

## THE DIVORCE WARS: IS THERE A BETTER WAY?

A growing number of couples seeking a divorce are engaging in the mediation process as an alternative to litigation. The mediation route offers numerous advantages both to the parties who are divorcing and their children.



Perception: As attorneys become the primary source of Communication between two people, their views of each other often become very distorted. The person who was once a lover and a friend can become, in the other's eyes, a monster armed with a scary attorney. Mediation allows a former couple to meet again, face to face, in a setting where each person must "play nice" or risk looking like the bad guy. Oftentimes, the spouse who has become the "monster" magically transforms into the normal person they used to be during mediation. Alternatively, the person who *perceived* the other to be a monster might realize that the person across from them is actually the same person they married and enjoyed a life with for a period of time. If the mediation is successful, instead of asserting "my attorney says I have a very good chance of getting permanent maintenance (alimony)", the person might say "how am I supposed to make my car payment?" Instead of "my attorney says I am entitled to five days per week with Jack [child]" the spouse might be willing to communicate what is really going on behind the legal jargon: "I'm going to miss Jack if I have to go that long without seeing him." Sometimes it is harder to play "hardball" when the person you are aiming at is sitting across from you.



Knowledge: Before the separation, neither party knows what they might be entitled to receive from the other under the law. If attorneys represent both parties when mediation takes place, they are presumably now armed with the knowledge of the risks presented by going to trial. If attorneys do not represent the parties, the mediator can inform them of what they might expect if they let a judge decide

the fate of their issues. Decisions to settle during mediation are usually informed ones—regardless of whether the parties are represented.

Parenting: Finally, mediation offers parents a final opportunity to parent—together. Emotions aside, parents are generally better at gauging the needs of their children than judges, who are more than happy to see parents make decisions regarding their children jointly. Litigation is perhaps the least likely route to peaceful co-parenting. Mediation allows parents to try it out—see what it would be like to put their heads together for the sake of their children. Couples are often surprised by how many parenting issues they agree upon when monetary issues are set aside.

Mediation is not a win or lose process: Mediation is successful if even one agreement has been made. The parties may be able to agree initially on finance decisions but not on childrearing issues. If so, the mediation is a success. As the old adage goes, “if at first you do not succeed, try, try again”. Mediation that is only partially “successful” sets the stage for further mediation success. Once the parties taste the richness of agreement versus discord, they may mediate again only to realize that they are able to agree on parenting issues after all.