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The Top Four Questions To Ask In Your Divorce Mediation

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Shore Divorce Mediation explores the top four questions to ask in mediation.

Pursuing [mediation for a divorce or family law issue](#) is a decision that all people involved need to agree on prior to engaging in the process. Once the mediation begins, though, spouses or parents often find themselves at a loss for things to say to the mediator, or how to answer questions. As a result of feeling overwhelmed by the complexity of a divorce or the gravity of the discussions for a custody arrangement,

some parents or spouses begin to engage in mediation passively rather than participate in it actively. They often feel like things are passing them by or that they are missing important opportunities to speak and pursue their interests, or even perhaps that they are “losing” at mediation. In many cases, these concerns are legitimate; not in the sense that a person is “losing,” but in the sense that they are not being heard as much. Often times, skilled mediators will zone in on this and try to elicit input from all persons involved, but this does not take the onus off a participant to be active during the mediation process. If you have begun to feel like you are floundering in the mediation process, it can be helpful to return to the fundamentals of why you are mediating your differences. Asking four simple questions can help ground you, and assist in finding your voice and expressing your wishes.

1. What Issue Are We Resolving?

A silent question to constantly keep in mind throughout the mediation process, this can keep you organized and coherent in an otherwise overwhelmingly large process that can quickly become disorienting. A divorce can be broken down into three basic parts, and a custody agreement involves only the last two:

1. *Asset Division*
2. *Child Custody*
3. *Child Support and Alimony*

If you find yourself disoriented or confused in mediation, mentally asking yourself which of these topics is being discussed at the moment can bring you back to the table. Also, it may be helpful to jot down notes along with your own thoughts about each of these topics. While in the mediation, you are then able to review your notes and either express your wishes or, on the other hand, ask for clarification on the topic.

2. What Are My Goals?

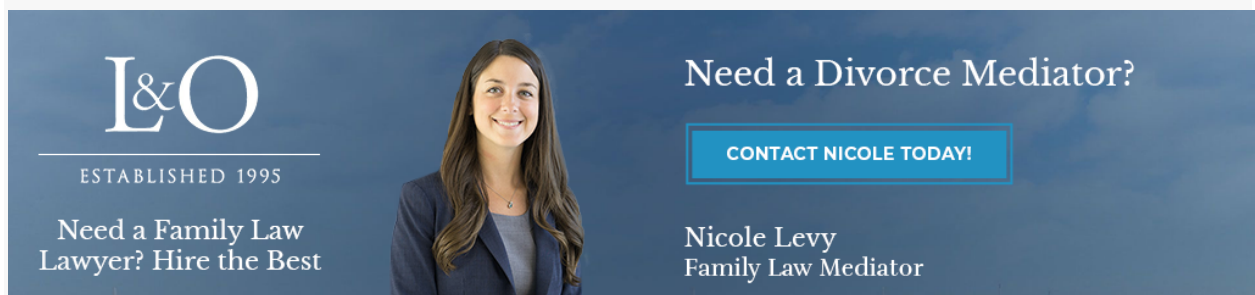
Another silent question to always keep in mind is what you want out of this mediation. Knowing *your goals for mediation* is one thing: reminding yourself what they are is completely different. Keep what you want at the front of your mind. This is necessary to stay on track, avoid distractions, pursue your interests, and reach a resolution that you can really live with. This also assists the mediator, as you are able to clearly indicate what you are seeking out of mediation. Remember, your goals may seem clear to you, but they need to be made clear during the process as well. Moreover, your goals may shift during the process, and this means continually expressing them.

3. How Would a Court Resolve This?

If you are worried that the other person is taking advantage of mediation's relaxed atmosphere and getting the better end of every negotiation, it can begin to become helpful to ask how a court would handle the issue or issues being discussed. Be warned: mediators cannot predict exactly what a court would or would not do, as litigation is nuanced. However, for more broad issues, often times a mediator can *weigh in on what a hypothetical judge's outcome* may be. The possibility of litigation looms over the shoulder of every divorce and custody mediation. While litigation is far more time consuming and expensive than mediation, having the legal representation of a divorce or custody lawyer can level the playing field. If you are concerned that you are being taken advantage of during mediation, then the added costs of litigation may be less of a problem. An outright threat to take your case to court is sure to doom any further advancement in mediation. Mediation under duress is no longer mediation. Tactfully asking your mediator how a probate and family court judge would resolve an issue keeps playing by the rules of mediation, while insinuating that litigation is on your mind. It also signals that you have an eye on your legal rights in divorce and that you are not satisfied with how the mediation is proceeding.

4. What if Things Change?

Resolving issues, for the time being, is already difficult enough. However, life after mediation is filled with surprises that can drastically change your ability to fulfill the obligations you settled on during mediation. Asking experienced mediators what will happen if things change is often well worth the time. Mediators typically have valuable input about how prior mediations and modifications have withstood the test of time, and can help you and your spouse create an agreement that is flexible enough to handle many of life's foreseeable challenges.



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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 Levy, check out [her author page on the Lynch & Owens Blog](#).

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