

Is Mediation Right For Me? Written by Jo Ann N. Myers

What exactly is mediation? This is a question I am frequently asked. Mediation is a process by which both parties agree to sit across the table from each other to mutually make decisions concerning their minor children (if they have children) and their community assets and debts. There are codes that govern community property, child visitation, custody and support, and in our mediations these are often used as guidelines to help put together a mutually acceptable agreement.

Often, in family mediations, couples will begin accusing each other of violations in the marriage ranging from infidelity to debt accumulation to lack of monetary contribution to the community regime. There are mediators who are therapists, but my mediation sessions are about planning for the future of the individual parties who once were a couple, and the creation of a stable and secure environment for their minor children. Although one parent may feel that they have contributed more to the community, Louisiana is still a community property State, and the mediation agreement should reflect a semblance of equitable distribution. The real advantage of mediation over litigation is that the parties have more control over the outcome of child custody, visitation, and community partition.

The question will come up in mediation: who is on my side? Unless you bring a friend, family member, boss or an attorney with you there will be no taking of sides. A mediator is there to help both parties equally to resolve any disputes that they have. A mediator asks many questions of both sides and even though it might appear that a mediator favors one side over the other, this is not the case. The more information we have the more we are able to guide you to making fair and reasonable decisions.

I believe it is important to have an initial consultation with the parties to evaluate whether mediation will work for them. Sometimes, far into the mediation, we find we cannot reach an agreement. Because mediation is very cost effective, one or the other party can choose to go to court on one or more unresolved issues, and not really lose much monetarily, especially if the majority of issues have been resolved.

The following are examples of a few of the cases in which mediation was successful and a few where it was not successful:

Case 1 presents a couple where the wife moved out of the family residence. The husband refinanced and paid his former wife a lump sum payment. The

couple had a relaxed visitation schedule with the two minor children. The children were domiciled with the father. This presented no problem. We began with a discussion of child support obligation (which is mandatory by law on both sides). We filled out an obligation worksheet under the family code pertaining to shared/joint custody obligation for both parties. We also discussed both parties' retirement accounts and that obligation. The wife did not want to negotiate her settlement, and wanted what she was legally entitled to under the code. The husband's blatant refusal and anger outbursts made a resolution very difficult. The mediation is still ongoing.

Case 2 presents a couple with very little assets and this should have been a very low cost and simple mediation. The wife lived with her parents free of rent and did not hold a job. Under the code her husband's obligation was a certain amount, and the cost of her car payment was her responsibility as was his car payment his responsibility. The wife made no plans to seek employment in the near future and wanted increased child support and full payment from the husband for her car note. The husband's salary was under \$25,000 per year. Even when the husband agreed to increase support and payments for six months the wife refused to commit to seeking employment. The only child was in school full time and the wife was in good health. An agreement was reached for child custody and visitation. The husband pays his legally required child support. The mediation is pending.

Case 3 presents a couple where the wife wanted a divorce. The couple was committed to a fair and equitable distribution of assets and debts. The couple, although unable to resolve their differences in staying married, came together for the sake of the children and for their future. The couple saved money, time and stress by resolving everything through mediation.

I recommend a couple come in for consultation before committing to mediation to see if mediation is right for them.

Another problem that crops up often is second marriages and problems with the children of the first marriage. If there are underlying issues, we can, in mediation, get them out on the table and try to come up with an agreement that will reduce the stress caused by unresolved conflicts. Again this is not therapy, but an airing of issues that the couple might not even be aware of.

Most mediations are successful and save the money, time and energy it takes to go to court over every little issue. I sincerely believe in the process, and if parties are committed to controlling their own destiny, it is the right way to go.

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