

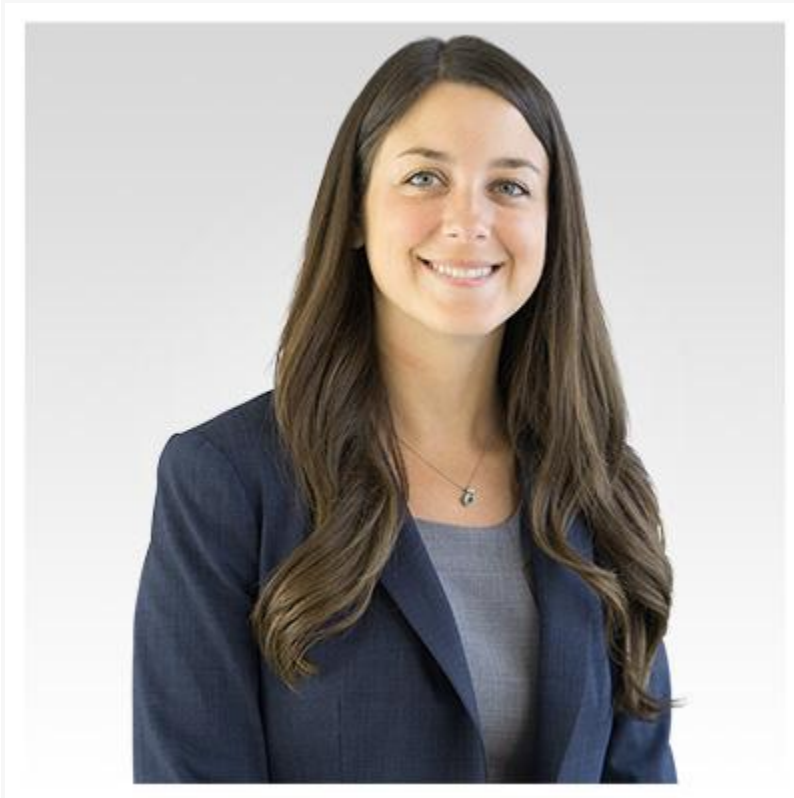
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# How Mediation Rewards Creativity To Resolve Disputes

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*Divorce Mediator Nicole K. Levy reviews how mediation encourages dispute resolution by rewarding creative problem solving and communication.*



*In order to begin the [mediation process](#), it is important for you to understand [what mediation is](#). Mediation is sometimes defined as the*

intervention in a dispute by an independent third party in order to reach resolution. However, mediation is much more than this. First and foremost, mediation is a process that is used to resolve disputes without the need for judicial intervention. The independent third party is the mediator who aids the participants in reaching and structuring a mutually agreeable outcome. When compared to the [cost](#), stress and time involved in litigation, mediation is often the preferred resolution process for individuals who want to avoid the negative implications of court involvement.

### *The First Step: A Voluntary Agreement to Mediate*

The first step of mediation actually involves coming to an agreement: those involved must agree to mediate. Coming to this agreement alone demonstrates each side's open mind in the process to come. Mediation is, by its very nature, voluntary. This means anyone can decide to terminate the mediation at any time. This also allows for a [flexible time table](#). Sometimes, the people mediating have not spoken in quite some time; or, during the mediation, one or both persons involved needs to pause and think things over for a period of weeks or months. In other scenarios, participants have reached a partial agreement and want help moving forward without interruption. Because mediation is voluntary, the individual participants are in control of the timing. Wherever you fall on this spectrum, the fact that you are able to start mediation is always a positive step in the right direction.

### *Seeking Resolution: Mediators Teach Compromise by Overcoming Negativity Bias*

The [mediator's role](#) is to help participants discuss and explore resolutions to all the issues. The mediator does not achieve this goal by waving a magic wand over the people in the room. It is not hypnosis. Instead, the mediator listens carefully and accomplishes his or her goals by asking questions. Invariably, each person in a mediation has valid questions and concerns about the topic in dispute. The problem, in most instances, is that the people involved are unable to (a.) identify and focus on their shared and common goals and (b.) hear and fully understand the

legitimate concerns of the other person. It is human nature to focus on the negative. This “*negativity bias*” manifests itself in several ways:

The negativity bias, also known as the negativity effect, refers to the notion that, even when of equal intensity, things of a more negative nature (e.g. unpleasant thoughts, emotions, or social interactions; harmful/traumatic events) have a greater effect on one's psychological state and processes than do neutral or positive things.

