

Mediate your Divorce and Avoid the Courtroom

By Lynn Landis-Brown, Mediator and Lawyer

The end of a relationship is often a painful, life changing experience. Most people who have gone through a divorce report the experience as second only to the death of a loved one as the most difficult period in their lives. The divorce process itself often adds to the pain by placing family members in the position of adversaries, each with an expensive gladiator (lawyer) to wage a costly and stressful expensive courtroom battle. The “war” comes at a time when the participant’s finances are at their worst possible state: two households will now need to be maintained on the same income that used to run one household.

As a divorcee, a child of divorced parents and a step-parent for more than 26 years, I have lived almost every role in the divorce process. As a party to a divorce, I’ve fought the court battles and paid the stratospheric attorney fees. As a child of divorced parents, I have experienced the gut-wrenching experience of having to decide which parent to invite to a special holiday or birthday with grandchildren because divorced grandparents are unable to remain in the same room together. Instinctively, I knew there must be a better way.

As a litigation attorney, I’ve seen the toll the court process takes on families. While lawyers often enjoy the trial process, few clients do. While vigorous cross-examination may be very entertaining on television, few clients report they enjoy paying for the experience. Family law trials are expensive, and at the end of the day, the lawyers pack up their papers, get paid and go home. The parties, whose wounds have been ripped open anew during trial, get to go home alone and dread living with the fall-out the trial left behind (usually hurt and anger) on their former spouse. If you are looking for an alternative to divorce as usual, you are not alone. Fortunately, there are alternatives that enable couples to resolve their dispute in a respectful, dignified manner.

Out of court settlement through mediation is a good way to avoid intensifying the conflict involved in a divorce. Mediation is a voluntary process in which a neutral third party (the mediator) works with both parties to achieve a result both parties can live with. A mediator can help both parties accept that there is going to be an equitable division of property and debt and an allocation of parental responsibilities based on the best interests of the children, whether there is a prolonged court battle or not.

While a judge in a courtroom WILL make a decision, judges rarely have the time (they often have to juggle your divorce case with their homicide cases) to render a personalized decision. In mediation, YOU control the outcome. Unlike a judge, a mediator does not have the power to force a decision on either party and works to help meet the needs of both parties. When a settlement is reached, you’ll know exactly what you will get because you helped design the agreement. The proceedings will take place in the informal surroundings of an office, instead of an intimidating public courtroom

where the most intimate details of your personal life will be determined by a total stranger.

Mediation often offers the additional advantage of often achieving a quicker result. The meetings can be set at YOUR convenience.

Settlements before trial are better for your children. Children are keen observers who love both parents. They suffer when you suffer. They worry about where they will live and what will happen to them. Children watch their parents and model their own behavior regarding problem solving based upon what they see demonstrated by their parents. If their parents can manage to get along even if they disagree, children learn that they can do so also. Mediation helps children learn there are healthy ways to resolve disputes and that life for them can be “OK” after a divorce. The reality is that if you have children, you are going to have to continue to deal with your ex-spouse for many years to come even after your children are grown, at their graduations, weddings, and births of grandchildren. Mediation can begin to lay the foundation of cooperation needed for future communication.

A mediator who is experienced in family law can also put your expectations into perspective and help you understand what a trial judge would probably find reasonable or unreasonable. In this way, a mediator can help evaluate your case and give you an idea of how issues might come out if you go to court.

Mediation still requires preparation and work by both parties in order to be successful. State law requires full disclosure of property and debt. You must complete a Sworn Financial Statement identifying your financial status. A fair settlement cannot be reached unless everyone knows what exists. You also need to have some idea of your job and career plans.

I have yet to see anyone get everything he or she wants in the courtroom or in mediation. Compromise is inevitable. The benefit of mediation is that you will know the result, you will have reached it in private rather than in a public courtroom, you will have been involved in creating the result and the result will be one that you agreed to rather than one imposed upon you by a busy judge.