

Divorce Mediation

Bernard F. Natelson, Psy.D., A.B.M.P.
Licensed Psychologist (PSY #6745)
docallegro@aol.com

Divorce mediation provides a unique way of bringing both marital partners to the negotiating table in front of a neutral mediator. A mediation perhaps can be accomplished best by having both a therapist and an attorney present. This approach fits well with what Fisher et al. (1991) pointed out as the two major ingredients of a negotiation: **substance** and the **relationship**. During the mediation, the lawyer handles the substantive issues pertaining to economic matters while the therapist deals with the relationship issues, especially, if children are involved (Mercer and Pruett, 2001). This approach avoids the flaw of not dealing with emotions, and specifically, the potential anger that may occur during the mediation.

Because the negotiation process begins by establishing guidelines to be followed by both parties, prior to any mediation phone contact by one of the mediators or an intake worker should be made to the parties involved. The purpose of this phone contact is to screen out inappropriate cases such as marriages where domestic violence or drug use might be occurring. The intake worker or mediator avoids the use of legal terms, such as custody or child support, but rather reframes these issues as “parenting plan” and “general finances.” In substituting a more neutral non-threatening use of language rather than legalistic terminology, the stage is being set for a successful mediation between the two partners.

After the phone contact is made, both parties are seen, either separately or conjointly, for a mediation orientation that lasts about one half hour. Insofar as this meeting will set the tone for the coming mediation, it is an essential part of the negotiation process. During this meeting, the intake worker or mediator will ask questions to see whether or not the parties are intent in following through with the divorce and going through the proceedings entailed in divorce mediation. The advantages of mediation over alternative means of divorce, such as litigation, are pointed out by illustrating that a successful mediation is far less costly than the adversarial alternative. Here the parties are shown figures that compare the cost and time of litigation as opposed to a successful mediation to help them better understand what their Best Alternative to a Negotiated Agreement (BATNA) would be if they hired separate attorneys (Fisher et al., 1991)

When both the wife and husband come in for the first time, the mediators set the rules and guidelines, one of which is that the couple bargain in good faith. Intentional misrepresentation, the pitfall often seen in litigation, is not permissible in mediation. An example of this particular pitfall would be when one of the parties hides his/her assets.

Finally, as the mediation progresses, mediators tend to work on the least complicated issues first, thereby building trust and confidence with the parties, and making it easier for them to subsequently tackle the more thorny issues. Accordingly, mediators will address personal property, such as cars, first, avoiding the more complex issue of child custody until later on in the process. In this sense, early agreements will increase the likelihood of later agreements between the parties.

References:

Fisher, R. and Ury, William (1991). *Getting to yes*. New York: Penguin Books

Mercer, D. and Pruett, M.K. (2001). *Your divorce advisor*. New York: Simon and Schuster