

WHAT COUPLES *Need to Know about* THE DIVORCE MEDIATION PROCESS



Robert D. Bordett, CFP,[®] CDFA[™]
Collaborative Practice and Mediation Services



888-822-4733 | www.U2Agree.com



Welcome

With more than 25 years of experience in the mediation and financial profession, I have seen firsthand how beneficial mediation and Collaborative Divorce can be for divorcing clients. Many individuals who come to me are concerned about limiting the level of stress and conflict in their divorce case, and that's where mediation or Collaborative Divorce can play a critical role in resolving your issues without the disadvantages of litigation.

Why choose me as your independent third-party mediator or financial neutral for divorce?

- For more than two decades, I have been focused on personalized service for my clients. In my office, your case is worked on by me rather than handed off to another employee. My goal is to establish a relationship with my clients so that I understand where the parties are coming from. You get the commitment of my attention and time for your divorce mediation or Collaborative Divorce.
- I have a background in accounting and financial planning, all of which can play a role in your divorce mediation or Collaborative Divorce. My diverse background helps me evaluate the many facets of a divorce mediation or Collaborative Divorce to suggest varied and valuable solutions for the case.
- I am committed to resolving your case outside of the courtroom in a private and dignified manner. I bring a creative mind and empathy to the process so that you are satisfied with the final agreement.

Mediation or Collaborative Divorce can offer less stress, less time, less money, and less conflict for your divorce. Contact me today to learn more about divorce mediation or Collaborative Divorce for your case.



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What Couples Need to Know about The Divorce Mediation Process



1 Chapter 1: What Couples Need To Know about the Divorce Mediation Process

Divorce is a difficult transition for all couples, but the process does not need to be a bitter struggle. Using divorce mediation allows you to end your marriage without a lengthy court battle. Mediation puts divorcing couples in control of their fate and gives them the power to make important decisions concerning their children and property. It is growing in popularity and in many cases courts require couples to attempt mediation before moving forward with litigation.

What Does the Mediation Process Entail?

Mediation is a controlled discussion intended to create a jointly beneficial resolution for divorcing couples. It is facilitated by a neutral third party mediator and might include individual representation for each spouse, as well as expert resources available to answer questions regarding real estate, finances or mental health. Most mediated divorces are completed over the course of several sessions that take place in a neutral location, typically the mediator's office.



Mediation begins with the decision to divorce and then the choosing of the mediator. There are many qualified mediators. Couples can be assigned a mediator by the court or can find a mediator on their own. Typically, the mediator's fees are split between the spouses.

The First Session

Mediation begins with an initial meeting of the divorcing spouses, their attorneys if they have chosen to use individual representation, and the mediator. Some mediators refer to this initial session as orientation because it allows spouses to become familiar with



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the mediation process. All mediations are unique, but there is structure in place to help guide the proceedings. This initial meeting also includes advice on communication. The goal of mediation is for couples to work through their differences and reach a resolution that is mutually beneficial and ideal for their family, which requires listening, open-mindedness and flexibility. These things are explained during the initial meeting.

Additionally, the first mediation session provides an opportunity for each spouse to state his or her case. This might be done alone with the mediator, in session face-to-face with both spouses present, or in a combination of the two. The mediator usually asks clarifying questions and discusses issues that are points of agreement and contention. If any of the issues are already settled, those are put aside to be included in the final agreement.

Once a mediator has a sense of the issues in dispute, he or she discusses a plan with the divorcing spouses for resolving these issues. Additional information might be required for further discussion, so spouses are sent away with the task of gathering documents or anything else related to the issue. Often, information regarding real estate or financial matters is included in this category.

Additionally during the initial session, mediators review the paperwork and various documents associated with the filing of the divorce. If paperwork is incomplete, mediators can help couples with these materials, as long as no advice is given in favor of one spouse or the other. Mediators are legally required to remain neutral at all times.

Finding a Resolution through Communication

In subsequent mediation sessions, mediators work with spouses to discuss the issues in dispute and potential solutions. Spouses are encouraged to share plans for resolution and be open to compromise. These sessions are an opportunity to truly explore marital issues, such as property, joint investments, debts and loans, and custody of children (if any) and determine how these issues will be handled once the marriage has ended. Each



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issue might be addressed in different sessions or can be combined into as few sessions as possible. The initial meeting will have addressed a schedule and the divorcing couple is given some say in how the proceedings unfold.

Mediators prepare for subsequent meetings by reviewing the important aspects of a divorce. They analyze finances and examine the overall value of marital property. They consider where each spouse is in regard to supporting himself or herself and consider how long it would take a spouse to become self-sufficient. They take a significant look at the health and well-being of the children in the family and consider what each spouse is requesting in relation to what the children want or need.

