

# Example of research paper on mediation divorce

[Family](#), [Divorce](#)



When two partners decide to get married none of them anticipates a divorce at some point. However, due to various circumstances and challenges in the marriage, divorce becomes unavoidable. Divorce, therefore, is generally understood as the dissolution of a marriage union, whereby two partners of a marriage decide to go their own separate ways after agreeing to do so. It may be out of either partner's own volition or from both of them. It occurs in the most extreme of circumstances where the differences between the partners are irreconcilable.

The process of divorce can be done legally in court, by traditional means or other means depending on what the parties agree to. One of the methods of solving a divorce case is through divorce mediation. It is an alternative process of resolving disputes between spouses who want to part ways and live separately, other than through court litigation. In this method of resolving divorce issues, a third party known as the mediator is involved. The mediator should be a neutral person, whose main purpose entails helping out the parties to a divorce reach a mutually agreeable settlement. It is usually a voluntary kind of settlement which gives the parties to a divorce an option to plan their future rationally, mutually and in an atmosphere of total cooperation from both of them. The neutral party should, therefore, be a trained divorce mediator in order to make decisions that are well guided concerning finances, children if any and the future in general with regards to the divorce. The mediator should be objective. It is not in his or her place to resolve problems or force an agreement on the parties. His or her job is limited to helping the parties come to an agreement by acting as an intermediary. He, for instance, offers opinions or makes suggestions, but

never imposes an agreement upon the parties. He or she should guide the couple; help them keep focused on the issues at hand, and avoid getting off the track. Instead of focusing on the dynamics of adversity and competition, the process instead places premium on mutual problem-solving and the overall best interests of the family.

The process of divorce is a difficult task and may take a lot of time and work. It needs the cooperation of both parties. If there is no mutual agreement between the parties, it becomes very difficult to sort out issues amicably. A lot of pressure will lie on the mediator because he or she has to make sure that the parties have come to a peaceful agreement to their full satisfaction. Therefore, when there is no cooperation between the parties, it becomes almost impossible to achieve the goal intended in the divorce mediation process, which is mainly to resolve matters amicably.

Mediation helps dissolve a marriage by focusing on the future and not by getting stuck casting blames about the past. An effective mediator has the following traits: He or she must be impartial and able to assist the participants in reaching their decisions voluntarily. He or she should be qualified by training and experience and should possess inter-personal skills. He should be aware of the impact of culture and diversity and should always be available when needed. He should be aware of developmental stages of children and take into account the best interest of the children and should be able to draw crucial information from the parties in efforts to aid them make informed decisions.

The mediation process may take place before a lawsuit or divorce complaint is filed, or after it has been filed. The venue of mediation is often decided by

the parties, they get to decide the place they want to hold their meetings together with the mediator. There is no rule imposed on them regarding the place of meetings. Nevertheless, divorce mediation is not a substitute for the parties involved to obtain independent legal advice, counsel or therapy. During the mediation sessions, there is an initial stage where the mediator and the parties to divorce discuss the mediation process and whether it is appropriate, the parties to be present during the process, the format of the process and the time and cost of the process. The parties involved and the mediator will then enter into an agreement to mediate and the parties' understanding and commitment to the process, the requirement for a full financial disclosure, the mediator's role, confidentiality of the process and the right of any party to terminate the process any time up to the time a Memorandum of Agreement is being signed. If the parties to divorce mediation do not come into an agreement, technically this means they have reached an impasse and the process has failed and, therefore, requires court recommendations.

In an informal and safe environment the mediator always helps parties communicate and prioritize their needs and goals. Incidentally, divorce processes are characterized by unique difficulties including issues of disempowerment and frustration with the divorce process; the parties often have little to no understanding of the issues and may lack control over the same. In mediation, the parties retain control of the decisions that relate to their own lives and to the lives of their children. Mediators in essence lack the absolute control over the parties. It affords the actual consumers of the decision to arrive at the said decisions individually. This is considered

advantageous as it lacks the vagaries experienced in the court litigation process where the attorneys remain in control of the situation to the exclusion of the parties. As hostile as a couple may feel towards each other, through the help of the mediator, they will learn to separate the issues and the negative energy they have between them and learn how to focus attention on the critical matters .

Like any other process, divorce mediation has its procedures. These are discussed substantially in the ensuing paragraphs. Opening statement, this is the point which the mediator outlines the roles of the parties and demonstrates his or her neutrality in the process. Ground rules are also set out at this stage. The mediator at this point reviews the mediation process and briefly recaps the issues and areas to be addressed.

After the opening statement, the mediator gives each party an opportunity to tell their story uninterrupted. This, however, is not the point of necessarily stating the facts, it is simply intended to give the parties an opportunity to frame issues in their own mind and give the mediator more information on the emotional state of each party.

