

MEDIATION: WHAT IS IT AND WHAT CAN IT DO FOR ME?

Either by court order or by agreement of the parties, you have mediation scheduled in your divorce case. You may groan and think this is yet another ploy by the attorneys to generate more fees. Not true. Mediation could very well be what settles your case and keeps you from spending a lot more money going to trial.

What is mediation?

Mediation is a way to resolve your dispute by way of a trained, neutral mediator whereby the mediator facilitates an agreement between the parties. Usually, you and your attorney are in one room and your spouse and his/her attorney are in another room and the mediator goes back and forth between the rooms with offers and counteroffers to settle the case. The mediator should be familiar with family law and the courts in your area so that he/she can provide both sides with a “reality check” as to the strengths and weaknesses of their cases. Many times if you’re dealing with a difficult party, that party will listen to the mediator because the mediator can confirm what their attorney has been advising all along. That can prove very helpful.

Isn't mediation a waste of time?

Absolutely not. Statistically, 80% of all cases that go to mediation will settle, so the odds are in your favor that your case will be resolved. It's worth it to try and the courts usually order it anyway. Your costs involve the cost of the mediator, which the parties will split, and attorney time to prepare for mediation and to attend mediation. This is money well spent if the parties want to settle. Sometimes, a party has no interest in settling for whatever reason and mediation is a waste of time. However, the vast majority of times the parties will negotiate in good faith and settle the case. You'd be surprised how a good mediator can get a difficult and stubborn party to meet half way.

Preparation is the key to a good result.

Never go into mediation unprepared. It will be a waste of time and money for everyone involved. Have all of your documents ready and be prepared to argue any legal issues with caselaw or statutes. Prepare a written settlement offer of what you want to settle the case. Always ask for more than what you would settle for with the intention of backing off that and meeting somewhere halfway.

The mediated settlement agreement.

Once you have reached an agreement, the mediator will put it in writing. This agreement is irrevocable and cannot be changed once you leave. It's rare that you see a party get a “big win” in mediation. There's a saying that if both parties walk away from mediation feeling like they got a bad deal, it was a successful mediation. Just keep in mind that you have to give a little to get a little. In the long run, you will have saved yourself money. That's the beauty of negotiation.