Potential Power Imbalances In Divorce Mediation

By Kimberley Keyes | April 01, 2019

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Divorce mediator Kimberley Keyes discusses how divorcing spouses should address any power imbalances between the spouses early in the mediation process.



Power imbalances in a marriage can take shape in many forms. One spouse may hold a disproportionate level of knowledge about the family finances, such as when one spouse is a business owner. One spouse might have far greater educational and professional achievement. One spouse may simply have more dominant personality than the other. Even events during a marriage can drive power imbalances. For example, one spouse's history of infidelity can cause feeling of guilt and anger that drive a power disparity, while a history of abuse could drive a

spouse into fear and submission. Separating spouses who are subject to a significant power imbalance can sometimes struggle in [divorce mediation](#) compared with spouses who are on more equal footing. Whatever the reason for the unbalanced power dynamics, the "weaker" spouse runs the risk in mediation of not getting what they want or deserve in a mediated divorce agreement. Such spouses are often concerned about how a mediator will address their power imbalance, and rightfully so. The best approach to addressing a power imbalance

in divorce mediation is at the stage of identifying and selecting a divorce mediator.

Why Addressing a Power Imbalance Prior to the Commencement of Mediation is Important

Prior to commencing a mediation, the mediator has the ability to work with the spouses to “set the ground rules” for the mediation. These ground rules can include agreed-upon steps taken by the mediator to place unequal spouses on more balanced footing for the shared purpose of reaching a divorce agreement. We have discussed the different mediation styles that mediators use to address power imbalances in [“Comparing the 3 Major Styles of Mediation”](#) and [“How Different Mediation Styles Address Power Imbalances”](#). In the second of these blogs, I wrote:

Mediators who use [evaluative mediation](#) or [transformative mediation](#) in these situations—either exclusively or as a supplement to a facilitative approach—are usually better suited to mediate a divorce when spouses are unequal. By focusing more directly on the objective strengths and weaknesses of each spouse’s [interests and positions](#), evaluative mediators can shift the negotiation away from power dynamics and towards the specific issues that the parties are seeking to resolve. Meanwhile, transformative mediators start the process by observing the communication styles of the parties, then adjust their approach to improve the parties’ communication style before proceeding to the substantive issues.

It is important for mediation participants to raise power imbalances before mediation gets fully underway, since the ground rules must be set by the mediator prior to the commencement of the mediation. Because mediators are neutral third parties, most would not have an “*ex-parte*” conversation with just one spouse about the details of a power imbalance since private conversations with only one spouse can create the perception that the mediation process is unfair. Although adjustments to the mediation style can be made later in the process, it is nearly always preferable for spouses to address these issues early, at the outset of the mediation.

Raise Power Imbalances During the Search for a Mediator

If you are concerned about the power dynamics in your relationship, a better option is to bring up the issue while asking the [important questions you should be raising before you hire a divorce mediator](#). By raising the issue before hiring a mediator, you can probe a mediator's credentials and experience dealing with power imbalances, and can get at least a vague idea of how or even whether the mediator would handle the discrepancy. While mediators will not divulge personal information into details about particular mediations they have done in the past that involved similar imbalances, they should at least be able to give a broad outline of the techniques they can use to level the playing field, and help you [find the right mediator for your situation](#). Furthermore, raising the issue before making a hiring decision can put your eventual mediator on notice that he or she should look out for distinct power dynamics in your relationship. The result is the same kind of increased awareness on the mediator's part that you would have obtained by explicitly raising the power issue during a mediation session, but without creating the perception of unfairness that can taint the outcome of a divorce mediation.



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