



Divorce Mediation Myths

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Who is at a disadvantage in mediation: men or women? An expert debunks myths about divorce mediation.

Myth: Mediation allows one spouse to dominate another.

Fact: A good mediator pays close attention to the power balance between the spouses and uses specific techniques to address any imbalance. If one spouse persists in dominating behavior, the mediator will call a stop to the mediation rather than allowing it to continue. One caveat: Even the best mediator can be unaware of a power imbalance if it only goes on outside of the mediation sessions and the spouses don't let the mediator know about it.

Myth: Women are at a disadvantage in mediation.

Fact: Women are no more at a disadvantage in mediation than in divorce court. In fact, women can often obtain a better result in mediation than they can in court, because the mediation process allows separating spouses to negotiate an agreement that considers nonlegal factors. Also, except for court-ordered (mandatory) mediation, a woman is free to stop the mediation and/or refuse to sign an agreement that seems unfair to her.

Myth: Mediation is more hassle than hiring a lawyer to handle the divorce.

Fact: Whether divorcing spouses mediate or hire a lawyer to handle the divorce, they have to do a certain amount of legwork in gathering information and making decisions. Mediation offers a streamlined approach to the information-gathering and decision-making processes. In contrast, using the courts is cumbersome and expensive.

Myth: Mediation is for wimps.

Fact: In mediation, the spouses stand up for themselves and what they want. They don't have lawyers speaking for them and telling them what to do. As a result, people who mediate often come out of their divorce with greater communication skills and self-confidence, as well as agreements they can really live with.

Myth: Mediation makes the divorce take longer.

Fact: Mediation almost always takes less time than litigating a divorce. Unless the spouses have worked everything out ahead of time, hiring lawyers to handle the divorce will almost always take as long or longer than mediating, even if the lawyers are able to settle out of court.

Myth: There's no place for lawyers in mediation.

Fact: Lawyers who understand and support mediation can help mediating spouses in several ways: by informing them of their legal rights and options, by coaching them through the negotiations, by coming up with creative settlement ideas, and by preparing the necessary divorce paperwork once an agreement is signed. Most consulting lawyers charge a reasonable hourly fee and don't require a large retainer (advance deposit). A spouse pays for only as much consulting time as is needed.

Myth: All divorce lawyers understand and support mediation.

Fact: Divorce mediation is still a relatively new phenomenon. Many adversarial lawyers have little or no experience with the nonadversarial approach used in mediation. Some even disapprove of mediation, arguing that divorcing spouses should not negotiate on their own but only through lawyers. These attitudes are slowly changing, as divorce lawyers become more aware of mediation and its benefits for their clients. Meanwhile, spouses wishing to mediate their divorce need to find consulting lawyers who are "mediation-friendly."

Myth: In mediation, the mediator decides what's fair.

Fact: Unlike a judge or an arbitrator, a mediator has no power to make decisions for the divorcing spouses. The mediator's job is to help the spouses negotiate an agreement that each of them considers fair enough to accept.

Myth: Mediation is always the best option for every divorcing couple.

Fact: Mediation works for most divorcing couples. As long as both spouses are able to speak up for what's important to them, and can behave themselves appropriately in mediation, the process can work for them. On the other hand, mediation may not offer enough protection and structure for some couples. For example, a couple with domestic violence or substance abuse issues may need to have lawyers speak for them instead of trying to negotiate directly. In addition, some spouses may prefer to assume the risks and cost of adversarial litigation in order to make a point or assert a legal right rather than compromise in a settlement.