

# When is Divorce Mediation the Better Way?

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## Divorce: A Difficult and Painful Process

A failed marriage can be traumatic and emotionally devastating. Further anguish looms as a divorcing couple faces painful decisions regarding a parenting plan, division of property, assignment of debt and a variety of other issues. But there's no way to escape these difficult decisions. The parties must select a process to make these important (and legally-mandated) decisions. The question is: will the process they choose make it better or worse?

## Reach Agreement or Let a Judge Decide

A vast majority of divorces are not resolved by a judge, which means they are settled through negotiations. In most cases, the court decides only when negotiations fail. The system in Washington has a bias toward settling out of court. There are a variety of resources to help parties work things out, for example, online guides and settlement conferences prior to a court date.

So the first critical decision is *not* whether the divorce goes to court – that decision is usually made after months of negotiations. Instead, the first decision is whether to get help in resolving the difficult issues and, if needed, what type of help – representation by legal counsel or facilitation by a neutral mediator.

Essentially, there are three ways to negotiate:

- ❑ Without help -- Any honest mediator or attorney will encourage their clients to work out as many issues as possible on their own.
- ❑ With help of a mediator -- Remaining issues can be negotiated with the assistance of a mediator, whose goal is to reach mutual agreement.
- ❑ With help of attorneys -- Remaining issues can be negotiated by attorneys representing each client; the goal of most attorneys will be to “win” and get the best possible outcome for his/her client.

## When a Mediated Settlement is the Better Path

When a divorcing couple communicates very well and aren't far apart on the issues, it may be possible to work out a dissolution without outside assistance from either a mediator or attorney. However, in most cases outside help is warranted. Here's a case for choosing a mediated negotiation instead of asking attorneys to negotiate a settlement.

- ❑ **Mediation is collaborative, builds trust and preserves relationships.** Its goal is to work out a mutually satisfactory (“win-win”) solution and minimize conflict. The mediator works hard to see that both parties' interests are identified and addressed. During mediation, couples often learn communications strategies they can use for years to come. Attorneys represent their own clients' interest and most act within an adversarial paradigm that often drives parties further apart – undermining trust and increasing tension, anger, and resentment.

- ❑ **Mediation allows divorcing couples to control their own future.** The mediator taps into the creative thinking of both parties to find common ground and solve problems. This creativity is diminished when negotiating through attorneys in an adversarial process.
- ❑ **Mediation costs significantly less.** Mediation costs significantly less than negotiating through attorneys, because 1) they usually charge less per hour and 2) require fewer hours to get the job done – especially considering that divorcing couples need only pay one mediator as opposed to two attorneys. Mediators charge only for time spent in session, while attorneys charge for every consultation, inquiry, phone call and letter. Adversarial and expensive divorce proceedings exacerbate the trauma of divorce and can negatively impact parties --and their children -- for years.
- ❑ **Mediation is informal and flexible.** Sessions can be scheduled at times that work for the parties and are not limited to the hours of a law office. Although mediators use a structured format, it can be easily modified and adjusted to fit the needs of each situation. Mediation also preserves all other options – if some issues are unresolved, the parties can still work through attorneys or even let a judge decide.

### [Mediators Work in Concert with Attorneys and Financial Advisors](#)

Divorce mediation is not an “either-or” proposition. Clients are well-advised to use a combination of services. Mediators must be impartial and do not provide advice and do not represent either party. For that reason, divorcing couples using mediation are encouraged to consult with trusted advisors (legal, financial, etc.) to protect their interests and to have a final settlement reviewed. And, while the mediator will help the couple make all the decisions required in the dissolution process, they would not actually prepare the final, legal documents or file them with the court. To complete these legal steps, mediation clients need to either learn how to do it themselves (feasible for many people) or retain an attorney to file the necessary papers with the court. One option is for clients to use the services of attorneys and other professionals in “collaborative practice” who are committed to avoiding litigation and who can work as partners with a mediator.

Upon request, the mediator can direct clients to self-help resources.

### [When Mediation is Not Advisable](#)

Not every divorce is a good candidate for mediation. Here are some examples:

- ❑ When there exists an abusive relationship that suggests husband and wife cannot work together collaboratively or, in some cases, should not even be in the same room. Or, with respect to the parenting plan, if one of the parents has abused the children, the best interest of the children will probably be served by a court’s judgment, not negotiations.
- ❑ When the parties are so hostile they are unable or unwilling to work together to negotiate a settlement.
- ❑ When the parties are unwilling to negotiate in good faith, that is, one or both parties are convinced they would “win” in court and are determined to hold out for litigation.
- ❑ When the couple can communicate effectively, the issues are simple and the parties are in substantial agreement they may be able to reach agreement without outside help.

*Contact the Samaritan Center Mediation group voicemail: 206.957.4696*