The mediator reflects on the issues discussed during the initial meeting and how these discussions were handled. The mediator's purpose is to facilitate communication and determine if the solutions spouses consider are reasonable. To do this successfully, they must have a complete understanding of the situation and be prepared for any potential challenges.

A mediator's job is not to force couples into agreement or make decisions for them. Instead, mediators guide divorcing couples toward fair, satisfactory resolutions. Mediators can make suggestions, but they cannot offer legal advice to either spouse or tell either spouse what to do. Once the mediation is successfully concluded, the mediator draws up a written document known as the Memorandum of Understanding (MOU) that includes the details of the divorce agreement. Each spouse has an opportunity to review the documented plan with his or her personal attorney and then an official divorce agreement is drawn up by the attorneys.

A mediator's job is not to force couples into agreement or make decisions for them. Instead, mediators guide divorcing couples toward fair, satisfactory resolutions.



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The length of mediation varies from couple to couple. Most sessions last a few hours and there can be as few as one session or as many as needed over the course of several weeks. The length of mediation depends on the complexity of the issues and the willingness of the spouses to come to agreement. In nearly every instance, though, mediation is faster than traditional litigation.

Mediation continues to grow in popularity as a means by which couples can divorce without the bitter drawn out litigation process. In the United States, nearly half of all first marriages end in divorce and nearly every one of those that are mediated are settled successfully. Mediation is efficient and gives spouses control over the outcome of their situation. These benefits result in feelings of satisfaction and a greater likelihood the divorce agreement will not cause problems down the road.

Have you decided divorce is the only way to bring your marital strife to an end? Has your spouse presented you with a petition for divorce? Mediation can help you resolve even the most contentious matters faced by you and your soon-to-be former spouse.



To ensure your mediation is successful, you need an experienced mediator. Robert Bordett provides effective mediation solutions for divorcing couples. Bob helps couples talk with each other openly, directly and with compassion, guiding them to agreement on their various issues. Whether mediation is your chosen alternative to litigation or you have been ordered by the court to attempt mediation, Bob can help. At the end of the mediation process, he drafts a “memorandum of understanding” summarizing the agreement.

If you are ready to take the next step and schedule your first mediation session, contact Bob at 888-822-4733 or by email at bob@u2agree.com.



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2 Chapter 2: Why should I choose the collaborative process?

To preserve family relationships is a simple answer to the question of "Why".

According to clients who have engaged in the collaborative process, they have said the following:

- *"I would recommend the collaborative process for anyone that wants to maintain a loving environment for their children. You can get divorced, but your kids can still have a family".*
- *"Through the collaborative process we learned to work together in ways that will continue to benefit us and our children and with the help of the financial expert, we even saved money".*
- *"The collaborative process gave me the opportunity to control my own destiny".*
- *"My children were not forgotten in the divorce. This process insured they had a voice".*
- *"The partnership between the legal, financial and mental health professionals worked wonderfully for our entire family".*



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Why Should I Choose the Collaborative Process Instead of Traditional Litigation?

1. Lower Cost

The collaborative process is generally less costly and time-consuming than litigation.

2. Client Involvement

The client is a vital part of the settlement team and has a greater sense of involvement in the decision making which affects their lives.

3. Supportive Approach

Each client is supported by their lawyer and coach in a manner that still allows the attorneys to work collaboratively with one another in resolving issues.

4. Less Stress

The process is much less fear and anxiety producing than utilizing Court proceedings or the threat of such proceedings. Everyone can focus on settlement without the imminent threat of "going to Court".

5. Win-Win Climate

The Collaborative process creates a positive climate that produces a more satisfactory outcome for both parties. The possibility actually exists for participants to create a climate that facilitates "win-win" settlements.

6. Speed

The speed of the collaborative process is governed by the parties rather than court calendars.

7. Creativity

The collaborative process encourages creative solutions in resolving issues.

8. Clients in Charge

The non-adversarial nature of the collaborative process shifts decision making into the hands of the clients where it belongs, rather than into the hands of a third party (the court).



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Is the Collaborative Process Right For Me?

Couples whose marriages are in trouble face many difficult decisions, all of which have the potential for serious consequences.



Some of these may be:

- Is this marriage worth saving?
- Will the children be harmed?
- What will be the ramifications of our divorce?
- How deeply will it alter our life?

You may also feel:

- Ambivalent about ending the relationship
- You are the most hurt, misunderstood, damaged, or least powerful person in the relationship
- Your partner is using the myriad of divorce counter plays as a way to stay married
- Intimidated by your partner in addressing and resolving complex and difficult issues
- We would have a great divorce if it weren't for the other party
- The divorce is your last chance to destroy the other party

How Does the Collaborative Process Work?

