



GUIDANCE TO MAKE INFORMED CHOICES • EMPOWERMENT TO CREATE EQUITABLE AGREEMENTS

10 REASONS TO MEDIATE ... 3 REASONS NOT

The advantages of mediating rather than litigating a divorce are numerous. Here are ten reasons to favor a mediated settlement. But divorce mediation isn't right for everyone, and this article concludes with three situations in which litigation is a better option.

1. You'll gain guidance and empowerment without losing control

Spouses in divorce mediation gain guidance to make informed choices and empowerment to create equitable agreements. But you remain in control of your divorce. Litigation, in contrast, places control in the hands of judges and attorneys. This makes the outcome highly unpredictable. In an age when people feel less control over their lives, mediation allows you to assert yourself as the principal decision maker in a deeply personal aspect of your life.

2. Mediation works — and parties stand by their agreements

Studies show that more than 80% of divorce cases settle in mediation.[†] And spouses are more likely to stand by the terms of a mediated settlement such as abiding by co-parenting schedules and making timely support payments. Why such high compliance? Research suggests that people feel much less resentment towards a settlement when they've participated in shaping its terms.

3. You'll save a lot of money

Mediation is a lot cheaper than divorce litigation. For example, the average litigated divorce in California costs \$45,000 per party. Much of this expense is attorneys' fees for discovery, research, witness preparation, depositions, interrogatories, motions, conferences, subpoenas, trials, appeals, and time waiting outside courtrooms.

Moreover, divorce litigation rarely yields an advantage to either spouse. As Judge James W. Stewart, former judge of the Santa Clara County Superior Court, counsels in *Divorce Handbook for California* (Impact Publishers, 2002): "Realistically, you cannot gain a significant advantage in litigation by hiring a more skillful attorney. Put aside the notion that your attorney is a great courthouse advocate whose skill and ability will hypnotize the judge. Your case is not going to trial before a judge — short of a miracle; if it does, it will be a financial catastrophe for you."

4. Freedom to consult an attorney

Parties to a mediated settlement may still want to consult attorneys. Attorneys, for example, can offer independent legal advice as necessary and review a settlement before the spouses sign it. However, spouses in mediation require much less attorney time — typically no more than a few

[†] Kelly J. A Decade of Divorce Mediation Research. *Family and Conciliation Courts Review*. 1996. 34(3). 373-385; Benjamin M. Irving H. Research in Family Mediation: Review & Implications. *Mediation Quarterly*. 1995. 13(1). 53-82

hours — and hence incur much lower attorney fees than spouses who litigate their divorce. Further reducing the costs of mediation, the mediator's fee is shared by the parties.

5. Recognition and dignity: qualities you'll surrender in litigation

Unlike judges, mediators issue no rulings on the rights or wrongs of either party. As such, you won't find vindication in mediation. (Nor will you likely find it in litigation either.) However, divorce mediation will provide you with recognition. You'll be heard and understood by the other party, often for the first time. And you won't have to make split-second decisions that affect the rest of your life in a crowded courthouse corridor. In short, you'll experience a measure of dignity that you would never find in the adversarial process of litigation.

6. Mediation won't deplete you emotionally

No one enjoys divorce. Debilitating at its worst, it can exact an unbearable mental toll as people who once loved each other (and who may still love each other) adopt combative postures that distract them from their jobs, their health, their friends, and members of their family. Mediation won't dispel the loss, anger, hurt, or sadness you may feel during or after divorce. But it will transform your relationship to the divorce process. Most importantly, mediation will leave you sufficiently intact to move on with your life once a settlement is agreed.

7. You won't destroy your relationship — and you'll be glad you didn't

When spouses pursue litigation, they perceive each other's actions as hostile and respond in kind. That's a problem because damage to the relationship during the divorce process has a lasting impact. For example, divorced spouses often need to continue co-parenting their children through sports events, music recitals, graduations, weddings, funerals, and the birth of grandchildren. Mutual friends and extended families may also continue to connect spouses long after their divorce. Unfortunately, we often underestimate these realities, wrongly supposing the relationship will end immediately after the divorce.

8. Protection for your children

Children are always casualties in an adversarial divorce, often suffering psychological damage. Experience shows they can be spared much anxiety and depression when their parents choose mediation over litigation. No longer constantly arguing or speaking destructively of one another, mom and dad are now engaged in a process that models constructive problem solving.

9. Speed

Divorce mediation is efficient as well as effective. Approaching a dispute as a problem rather than a contest, it directs energy into attacking the problem rather than each other. Indeed, spouses who choose mediation typically resolve their dispute in substantially less time than those who resort to litigation. A complex dissolution of marriage may require as many as six or eight sessions, whereas a simple case may settle in just two or three.

10. Convenience: schedule mediation sessions to suit your lifestyle

Unlike the court system — a bureaucratic process that makes little concession to the convenience of its clients — New Resolution is client friendly. We schedule mediation sessions during weekdays, evenings, and even weekends to best suit the professional and personal needs of our clients.

IS MEDIATION RIGHT FOR ME?

The great majority of divorce situations are suitable for mediation — a process that guides spouses to make informed choices and empowers them to create equitable settlements. However, mediation isn't right for everyone. Here are three situations in which we'd recommend against it, referring couples instead to the alternative of litigation.

Feelings of Intimidation

Your needs and interests remain paramount throughout mediation. As such, it's important that you don't feel intimidated by your spouse. Our mediators won't allow anyone to be a doormat. We'll manage the environment, creating a safe space for you both to be heard. However, if your spouse intimidates you, litigation is a better choice.

Doubts over Your Spouse's Candor

Divorcing spouses are required, under penalty of perjury, to provide one another with Declarations of Disclosure i.e. statements of their property, debts, income, and expenses. Spouses who submit false or incomplete declarations are liable for punitive damages and indictment for perjury. Any settlement can also be set aside. Regardless of these safeguards, if you suspect your spouse might try to hide assets or otherwise act in an under-handed way, you should retain an attorney who can represent you in divorce litigation.

Crusading for Justice

By their very nature, spouses in conflict believe in the legitimacy of their claims and perspectives. Sometimes, however, their relationship to the conflict may run deeper. They may begin to see themselves as crusaders for justice on a mission to vanquish one another. Crusaders are better served by litigation than mediation. This is not because they are likely to find vindication in a judge's ruling, but rather because they will not find it in mediation. Mediation is a problem-solving process that's oriented towards settlement without ascribing blame, fault, or guilt on either party. To spouses whose foremost need is vindication, no mediated settlement will ever suffice.