In the mediation context, negativity bias often hinders individuals' abilities to properly value and build upon areas of agreement. Instead, individuals tend to be drawn to areas of *conflict, dispute and negativity*. A skilled mediator draws out shared goals that individuals may take for granted (or be totally unaware of) and assigns value to these areas of potential agreement that individuals are unable to understand on their own. Meanwhile, the mediator asks questions to help each person understand the other's concerns as valid and legitimate, even in the face of real disagreement. After (a.) identifying and valuing areas of shared agreement and (b.) acknowledging and validating the legitimacy of each participants' concerns, the mediator turns to (c.) helping individuals negotiate compromises without the burden of negativity bias. The final stage involves the mediator aiding participants in crafting a final agreement that memorializes the resolutions reached during the process.

### *Mediators: Neutral Third Parties Trained to Overcome Obstacles and Conflict*

It is common knowledge that mediators are neutral third parties, who do not take sides or assign blame to participants. Mediators do not advocate for a position, however. The mediator advocates for methods of communication that tend to get lost in the emotion and frustration of conflict. A skilled mediator asks each participant questions that draw out that individual's ideas in a way that the other participant can hear, understand and relate to. The mediator does not favor either individual's position or outcome, but he or she pursues the goal of communication. The mediator does not demand better communication, however. Instead, the mediator participates directly in the communication process, drawing

*the participants in and facilitating positive communication by asking the right questions. The true skill of a mediator is listening. The mediator must quickly understand how each participant communicates, and determine the best way to identify shared goals – which are often hiding just beneath the surface of a conflict – and draw out the words and ideas that enable each participant to understand the other. A skilled mediator can facilitate a conversation even in tumultuous relationships, and begin building a resolution from the foundation up, tailoring his or her approach to the unique communication styles of each participant.*

### *Collaboration vs. Conflict: How Mediation Differs from Litigation*

*Mediation is a collaborative process. Unlike litigation, where the court's calendar dictates timelines and discovery, and the other party may schedule court hearings without your consent, mediation draws the participants into working towards resolution on their own schedule. The mediator process is based on the facilitation of ideas. It is inherently creative, and conflicted individuals often find themselves drawn together as they discuss the best framework for reaching shared goals. Unlike litigation, where a "failed" argument can result in punishment, mediation values the creative process. Even ideas that don't work can be worthy of praise, as participants brainstorm resolution, and attempts are compromise receive praise and encouragement. The people involved in mediation are encouraged to discuss creative solutions that are tailored towards their individual issues; not necessarily boilerplate solutions. When working towards a common goal, the participants generally become better listeners, as the mediator facilitates idea exchange and incentivizes creative attempts to problem solve, even when such attempts are unsuccessful.*

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## *Controlling the Schedule: How Mediation Puts You in Control of Your Life*

*One of the greatest benefits to mediation is the control maintained by the participants. Control, in this context, is not just limited to the timing and duration of the process. People involved in mediation have the power to directly determine what their resolution will look like. Although some compromise will be needed, the details that matter most to an individual are far more likely to be addressed in a mediated agreement than a court's judgment following a trial. In coming to an agreement, each section of an instrument can be reviewed, discussed and customized. I often tell litigation clients that leaving decisions to a judge who does not know you, your spouse, your children or your issues – and has multiple cases to decide before and after yours – is risky and unpredictable. The mediation process allows you to focus on the details that matter most to you. What do you have to lose?*

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***Nicole is a divorce mediator for South Shore Divorce Mediation, with offices in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a 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 Levy, check out [her author page on the Lynch & Owens Blog](#). Disclaimer:*** *The information you obtain at this site is not, nor is it intended to be, legal advice. You should meet with an attorney for advice regarding your individual situation. You are invited to contact our office. Contacting the office does not create an attorney-client or mediator-client relationship. Please do not send any confidential information to the office until such time as an attorney-client or mediator-client relationship has been established. This blog is considered an advertisement for the Law Office of Lynch & Owens, P.C. d/b/a South Shore Divorce Mediation. The Massachusetts Rules of Professional Conduct broadly govern all advertisements and communications made by attorneys and law firms in the Commonwealth. Generally, legal*

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