

## **Contemplating Divorce? Consider Mediation**

by Philip Mulford

Mediation is an especially effective process for resolving issues that arise when a couple contemplates divorce. Mediation allows a husband and wife to make the decisions that are going to affect them and their children for the rest of their lives. Since a husband and wife remain the experts on their marriage and family even under the most troubling circumstances of divorce and since the results are going to affect them directly, they should control the outcome. Mediation gives them control. Mediation gives a divorcing couple the opportunity to develop a plan that specifically addresses a family's unique needs in a positive, structured environment where the mediator facilitates effective communication and problem solving. By enabling a couple to remain in control, mediation allows spouses to make the best decisions for their family and customize an arrangement that accounts for the specific uniqueness of that family. Moreover, it helps a couple communicate in a positive fashion at a time when the opposite is more likely.

Mediation is neither adversarial nor argumentative, but rather cooperative and collaborative. The inherent nature of the process of mediation saves time and, therefore, money. Mediation tends to minimize and resolve differences rather than exaggerate and inflame them. Mediation tends to look forward rather than back. By giving spouses the opportunity to hear each other's reasoning and ideas directly, each spouse is in a better position to structure mutually acceptable arrangements.

How often does a newly divorced couple walk out of divorce court amicably discussing their court-ordered visitation arrangement? Ever? Constructive post-mediation discussions between couples occur quite often, mostly about the substance discussed in that mediation session. Mediation gives couples the opportunity to begin the process of accepting an entirely new mindset about a quite frightening prospect. Mediation helps couples reconnect and regain control of their lives. Mediation allows couples to be accountable to each other and acknowledge their own participation in the breakdown of the marriage where each can recognize that neither is without fault and both can accept responsibility. Mediation gives the couple the chance to test the prospect of

reviving the marriage or confirm that divorce is the better alternative for them. Mediation utilizes the couples' energy to create customized, specifically tailored arrangements that take each other and their children into account. When it comes to the children, mediation encourages collaboration between the two most knowledgeable, experienced and qualified experts in the field - the mother and the father.

By the time a couple contemplates divorce, enough destructive forces have already been at play. Unfortunately, the traditional adversarial process of divorce litigation tends to cause further destruction of interpersonal relationships within the family. Divorce litigation undermines any vestiges of trust left between a husband and wife. Divorce litigation converts a marriage into a battleground that serves neither - even the eventual courtroom "winner." (As used in this article, the term "divorce litigation" is not limited to courtroom time, but also includes the arduous and expensive process called "discovery" and related motions, even when the case settles out of court.)

The substance of a marriage and a family is not property, financial assets, and financial liabilities. The substance of a marriage is the interpersonal relationships between husband, wife, and children. Divorce doesn't change the substantive issues from the people and their relationships to those of property and finances, but divorce litigation tries to do just that. Divorce litigation does not address the more important, continuing, and substantive interpersonal issues. Mediation, on the other hand, addresses those interpersonal issues directly. Mediation helps a couple communicate when simply talking seems impossible - at a time when, especially with children involved, post-divorce communication will be even more critical. Once the people issues are addressed, the property issues become less overwhelming and a comprehensive plan to address those important issues can be constructively created.

Divorce litigation fuels and feeds off of overwrought emotions. It's easy to understand why divorce lawyers operate on a retainer basis. Their clients will often be unhappy with the results. Too often clients walk out of divorce court disenchanted with their lawyers, the judge, and the system. It's no wonder judges who handle divorce cases suggest that court is not the place to resolve the issues of divorce.

Despite the limitations of the adversarial system, I am by no means suggesting that mediation replaces the need for legal counsel. Mediation is not a substitute for a lawyer and legal representation. It is, in fact, a substitute for the courtroom battle and the adversarial process preliminary to it. Effective legal counsel in mediation, however, requires counsel to serve a different, non-combative, role. A lawyer in mediation needs to be able to honor the decision-making authority of the client while advising that client of the legal consequences of any proposal. By advising clients of the legal consequences of any particular proposal, the lawyer provides the client with the information the client needs to make informed decisions.

In addition to legal counsel, I always encourage my clients to obtain tax, financial, and any other professional advice that either of them needs to make fully informed decisions. But at the end of the day, clients in mediation remain in control of the decisions that will affect them and their children for the rest of their lives. They create mutually acceptable, customized arrangements that only they could have crafted. They move forward out of a peaceful process that prepares them for their new lives. Isn't that the way you'd want it to be?