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Why Choose Mediation Over Litigation For Your Divorce?

By Nicole K. Levy | July 28, 2017
[Mediation](#)

Divorce Mediator Nicole K. Levy explains why parents, spouses and former spouses should consider mediation over litigation.



Divorce, like any family matter that requires litigation, is rarely easy. The emotional toll that litigation takes on your family and life cannot be explained, nor can it be anticipated. The uncertainty, coupled with the financial burden accompanying litigation, only adds to stress and worry. There are so many variables that exist in divorce cases that it is often difficult to receive a definitive answer from the courts without risking a trial. Even after trial, there are appeals and post-judgment filings that can make the litigation process seem endless. The good news is that there are alternative methods to resolving divorce and family law issues

beyond running into court or getting served with surprise paperwork. Divorce mediation is among the best. A common question is whether mediation is the right choice for you and your situation. Many people who are embroiled in [family law issues](#) - such as divorce, child custody or child support - assume there is too much conflict, too much hurt, or too much anger to come to an agreement without court intervention, but you might be surprised.

Too Much Conflict for Mediation to Work? Not Necessarily

I have seen couples, ex-spouses, and parents come to agreements despite high conflict, high emotions, and lots of anger. I have worked with parents who barely know or trust each other, but share a child, and need to come to an arrangement that worked for all the people involved. Mediation is no magic cure, but the minute you agree to try mediation, you are agreeing to put aside the threat and cost of litigation to see what can be resolved. It is certainly true that a certain level of agreement is required for parents to mediate their dispute. For example, they must agree that they are each willing to try mediation. From that one seed of cooperation, however, a full agreement can grow.

Mediation is Also a Useful Tool for Parents Who Get Along

On the other side of the coin, perhaps you and your spouse or former spouse get along well enough that your needs and wants are nearly aligned. Why can't you both just sit down and write up an agreement? The answer is clear: divorce and family law issues are often complicated. For a judge to approve an agreement, it needs to meet certain criteria. In fact, judges have the authority to reject an agreement that does not adequately address the requisite issues, contains contradictory language, or fails to adequately provide for those involved. Custody, child support, division of assets, sale of properties, dividing retirements, and sharing debts - resolving these issues are complicated enough. But ensuring an agreement includes the right terminology and addresses the court's concerns requires an experienced hand. Any unaddressed issues may delay the resolution, and any ambiguities in the language can result in litigation as individuals struggle to understand their respective rights under an agreement.

Family Law Litigation: A Coercive, Inflexible Process

While mediation is a voluntary process, litigation often is not voluntary for at least one of the parties involved. Once you have filed an action with the Probate and Family Court, you are on the court's calendar, even if you are the moving party. Once underway, either party involved in the litigation can schedule motion hearings or demand discovery with almost no warning. Every court appearance is a new opportunity to see your personal life and reputation publicly dismantled by an attorney who is trained to find and exploit weaknesses. Those who believe their attorney is a "pit bull" who'll make mincemeat of an

opponent often find that opposing counsel is just as fierce, and the psychological trauma of being targeted by a trained professional is no less intense for either party. A skilled family law attorney can employ a wide variety of coercive and effective pressure tactics that are highly unpleasant to consider, much less experience.

Mediation: Flexible and Voluntary

Mediation is flexible. The mediation process allows parents, spouses and former spouses to determine timelines that work with their calendar. Mediation does not involve coercive tools such as discovery requests, depositions, contested hearings and skyrocketing legal fees. There is a piece of advice that I consistently tell most of the people I work with: if you and the other person - be it an ex-spouse, a current spouse, the other parent, grandparent, or anyone else - can agree on something (even *one small thing*) you are moving in the right direction. It is always better to dictate resolution yourselves. Lawyers and judges can never know the ins and outs of your family, your schedule, and your life, as you do - which means that Orders and Judgments that come from the court can never truly be tailored to your needs. Mediation keeps family disputes within the family. Put your best foot forward and give it a try.

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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

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