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Do Separated Spouses Need To Get Along For Mediation To Work?

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Divorce mediator Nicole K. Levy discusses overcoming anger in the mediation process.



*Divorcing spouses who choose to engage in mediation often find the process **quicker** and substantially less expensive than divorce litigation. However, spouses facing divorce sometimes fail to pursue mediation based on preconceptions about whether the mediation process is suitable for spouses experiencing a high degree of personal conflict, tension or hostility. Individuals involved in a tense separation or interpersonal conflict often assume that mediation is only suitable for spouses (or*

former spouses) who are largely “on the same page” and simply need a third party neutral to help work out the details of an agreement. Believe it or not, you can have a successful mediation, even if you and your (former) partner are struggling to get along. *Overcoming negative emotions* is part of the mediation process, and a skilled mediator understands how to encourage participants to express emotions that advance the mediation process while suppressing counterproductive expressions of anger and aggression.

Types of Disagreement: Opposing Legal Positions vs. Personal Conflict

Historically, less than half of my mediation clients begin the mediation process with clear shared goals on major substantive issues. More commonly, individuals enter the process knowing only that they need assistance with a divorce or custody agreement, and that they agreed to try mediation. Indeed, I frequently encounter parents (or separated or former spouses) who enter mediation knowing that they share serious disagreements over major substantive issues, including *child custody, child support or alimony, or the division of marital assets*. Success is often achievable through mediation even when clients enter the process with diametrically different legal positions. *Substantive issues* aside, the more challenging form of conflict is often *emotional*. Spouses who are angry, traumatized or prone to chronic arguing face a different set of challenges in mediation.

Understanding Anger in the Mediation Process

In general, anger manifests itself in three ways in the mediation process: aggression, anxiety and attribution. Aggression is often a natural byproduct of human conflict and is often worse when one or both individuals are aggressive by nature or temperament. Among the broad range of human personality types, a subset of individuals appear to enjoy (or at least thrive on) conflict, including the formalized conflict of litigation or the generalized conflict surrounding divorce and/or negotiations surrounding other contentious issues. In the mediation context, aggressive individuals can be unpredictable,

particularly if components of their behavior are driven by the endorphin release associated with conflict, such as adrenaline, as well as short-term variations in mood. Anxiety often comes from a very different place than aggression but can be equally challenging to address in the context of dispute resolution. A mediation participant's anxiety may be the product of a preexisting personality trait or a *power imbalance* that arose during the relationship. Meanwhile, it is fair to say that divorce and custody disputes are naturally anxiety-provoking events in their own right. Finally, we know that individuals who experience anxiety often blame a former partner or spouse (rightly or wrongly) for creating the distress the individual feels as a result of his or her anxiety. This blame can result in angry outbursts from the anxious individual or, perhaps more commonly, in expressions of fear that can create paralysis during dispute resolution. In the mediation context, anxiety often manifests itself through an individual's need to exert control over seemingly minor issues and subject areas. Anxiety can lead to "power struggles" over seemingly arbitrary concerns, as well as distrust and fear that can hinder the exchange of ideas and resolution of conflict. At the same time, an individual with a history of anxiety is sometimes vulnerable to manipulation or "button pushing" by a former spouse or partner who understands how to distract or misdirect the individual by exploiting his or her anxious responses. Attribution is a somewhat more subtle cause of anger in the mediation forum. Attribution, in this context, is best understood as how one individual views the actions of the other, where a misunderstanding or mistake assumption about the other individual's motives can trigger anger rather than understanding. In divorce cases, spouses often "assume the worst" about the other's motivation for taking a specific legal position or engaging in a certain behavior. In many ways, attribution issues often boil down to empathy; if individuals are able to place themselves in the other's shoes, and understand the other person's *interests and desires*, then the purpose and sincerity behind the other's legal positions often becomes more understandable.

How Anger Affects Decision Making in Divorce and Child Custody Cases

In terms of achieving goals that advance your personal best interests, anger is often the enemy in the family law context. To be fair, anger may not be uniformly bad in every instance in such cases. There may be occasions when individuals are struggling with adversity, bad outcomes, fatigue or depression/anxiety in which anger is what carries the individual through the adversity. Indeed, it is precisely this attribute of anger – to carry us through moments of acute distress – that probably explains its evolutionary value. In modern life, however, anger and strong emotions often hinder far more than they help in most contexts. Individuals experiencing anger and/or strong emotions generally struggle to identify and evaluate their best interest objectively, instead they make decisions driven by their emotions. Angry individuals often struggle to remember that the divorce or custody process will not result in reward or punishment, but rather, will result in a tightly controlled list of rights and obligations that will have real-world impacts on the individual for years or decades after the emotion has worn off. Ideally, individuals engaged in the divorce or child custody resolution process – whether through litigation or mediation – will identify their goals based on objective criteria: what outcomes are best for the individual and his or her children, which outcomes are achievable at what costs, and what strategies will best effectuate the desired outcome. Strong feelings of anger frequently interfere with the decision making process by externalizing the process: the angry individual tends to focus on outcomes that disadvantage the other party, disregards the cost-benefit analysis, and gravitates towards tactics and strategies that provoke or frustrate the opponent rather than achieving goals focused on the individual's best interests. Anger tends to trigger greater risk taking and focuses on "defeating" the opponent, and the need to express and respond to anger instead of focusing on substantive outcomes.