As in traditional family law/divorce cases, your lawyer supports only you and your spouse's lawyer supports only your spouse. In the collaborative process, both lawyers are trained to consider the other parties' perspective in order to help both of you reach agreements that accomplish the goals of both parties and preserve the welfare of the entire family.



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Collaborative practitioners work as part of an inter-disciplinary network of professionals to provide expertise and advice on issues relevant to the ultimate settlement of the case.

Before the process begins, the lawyers and clients formally contract to work together to resolve the issues of the case. Both lawyers contract not to take the case to court. They sign a contract titled "Participation Agreement". In traditional litigation the divorce process begins with the filing of a lawsuit. The collaborative process begins with the signing of the Participation Agreement.

The parties also sign a document "Statement of Understanding Among Team Members". This document contains the commitment of the professionals and the parties to work together as a team with the common goal of resolution of all issues in a way that best meets the needs of all involved.

The collaborative process differs significantly from the traditional litigation process. After both parties have each retained their collaborative lawyer, the lawyers contact one another to "triage" the case. The lawyers immediately begin to address the needs of their clients by discussing their clients' needs and desires with the other lawyer. The lawyers schedule an initial 4 way meeting which includes both lawyers and both parties. An agenda that outlines the items that will be discussed at the first meeting is sent to both parties. Any pressing issues will be covered in that first meeting, after the required participation agreements are signed.

Collaboration
working together to achieve a goal. It is a recursive process where two or more people or organizations work together to realize shared goals. Collaboration also present in opposing goals exhibit the notion of adversarial collaboration. This is not a common case

At the first meeting, the parties will also identify the other professionals with whom they will be working. The other professionals include coaches, a child specialist if children are involved and a single financial neutral.

The collaborative process begins only with the signing of the Participation Agreement and Statement of Understanding by the attorneys and parties at their first 4 way



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meeting. After that first meeting, depending on the needs and desires of the parties, they may work with their coaches, the child specialist and/or the financial neutral before seeing their attorneys again. In this way, costs are minimized as the professional with the appropriate expertise deals with their particular area. For example, the coaches will



help the parties address their communication issues in order to assist them in creating a parenting plan for their children. The child specialist will hear from the children and offer feedback to the coaches and parties to insure that the children's developmental needs are considered. The financial neutral will gather information from the parties and work with them and the attorneys to craft a financial plan based on a realistic financial picture.

The meetings in the collaborative process promote improved communication and cooperation. The collaborative environment is one that fosters informed analysis and reasoning. In the process, the professionals and parties generate options and create a positive context for settlement. The parties always retain control over their outcome. The commitment to continued cooperation, even if communication becomes difficult, increases the likelihood of a solution that builds a foundation for the future of the family even as the parents begin separate lives.

Ultimately, once all issues are resolved, the attorneys draft a settlement agreement and the pleadings necessary to obtain a divorce. The pleadings are filed jointly and indicate to the court that the parties have reached an agreement through the collaborative process. If possible, the attorneys file a Motion for Judgment on the Pleadings, a document which allows a Final Judgment and Decree of Divorce to be granted by the court without the necessity of a court appearance. If the court will not grant a final divorce in that manner, one or both of the parties will appear in court for the short amount of time it takes for the court to accept their settlement agreement and grant them a final divorce.



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Who Practices Collaborative Family Law?

All professionals who practice collaborative family law focus on the family in different ways. The lawyers have an expertise in domestic relations (family law), the mental health professionals are well-versed in family systems, and the financial neutral has working knowledge of asset divisions, child support guidelines, cash flow analyses, and basic tax implications of support payments. They are specially trained in the collaborative process, commit to the Standards of Conduct and follow the Guidelines of Practice established by the Collaborative Law Institute of Georgia.



The professionals practicing collaboratively commit to the process as well as its outcome. Their training and education encourages mature, co-operative and non-combative behavior. They contract not to participate should the case go to court and in that way have a stake in the success of the process.

The professionals who practice collaboratively protect the privacy and dignity of all involved in the process. They uphold high standards of integrity and, if inconsistencies and miscalculations occur, seek to correct them.

Collaborative practitioners expend as much effort working toward settlement of your case as they would to prepare for and conduct a trial. Together with their clients, the collaborative professional expends his or her time and energy on settlement, parenting plans, financial analysis, and education. The parties provide complete, honest and open disclosure of all relevant information without formal proceedings. The interdisciplinary network of divorce professionals and their clients are committed to finding creative ways to achieve and implement a settlement that will be best for the family.

Download Ebook

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