

SURVIVING SEPARATION AND DIVORCE: THE USE OF MEDIATION

Behind every angry and hurt client who is going through a painful separation and divorce is a caring parent who wants to do what's best for his or her children . At this most difficult time in your client's life, what can he or she do to ensure that, for the sake of those children, he or she will be able to maintain an ongoing civil relationship that allows the parties to mutually parent. The answer may lie not in litigation, which pits the two parents in an adversarial process where one loses and one wins, but in a process called Mediation.

As an attorney mediator I believe in mediation and am eager to let people know there is an alternative to traditional litigation. As attorneys we know that "truth" is multifaceted and complex. Conflict always has two faces. In mediation, we try to create a process where there is not a right and a wrong , but two rights. Mediation avoids finding fault and fixing blame. Instead it focuses on problem solving and helps people to analyze their real need and resources, and then to look at all the available options and alternatives. It's a voluntary, confidential process where an impartial person helps both parties participate in reaching mutually acceptable decisions. Instead of two attorneys negotiating with each other, the mediator helps the two people involved to negotiate directly with each other and come to a settlement that both can live with. It's a process that is practical, relatively informal, unencumbered by courtroom procedures or legal technicalities, and in most cases, significantly less expensive than financially debilitating courtroom battles. Most important, it allows people their privacy, and allows them to retain control of the critical decisions that affect their lives and their children's lives. Agreements can be creative and customized, and do not have to fit into a rigid legal mold.

As Family Law Attorneys we have many times taken cases that have difficult child custody/visitation issues which are often extremely time consuming, emotionally draining and appear unresolvable. Although mediation can help parties to reach settlements regarding separation or divorce in its totality, it can also assist with helping the parties reach agreements regarding only one or a few of the disputed issues, such as helping parties to draft parenting plans.

When two parents come into mediation, there are a variety of emotions swirling around the room that must be taken into account: depression, giving up the fantasy of a good marriage, feeling powerless to change things, feeling rejected and humiliated, experiencing anger, panic, denial, regret, guilt, diminished self esteem, vulnerability, heightened paranoia, and most of all fear. The fear is of loneliness, financial changes, possible loss of one's child, and fear that the child or children will choose the other parent. We also know that there is a third person(s) not in the room - the child. Children have similar emotions at a time like this. They too feel fear, anger, hurt, sadness, anxiety, loneliness, confusion, and depression.

In my experience, some of the prevalent emotions children present during separation or divorce are: (a) guilt -" Did I cause the break up?"; (b) fear -" If daddy left mommy or mommy

left daddy, can't that parent leave me too?"; © anxiety - " If I let mommy know that I still love daddy, will she love me any more or will she be angry at me?"; (d) anger - at the parent who left,. " Daddy didn't just leave mommy, he left me." But most of all, kids feel put in the middle of their parent's battle. Somehow, they have to choose one parent or the other, or they must act as the peacemaker, or the messenger to make it OK for their parents. As mediators, we need to not only look at the subjective needs or wishes of the parents, but also help those parents look at what is in the best interest of the child.

Having seen many families going through this stressful period, I believe I know what children need in helping them get through this traumatic process. Children need to be reassured of the following:

- 1) That both parents love them
- 2) That they will have a home with both parents
- 3) That they will have the freedom, as much as realistically possible, to continue with life as it was in terms of school, friends, and activities
- 4) That they will be protected from the hostility or conflict between their parents
- 5) That they won't be burdened by adult decision making
- 6) That they won't be pressured to choose between their parents or used as messengers
- 7) That they are not to blame for the divorce

In a mediation, I work with parents to develop a parenting plan, trying to put all of what I have learned about children's needs into the process. The major goal of a good parenting plan, involving decisions around custody and visitation, is to enable both parties to parent and to meet the developmental needs of their children. As a mediator, I particularly look at continuity (meaning that the child's life should continue in a similar kind of way), which can only happen if there is a relationship with both parents. Mediation tends to build on each of the parents strengths in their care taking role for the benefit of the child. I also look at stability, meaning issues around child care, schedule predictability, and continuing security and comfort. I know that whatever the plan that the mediator and the parents devise, children will suffer, often with long term consequences, if parents can not learn to deal with their differences and contain their conflict. In mediation, parents have a chance to do just that, unlike a court battle, where hostility and bitterness often become worse.

Mediation encompasses reaching agreements regarding all of the issues that are involved in a dissolution, such as the valuation and division of assets, real property, personal property, pensions, and debts. Mediation agreements also deal with the determination of payment of child and/or spousal support, restraining orders, and parenting plans involving custody and visitation.

In conclusion, I have tried by way of this article to focus on the emotional impact of separation and divorce on the entire family as the critical component of the mediation process, since these psychological dynamics create the structure in which I and the involved parents must do our work.