Information gathering stage, the mediator at this stage asks the parties open ended questions to get to the emotional undercurrents. This helps the mediator to create a rapport between the parties and make sure that everyone is in the same page.

Afterwards, the mediator tries to identify the problem. He or she achieves this by for instance, identifying common goal between the parties and help focus the parties to the real issues and ways to address the same. Once the parties have identified the issues that need to be addressed in mediation,

the mediator is supposed to propose a brainstorming session to find potential solutions.

After everything, there comes the conclusion stage where an agreement is reached. The goal of a divorce mediation process is for the parties to negotiate and reach an amicable agreement that satisfies both of them. This agreement should include all divorce related issues like finances, spousal maintenance, and children support and properties. Ultimately, the parties should have agreed on the possible solutions of how to handle those issues. Thereafter, it is advisable that the parties should have the agreement reviewed by an independent legal counsel before they sign it. After the review, the parties return to mediation to discuss the provisions, necessary revisions and to finalize the agreement. Once signed, the agreement becomes a legally binding contract that protects both parties during the period of divorce and will be incorporated in any decree entered by the court.

When preparing for the divorce mediation process, each party should have a clear understanding of his or her needs and goals, an initial presentation of their viewpoint and willingness to compromise. In addition, they should be prepared to listen, evaluate and explore different settlements, consider options in the general session or in caucuses, find ways to help the other party be flexible on critical issue, be ready to compromise, explore resolution and make decisions.

Once a divorce mediation agreement is signed by the parties, they become bound by it. Court should therefore not interfere with the decision as was held by the appellate court in Guthrie v. Guthrie. The cost of divorce

mediation process often varies. This is because it is upon the parties and the mediator to agree on the cost and how to receive payments. It should, however, be noted that it is usually way less costly than a litigation process. Average or typical divorce litigation would cost each party about \$7, 500 to \$15, 000 by the time everything is done. On the other hand, if the same matter is mediated, it would cost a total of about \$4, 500 if an attorney prepares the legal document, but if the parties prepare their own divorce papers without an attorney the cost of mediation alone would be under \$1, 500 or \$2, 000 at the higher side for a complete divorce. However, the longer the process takes, the more it costs. Generally, court rules affect how certified divorce mediators charge fees but the overall process is the same. Divorce mediation has its good and bad side, the pros and cons. Some of the advantages of this process are discussed as follows: It saves time and money. This is because it is not like the formal process of divorce; therefore, the process is shortened and in effect minimizes the caseload of the Family Court System. It is a fair process to the parties involved. This is because the mediator is a neutral party. It is a confidential process. It avoids long, drawn out litigation, dispenses with expenses attorney fees and effectively reduces the steps involved when one normally has to go through to obtain a divorce. In the process one can make agreements that fit the family. One is able to choose their own financial and parenting agreements in which the court could not because the judge must follow the law to the letter. It affords the parties an opportunity to receive legal advice without the risk of court action. Mediation assists the spouses to develop their plan on how to parent and how to resolve financial issues. It promotes self-determination of the parties

and their ability to communicate.

Disadvantages of divorce mediation are discussed as follows: There is no mediator/client privilege in divorce mediation process. This means that the mediator may talk about what was disclosed to him or her during the sessions. Divorce mediators lack any power to make binding demands on either party because they do not have the authority of a judge. There may be a lot of disagreements during the process because sometimes one spouse may perceive the mediator as favoring the other one. The mediator may not advise the party fully on the law and therefore the parties may fail to know their rights when reaching an agreement. Sometimes one of the parties may be unwilling to compromise and become rigid; subsequently it becomes difficult to reach an agreement. If it happens that there was domestic violence during the marriage, one of the spouses may be afraid to speak up for himself or herself out of fear. Divorce mediation focuses more on the relationship between divorcing spouses and perhaps the needs of the children and focuses less on substantive issues. Mediation participants are likely to experience depression and struggle with accepting termination of the marriage as a result of mediation's focus on renegotiation of the spousal relationship and decreased hostility between them.

The process of mediation is generally an efficient one. Studies and researches that have been made over the years have come to the conclusion that mediation is a better alternative to a litigation process. Research also shows that compliance and satisfaction with mediated agreements is higher than those imposed upon divorcing couples by a third party such as a judge. In conclusion it can be said that divorce mediation is an efficient process that



help spouses in their divorce related issues. It is less costly and thus helps those couples who cannot afford payment for court processes which would also takes more time. Moreover, it promotes peace among the spouses because, at the end of the process, they come into a mutual agreement that has not been influenced by anyone or any rules or law, but is totally independent.

## **Works Cited**

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