

MEDIATION: IT CAN HELP FAMILIES

by Brady Mikusko

Appeared in Journal for Michigan Parents & Educators, Feb 1995 (includes Divorce Options Chart)

“I moved out. We agreed we would work things out with the kids and the money. Three months later the only people still speaking were our attorneys. I don’t know how it happened...I tried, really tried to talk to her...We got into horrible fights every time we tried to discuss it...I was afraid I was going to lose everything if I didn’t do something. I really tried to work with her. She just wouldn’t. I had to call my attorney. I feel very bad about how things went.”

“I wanted to stay on friendly terms for the kids’ sake. They need both of us. He was angry that it was taking me so long to find a job...He couldn’t understand. I tried to explain that I needed more time...We couldn’t talk about it any more...My friends said I deserve spousal support. I felt my survival was at stake. I had no choice. I didn’t think it would turn out like this. There’s terrible tension between us now. It is not good for the children.”

-Lois Gold, *Between Love and Hate*, pgs 3-4

Divorce does not have to be like this. It can be different. In fact, for the sake of the children, it must be different. Why? Because the children who do not fare well in divorce are the ones whose parents are hostile and fighting. All current research on children and divorce unequivocally finds this to be the case. That is one reason why more and more parents are choosing mediation, instead of attorney-to-attorney negotiation or litigation, when faced with the crisis of separation or divorce.

Mediation is different from the conventional approach to divorce in many significant ways. First and foremost, mediation sees parents as joint decision makers -- not opponents. It also sees the family as the client

and, in so doing, helps the parents focus on what is best for their children, on what is best for their family. And herein lies another important difference from the conventional approach to divorce. Mediation recognizes the fact that the relationship between the parents doesn’t end with divorce, and in fact, needs to be supported and respected. The bottom-line is this: if parents compete against each other and fight to win the kids, the house, the pension, the bank accounts, and so forth, in their attorneys’ office or in court itself, is it really possible to end the fight once the divorce is final and work together for the sake of the children? Current research on children and divorce also documents that the children who do well after the crisis of divorce are the ones who have two actively involved parents in their lives. This does not necessarily mean 50/50 custody, but it does mean that children need enough time with each parent so that they can have the opportunity to form a close, real relationship with both. Mediators help parents develop such a parenting plan.

So how does mediation work? In mediation, two parties meet voluntarily and face-to-face, in the presence of a neutral, trained mediator, to discuss the issues that must be resolved. (If face-to-face meetings are unproductive, the mediator may meet with the parties separately.) The meetings are usually in an informal and private setting. In these meetings, the mediator first of all helps the parties identify issues. In a divorce case, those issues would include custody, visitation, division of property, and support. In a case where parents are in conflict after the divorce is final, the issues might be: changing the times that the children are with each parent, deciding which school the children should go to, and so forth. The mediator also helps the parties identify their needs, some of which are shared, some of which are competing. The mediator provides information to the couple as needed, works with them

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to develop options, and assists them in their negotiations. The mediator does not make decisions for the couple. Rather, it is the couple that is in charge of the decisions. The end result is agreements that speak to both of their needs.

Contrary to what one might think, lawyers are very much a part of the mediation process and each client is strongly encouraged to retain one. The lawyers serve as consultants to their client, since issues will come up for which the couple will need legal information. Furthermore, the lawyers will review the agreements, informing their clients if they are agreeing to something that is not in their best interest. Lastly, it is the lawyers who take the agreements through the court process.

Mediation is short-term, generally lasting 2-3 months with an average of 4-6 sessions (1.5 hours long). Fees are billed at an hourly rate, with different mediators charging different rates. Mediated divorces usually cost less than conventional divorces even with two lawyer-consultants. The reason for this seems to be that communication in mediation is direct, i.e., a couple talks to each other rather than through their attorneys, and there is less need for lawyers to engage in expensive legal procedures.

In closing, mediation is a process that is available all over the county, state and country. It is not an answer for every situation or for every couple. But it is also not just for the “perfect” couple (i.e., where both want the divorce, communicate well and have no hard feelings). Mediation is appropriate for the vast majority of couples.