



ASSOCIATION OF
FAMILY AND CONCILIATION COURTS

IS MEDIATION FOR US?



The Association of Family and Conciliation Courts is an international association of judges, counselors, court evaluators, mediators, and lawyers concerned about marriage and family life and lessening the pain of divorce. Members of AFCC subscribe to the Model Standards of Practice for Family and Divorce Mediators.

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Introduction

Divorce is a time of change for families. Plans for the children, division of property and financial arrangements all need to be worked out. Divorce is also a time of great emotional upheaval. These changes and emotions can result in conflicts between family members. How these conflicts are resolved can influence a family's adjustment to divorce.

For most people, conflict is frightening and stressful. On the other hand, conflict can result in the productive airing of differences and can lead to creative solutions that address the changing needs of all family members. Too often in the divorce process, family members feel like bystanders while lawyers, judges, and others work out these crucial issues. Even in the face of anger, fear and hurt, it is possible for people to negotiate an agreement which balances the interests of each family member and benefits everyone in the long run.

Mediation is one way for family members to resolve their own conflicts during and after divorce. The mediator, a neutral professional, helps participants clearly define the issues in dispute and tone down the communication process so a rational discussion can take place and agreements can be reached. The mediator does not make decisions for the family but helps members of the family make decisions they believe are in everyone's best interest.

Mediation may not work for all families. Participants must want to resolve these issues and be willing to work toward that goal. This brochure is intended to help you decide whether or not mediation can be of help to you.

Questions and Answers

What is mediation? Mediation is a cooperative problem solving process where a neutral professional assists family members in clearly defining the issues in dispute and reaching agreements that are in the best interests of the family. The mediator does not take sides or make decisions for others but helps participants resolve misunderstandings and communicate more clearly with each other. Parents are helped to understand the needs of children, reach agreements in their best interests, and develop a cooperative parenting relationship. Hostile and competitive feelings are reduced so that individuals can better adjust to the divorce and plan for the future.

How does it work? The disputing individuals meet together with a neutral and objective professional who is trained to help parties solve problems in a cooperative manner. The mediator guides the communication process so that everyone has a chance to be heard and personal feelings can be put aside. Conflicts are discussed one at a time and various solutions are explored so that the best possible agreement can be reached. The mediator may offer suggestions and help parties develop options to resolve the issues, but the final agreement is up to the parties.

What types of disputes can be resolved? Mediation can be helpful in resolving marital conflicts between spouses and family disagreements between parents and their children. It has been considered very beneficial to many couples experiencing disputes during and after divorce, particularly when children are involved. A mediator can help parents understand the needs of children and make decisions that can be in their best interests. Mediation can facilitate working out solutions for the day to day care of children, division of property, and financial arrangements. Communication skills established during mediation often help with future planning and can establish a stage for cooperative post divorce parental relationships.

Do we both have to participate? Because mediation is a joint, cooperative problem solving process it is necessary for both spouses to participate. Participants need not feel friendly toward one another but should be willing to work together to find solutions that will be fair and meet the needs of all family members.

Can mediation help us get back together? You and your spouse should seek marital counseling if either one of you have any doubts about getting a divorce. Mediation is not marital counseling. While feelings about the marriage and the decision to divorce may be discussed, the focus of mediation is to reach agreements so that parents and children may better adjust to the divorce and resolve future issues together.

What about the children? Divorce often is a difficult time for everyone, especially children. It can be very comforting for children to see their parents working together to resolve issues rather than fighting and competing over them. In some cases, children may be invited to participate in mediation so that parents can consider their needs and feelings as plans are made that will directly affect them.

Do I need an attorney? Mediation is not a substitute for independent legal advice. Lawyers can help their clients understand the law, make informed agreements, write up the final agreement, and complete the legal divorce procedure. The mediator focuses on helping participants reach their own agreements and does not represent either party.

Are agreements reached in mediation legally binding? Mediation agreements may be written up by the parties and the mediator as an informal working agreement or filed with the court as a legal contract. When agreements are incorporated into a court order or divorce decree they are legally binding and subject to the approval of the judge. Mediated agreements may be more flexible than court ordered

solutions because they can be changed by mutual agreement as the needs of families and children change over time. Any change to an agreement previously approved by a judge must be filed with the court in order to be legally binding.

What if we cannot work it out? The mediation process may not resolve all issues but even partial agreements can help participants narrow the issues and limit the time and expense of going to court. A time out from mediation and individual or couple counseling may help parties return to mediation and resolve the remaining issues. Issues that cannot be resolved completely in mediation can be returned to the court for resolution.

What does it cost? Court connected mediation services are usually provided free of charge or for a nominal fee. Mediators in private practice usually charge by the hour and fees are typically shared by the parties. Mediation is often less costly, both emotionally and financially, than litigation.

How do I find a mediator? Mediation services are provided by many courts to help families resolve custody and visitation disputes about children. In some locations, mediation is required by law or by court rule when families disagree about plans for the children. Mediation services are also provided by mediators in private practice. A skilled mediator ought to have knowledge of family law, psychology, negotiation and mediation techniques. Professional mediators who practice in your community usually are listed in the telephone directory yellow pages. Most court-connected services can advise interested parties of the types of mediation services that are available in the community. Referral information also may be obtained by contacting the Association of Family and Conciliation Courts, 329 W. Wilson St., Madison, WI 53703, (608) 251-4001.

An Additional Note

It is important to remember that family conflicts are natural and normal, particularly in light of the strong feelings related to divorce. Conflicts which linger over time though can hinder a family's adjustment to divorce. How conflicts are resolved can also affect the adjustment process. Settlements which are reached by one party winning and the other losing rarely last. That kind of resolution usually breeds additional conflict.

The mediation process redefines conflict as a family problem rather than one person's problem. The emotions of divorce are effectively managed so that they do not hinder the communication process. Better communication leads to better agreements. Consequently solutions are reached by the productive airing of grievances so that the needs of participants can be addressed and solutions found which will be satisfactory to everyone.

Mediation may be an effective way for you to settle the disputed issues of your divorce. Any additional questions that you may have about mediation can be referred to the court connected mediation service in your area or answered by your attorney or local mediation service.

This brochure was developed by Ann Milne, Chairperson AFCC Mediation Committee and reviewed by AFCC members Stanley Cohen, H. Jay Folberg, Alison Taylor, and Nolan Jones.

Additional copies of this pamphlet may be purchased from
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