Managing Anger in the Mediation Context: Suppression vs. Expression

In prior blogs, we have discussed the three *main mediation approaches: facilitative, evaluative transformative* mediation. There are also multiple approaches for addressing anger and negative emotions by mediation participants. There are two main schools of thought on managing angry feelings in mediation: *suppression vs. expression*. Each approach can have strengths and weaknesses, depending on the facts at hand. The “suppression” school of thought provides that mediators should discourage participants from expressing anger during the mediation because one individual’s angry expression can often trigger an equal or greater expression of anger from the other individual, leading to escalating emotions. A participant who has carefully composed his or her emotions prior to the mediation may find him or herself provoked or distracted by an angry outburst from the other, resulting in an increasingly tense atmosphere, increased risk taking, increased ultimatums and an unwillingness to accept reasonable offers. The “expression” school of thought recognizes the negative impact that one or both individuals may experience if they are not permitted to vent, work through conflict issues and resolve emotional issues that underpin the conflict the participants are experiencing. Advocates for “expression” believe that achieving lasting resolution requires participants to *hear, acknowledge and respect the other person’s feelings*, and that this can only be achieved by allowing participants to express their feelings – even angry feelings – in a controlled setting. If one individual’s pent-up emotions are a hindrance to settlement, it is easy to see how providing that individual with a forum to express their emotions could permit the individual to move past their emotions and shift their attention to more objective positions. Indeed, even less emotionally expressive spouses can sometimes benefit from *hearing the more emotive spouse articulate their feelings* in a clarifying manner. The reality is a good mediator must rely on both approaches on a case by case basis. The mediator must recognize the emotional state of each participant and determine the circumstances in which allowing a participant to express his or her anger (or other strong emotions) will help or hinder the mediation. In many cases, the mediation must adjust in real time, engaging in

suppression when emotions flare to high, or encouraging expression when it appears that progress can be achieved by airing and acknowledging a participant's feelings. Strong mediators combine good assessment skills – by evaluating the participant's emotional states through observation and questioning from the start of the mediation – as well as good awareness and reactions, as emotions ebb and flow in real time over the course of the session.

Evaluating the Emotions in the Room

*There are no magic tricks for mediators to determine the emotional state of clients in advance. Obtaining answers to key questions is a crucial first step for mediators. However, mediators must be careful not to trigger conflict by asking clumsy questions that invite an emotional response. Instead, the mediator must work his or her way through the session with subtlety. Key questions include: Have the participants been arguing over issues? Have the parties been freezing each other out or avoiding each other? Have one or both participants expressed anger to the other in the recent past? Is there a **power imbalance** in the relationship? Is a participant aggressive, anxious or attributing bad motives to the other? Are the individuals able to communicate about basis issues without slipping into **argument, sarcasm or commentary on the other**? Do the substantive positions of the participants appear to be based on objective goals or criteria or do they appear to be the product of anger or anxiety? Do emotions appear to be hindering one participant more than the other? Ultimately, it is the mediator's job to evaluate the emotional state of each participant, quickly assess if a participant is overtly or passively aggressive or anxious, determine whether attribution errors are present (i.e. doubts about the other party's motives that might be clarified by expressing feelings), evaluate each participant's substantive positions to determine if the individual appears to be driven by emotion or objective goals, and react in real time to negative emotional spikes or opportunities for empathy and shared understanding that arise over the course of the session. If it sounds complicated, that is because it is.*

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Is Mediation Appropriate when One or Both Participants Are Angry or Emotional?

As discussed above, strong feelings of anger (and other strong emotions) are often counter-productive for individuals engaged in divorce or child custody proceedings, regardless of whether the matter is being litigated or mediated. While litigation may be more conducive to expressions of anger, it does not necessarily follow that providing an individual with a forum to unleash his or her anger will result in the best outcome for the individual. Instead, individuals who are controlled by feelings of anger and other strong emotions are often drawn into damaging mistakes in litigation, where escalating behaviors can spin out of control. Certain [power dynamics](#), such as a history of domestic violence, pose particular challenges for mediation, where participants are generally expected to sit in the same room. If a participant's physical safety is at risk, mediation is unlikely to work. However, many concerns about anxiety, intimidation and past trauma can be addressed through "[shuttle mediation](#)" and [mediation coaches](#), clear behavioral guidelines set by the mediator such as the "[co-worker rule](#)", the use of [mediation coaches](#), and careful application of the suppression/expression approaches to control angry outburst while periodically encouraging appropriate emotional expressions to achieve shared goals and mutual understanding. In short, mediation is highly effective at defusing the anger and strong emotions that often result in negative outcomes for individuals in litigation. If you or your former partner are consumed by strong emotions, you should consider trying mediation as a way of avoiding the pitfalls of angry behavior that

manifest during litigation. **Schedule a mediation with [Nicole K. Levy](#) today at (781) 253-2049 or send [her an email](#).**

Nicole is a divorce mediator and mediation coach for South Shore Divorce Mediation, with offices in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a collaborative law attorney Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Nicole is a statutory mediator under [M.G.L. Ch. 233, s. 23C](#) and a proud member of the Massachusetts Council on Family Mediation. To read more from Nicole, check out her [content on the Lynch & Owens blog](#).

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