

## Debunking Mediation Myths

There are many myths and misconceptions floating around out there about mediation which discourage some couples from choosing this cooperative method of working out the details of their divorce. We asked some experts to debunk some of the most common myths.

By Silvia Pandolfi

Mediation is a cooperative, problem-solving process that gives couples the opportunity to control the decisions that will affect their future. Mediation allows couples to deal with their separation or divorce outside of a courtroom setting, and usually is less costly -- both financially and emotionally -- than litigation. A mediator helps you identify the points on which you already agree, then works with you and your spouse to create practical, informed solutions to the others.

Unfortunately, some people have heard negative stories about mediation -- they often begin: "my cousin's best friend's sister was totally ripped off!" -- which cause them to shy away from the process. Here's what the experts had to say about some of the most common mediation myths.

### **"Women do worse in mediation than men."**

Genell Greenberg, MSW, Esq., has a dual background in social work and law. She practices in Del Mar, California, where she specializes in family law and divorce mediation. "In my experience," she says, "women are just as successful as men at mediation. The concern that women may be at a disadvantage arises from two myths: 'women don't know -- or they are unable to learn -- about financial issues,' and 'women will always give in to keep the peace.'"

Your mediator, who is an impartial professional, should create a safe environment that won't allow either of you to get "ripped off."

Sharon Beskin-Goodman, LCSW, a therapist/mediator in Red Bank, New Jersey, points out that mediation has never been gender-biased. "Traditionally in the system, women feel a financial imbalance and men feel a custody imbalance," she says. "In other words, women may have more parenting time with the children, but proportionally less money, where as the male has less parenting time but more of the family money."

If you mediate your divorce, *both* parties can be empowered. The mediator will listen to both sides, and then he/she will help you create a fair plan that's in your family's best interests.

### **"I'm intimidated by my spouse; I need a lawyer to protect me, not a mediator who will take my spouse's side."**

Beskin-Goodman says that *you're* the best person to look out for yourself. After all, who better understands your needs?

"Mediation can be an empowering process," she says. "It can help the spouse who feels intimidated gain strength through education and knowledge. The process can also help the intimidated spouse begin to address issues and open up a line of communication which -- especially if there are children -- is very important and will always be necessary."

Douglas Schoenberg, a mediator and lawyer in Summit, New Jersey, agrees with Beskin-Goodman, adding that mediation can build your knowledge and self-esteem. "Mediation is good training for dealing with your ex-spouse after the divorce is over," he says. "In fact, mediation is good training for everyday life."

### **"Mediation is for couples who want to reconcile."**

According to Schoenberg, mediation is *not* marriage counseling. It can help couples learn to communicate better, but it's not intended to get them back together again. "Mediation is for people who want to move on with their lives," he says.

Kenneth Neumann, a co-founder of the Center for Family and Divorce Mediation in New York, has worked in the field since 1982. Neumann points out that one of the parties in mediation may be secretly -- or not so secretly -- hoping for a reconciliation. "But if the other party is clear about wanting the separation or divorce, then the mediator needs to help the couple reach a consensus," he says. Sometimes that means helping one spouse to realize that the marriage is really over -- and to start making choices that aren't based on being part of a couple.

### **"My spouse and I aren't speaking to each other. We can't possibly mediate our divorce."**

Forrest Mosten is a certified family law specialist and mediator, a partner at Mosten & Barbakow in Los Angeles, CA, a member of the academy of Family Mediators, and the author of *The Complete Guide to Mediation*. He says that most people going through divorce have communication problems. The couple may act out in many ways: some shut down the communication process completely, while others act in outrage. "Mediators are trained professionals who work with couples to maximize their communication and help them resolve their issues," he says. "A mediator can help you move on with your life."

### **"If a divorce involves complex issues, you can't use a mediator."**

There are many complex issues -- legal, financial, and emotional -- that must be resolved before a divorce can be finalized. According to Mosten, "More and more couples who have complex financial and legal issues are choosing mediation because they want to reduce lawyers' fees. If issues are complex, you may also need to work with an 'unbundled' lawyer as a coach." (Mosten explains "unbundling" as "the process of breaking down the roles a lawyer might play into smaller groups of tasks. The client is in charge of determining which services are to be performed by the client, which services are to be performed by the lawyer, and the extent or depth to which the lawyer will perform the services.")

Mosten adds: "Anything that can be decided by a judge can be worked on in mediation -- at a fraction of the cost and time, and with less wear-and-tear on the family."

Neumann agrees that complex issues can be dealt with in mediation, and in a more effective manner than litigation offers. "For example, when it comes to tax issues, couples will fight for different tax positions, never really looking at the overall best tax strategy," he says. Neumann adds that in mediation, most couples can often agree on strategies that allow *both* parties to come out ahead financially by keeping more money in the family's pockets rather than handing it to the government in unnecessary taxes.

Here are some other popular myths about divorce mediation:

**"Mediation is for parties who have already divorced, and who don't have any problems or disagreements with one another."**

Mediation is a voluntary settlement process giving you the opportunity to control the decisions that will affect your future. It's designed to help you resolve disputes -- before, during, and even after divorce.

**"Mediation isn't appropriate for people who have 'real' problems."**

*Of course* it's appropriate: if you didn't have "real" or difficult problems, you wouldn't need a mediator -- you'd be able to solve them yourselves.

**"Women don't know -- or are unable to learn -- about financial issues, so mediation won't work for them."**

Some people (men *and* women) are better with numbers than others; if you're "numerically impaired," let your mediator know that you need him/her to explain the implications of the suggested settlement so that you can understand it. Also, you could retain the services of an accountant or financial planner to help you.

**"Women always give in to keep the peace -- that's why they need a lawyer to fight for their rights."**

Again, some people are willing to sacrifice almost *anything* to avoid a fight. If this describes you, or if there was a significant power imbalance in your marriage, you need to let your mediator know so he/she can compensate for it.

**"If both lawyers are settlement-minded, you don't need to spend more money on a mediator."**

Mediation usually ends up saving people money: the issues you can solve together don't have to be negotiated by two lawyers or decided by a judge in court. Your mediator helps you create an agreement that's in your family's best interests, then each of your lawyers looks it over before either of you sign it. Your lawyer is there to look after *your* interests in the divorce; a mediator doesn't represent *either* party.