

Mediation

By Kristin D. Arnett, Esq.

Divorce is difficult. Divorce is emotional. Divorce is expensive and time consuming. Even if you think that you don't have a lot of "stuff" or you believe that you and your spouse "agree on everything," rarely is that actually the case. Even if you don't own much property, chances are you do have debt, which must also be divided. Whether you have been married five, ten, or fifteen years, you have accumulated things; you have joined two lives into one that now must be separated. This is not an easy task.

Questions Arise

Then, in addition to the property aspect of a divorce, perhaps you have young children. Now you and your spouse must decide on custody and who gets to see the children, when and for how long. Who gets the children on which holidays? If the children are in school, how will you divide summer vacation? Will you have the children long enough to go on a vacation? How will your children adjust to having two homes? Should you get your children into counseling? Can you and your spouse get along well enough for the sake of your children?

No One "Wins"

Often when people are divorced, there is no "winner." A party may prevail on a motion or may get more of the property, but the process of divorce rarely leaves parties feeling as though they have won. The cost, the emotions, the time involved, meeting with an attorney, and dealing with the opposing attorney all take a toll on an individual going through a divorce. Easing the burden of the divorce proceedings

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should be a priority throughout the divorce process. One way to ease the burden of divorce is by utilizing *mediation*.

Mediation is a process that allows the parties to be represented, yet have a voice. The parties, and their attorneys, if attorneys are involved, will meet with a neutral third party. This third party is the *mediator*. The mediator is a person who has read statements from each party and understands the issues involved. The job of the mediator is to assist the parties in reaching a solution with which both parties are satisfied. Notice how the mediator's job is not to make either party happy, but to make each party reasonably satisfied with the result. More often than not, when parties are able to have a voice in their final judgment, they are more satisfied than if they were to take their case to trial. Trial is a process in which the attorneys present the case, confined by rules of procedure and evidence, to a third party who then renders a judgment he or she believes to be most fair. This is done after discovery, after attempted settlement, and finally after preparation for trial. Thus, the cost of trial is high, both financially and emotionally.

Mediation Advantages

Parties, while going through mediation, sometimes feel that they are settling too much and that if they went to trial they might "win" or at least get more than what is proposed at mediation. However, failure to weigh risks and additional costs of going to trial, where the outcome may (or may not) be more favorable for a party, can be devastating. A third party is unpredictable and contrary to what is often believed by clients, attorneys have no control over how the judge will conduct a hearing and sometimes very little control over what the judge allows to be presented. The result of trial is a judgment, ordered by the judge who was limited to considering only what was properly presented during the trial. Attorneys cannot guarantee an outcome. Thus, even if a judgment appears more favorable to one party than that party might have received at mediation, was the cost of trial worth it? How much more money was spent? How much greater is the divide between the two parties? How much more difficult is it now to get along for the sake of the children?

Trial Values

Trial does have value. If parties cannot agree, then it may be necessary to put the issue(s) before a judge for the sake of moving the case forward and allowing the parties to obtain a divorce judgment. Of course judges, who have the difficult job of rendering a judgment in a matter in which they know very little about the parties and the situation, take such matters very seriously. However, mediation should be genuinely attempted or at least considered



in all divorce proceedings. Making the most of mediation and accepting a settlement that you had a voice in creating might just be the smartest decision you can make during the entire process of your divorce.

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- Purposes for Creating Trusts
- Specific Types of Trusts
- Collateral Estate Planning Documents
- Tax Considerations
- Gifting Strategies
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- Valuation Issues in Gifting

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