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MEDIATION

What is mediation?

Mediation is a process of alternative dispute resolution in which an impartial third party assists the parties in negotiating a consensual and informal agreement. Participants work with the guidance of a mediator to clarify issues, reduce obstacles in communication, explore solutions and if possible, reach a mutually satisfactory agreement.

Mediation programs can be very beneficial to people who are divorcing as well as to those who have long been divorced but who find themselves in a dispute in their post-divorce relationship. It is a cooperative method of dispute resolution that is led by a neutral party who assists the couple in reaching agreements. This method of resolving disputes is an alternative to the more common method of litigation, (resolving disputes in court) which is intentionally confrontational and involves attorneys representing one side against the other and results in one "winner" and one "loser." Mediation also has the advantage of often being less expensive than resolving disputes in court. That being so, it is well worth investigating by any couple facing divorce, a child custody or visitation dispute, or other interpersonal conflict.

A court may order mediation upon a request by either party or because the court itself determines it would be useful to the couple in coming to an agreement in their divorce. (598.7) Mediation will not be ordered, however, when there is evidence of domestic abuse. (598.41) Even in cases of domestic abuse, however, if both parties agree to mediate, despite the existence of a protective order, mediation can take place, but must be held at the local courthouse.

A successful mediation can help you resolve your case to enable you to have an uncontested divorce. Mediation can be particularly useful in situations involving children, because it is in the best interests of the children that their parents find a way to "get along" even if they will no longer live together as husband and wife.

Benefits of mediation

People in disputes who are considering using mediation as a way to resolve their differences often want to know what the process offers. While mediation cannot guarantee specific results, there are trends that are characteristic of mediation. Below is a list of some of the benefits of mediation, broadly considered. Mediation generally produces or promotes:

Economical Decisions

Mediation is generally less expensive when contrasted to the expense of litigation or other forms of fighting.

Rapid Settlements

In an era when it may take as long as a year to get a court date, and multiple years if a case is appealed, the mediation alternative often provides a more timely way of resolving disputes. When parties want to get on with business or their lives, mediation may be desirable as a means of producing rapid results.

Mutually Satisfactory Outcomes

Parties are generally more satisfied with solutions that have been mutually agreed upon, as opposed to solutions that are imposed by a third party decision-maker.

High Rate of Compliance

Parties who have reached their own agreement in mediation are also generally more likely to follow through and comply with its terms than those whose resolution has been imposed by a third party decision-maker.

Comprehensive and Customized Agreements

Mediated settlements are able to address both legal and extra-legal issues. Mediated agreements often cover procedural and psychological issues that are not necessarily susceptible to legal determination. The parties can tailor their settlement to their particular situation.

Greater Degree of Control and Predictability of Outcome

Parties who negotiate their own settlements have more control over the outcome of their dispute. Gains and losses are more predictable in a mediated settlement than they would be if a case is arbitrated or adjudicated.

Personal Empowerment

People who negotiate their own settlements often feel more powerful than those who use surrogate advocates, such as lawyers, to represent them. Mediation negotiations can provide a forum for learning about and exercising personal power or influence.

Preservation of an Ongoing Relationship or Termination of a Relationship in a More Amicable Way

Many disputes occur in the context of relationships that will continue over future years. A mediated settlement that addresses all parties' interests can often preserve a working relationship in ways that would not be possible in a win/lose decision-making procedure. Mediation can also make the termination of a relationship more amicable.

Workable and Implementable Decisions

Parties who mediate their differences are able to attend to the fine details of

implementation. Negotiated or mediated agreements can include specially tailored procedures for how the decisions will be carried out. This fact often enhances the likelihood that parties will actually comply with the terms of the settlement.

Agreements that are Better than Simple Compromises or Win/Lose Outcomes

Interest-based mediated negotiations can result in settlements that are more satisfactory to all parties than simple compromise decisions.

Decisions that Hold Up Over Time

Mediated settlements tend to hold up over time, and if a later dispute results, the parties are more likely to utilize a cooperative forum of problem-solving to resolve their differences than to pursue an adversarial approach.

Things to think about when going into mediation:

Know what your current situation is.

A. Financial

1. Do you know your current income and expense?
2. Do finances play a part in the dispute?
3. Do you need a loan or assistance from another person/ agency?
4. Is there something you would like to ask the other person to change?

B. Legal

1. Do you understand your legal rights?
2. Has law enforcement and/or the court intervened on the dispute?
 - If yes, do you understand where the case is in the process?
 - If no, are they likely to intervene?
3. What are the positive and negative potentials?

C. Social

1. Have you talked with the other party? Can you effectively communicate with them?
2. Do you see the other party as the enemy or a bad person?
3. Has the other party initiated contact with you? Has their attorney initiated contact with you?
4. Is continuing the relationship crucial? for you? for your family?

D. Emotional

1. Are you angry, frustrated, or confused about this conflict? other feelings?

2. What will you feel if you do not get what you want in this case?
3. How are family members or close associates feeling?
4. What do you think the other party is feeling?

E. Family

1. Have you shared your concerns and feelings with family members or others affected by this dispute?
2. Do your family members agree with your approach?

II. Know what you want to do to solve the conflict.

- A. To keep things as they are now
- B. To change specifically to comport to your position/goals
- C. To end the stress
- D. To restore the positive relationship
- E. To end the relationship

III. Know if you can get what you want

- A. What will you have to do to make this work?
- B. Can you do what it takes? Will you do what it takes?
- C. What will the other party have to do to make this work?
- D. Can the other party do this? Will the other party do what it takes?
- E. What happens if your assumptions do not work?

IV. What are other options if you cannot obtain what you want?

- A. What would be the next best thing?
- B. What is minimum you can accept or need?
- C. What happens if you accept less than you need?
- D. Will legal assistance help? Other assistance?
- E. Will time help? Will time delay or hinder?
- F. Do you need additional assistance – for emotional overload?
- G. Has your spouse or family proposed something different?
- H. Will talking help?

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