



What to Expect When Mediating Your Divorce Case

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WHAT TO EXPECT WHEN MEDIATING YOUR DIVORCE CASE

Written by [Marlene Pontrelli](#) and [Robert Schwartz](#) – 2/15/19

Many times the thought of going to court to resolve issues pending in your divorce is frightening. Accordingly, it makes sense, prior to going to court, to at least attempt to mediate your dissolution matter and resolve as many issues as possible. However, the thought of meeting with your spouse and the mediator in one room can also be frightening, unless you know what to expect.

Since a mediator cannot give legal advice, it is possible for you to mediate your divorce with your lawyer present. In such cases your lawyer and you are usually in one room, while your spouse and your spouse's lawyer are in a different room. The mediator will then go back and forth between the rooms attempting to negotiate a settlement. This method works particularly well because your lawyer will be there to give you legal advice and can advise on the risks and benefits of accepting a particular proposal offered by your spouse. At the same time you do not have to be in the same room as your spouse which may help to facilitate a more open exchange of information and ideas that can be conveyed through the mediator.

Mediation has several benefits including reducing delays in completing your divorce. When the issues in your divorce are decided by a judge instead of by you and your spouse, there are many opportunities for delay. These can include:

- Waiting for the trial date
- Having to reschedule the trial if there is a conflict in the calendar of the attorneys, the parties, or a necessary witness
- Waiting for the judge's ruling on your case
- Needing additional court hearings after your trial to resolve disputes about the intention of your judge's rulings, issues that were overlooked, or disagreement regarding the language of the decree

Each one of these events holds the possibility of delaying your divorce by days, weeks, or even months. Mediating the terms of your divorce decree can eliminate these delays and provide certainty.

Mediation can also have these additional benefits:

Recognizing Common Goals. Mediation allows for brainstorming between the parties and lawyers. Looking at all possible solutions, even the impractical ones, invites creative solutions to common goals. For example, suppose you and your spouse both agree that you need to pay your spouse some amount of equity for the family home you keep, but you have no cash to make the payment. At trial the Court is limited in either requiring a payment for equity in the home, or selling the home if you

cannot pay. However, in mediation you might come up with a number of options for accomplishing your goal such as a payment plan, or exchanging some property in exchange for equity in the home. Mediation allows you to choose the best option for your family.

Addressing the Unique Circumstances of Your Situation.

Settlements reached by agreement allows you and your spouse to consider the unique circumstances of your situation in formulating a good outcome. For example, suppose you disagree about the parenting times for the Thanksgiving holiday. The judge might order you to alternate the holiday each year, even though you both would have preferred to have your child share the day.

Creating a Safe Place for Communication. Mediation gives each party an opportunity to be heard. Perhaps you and your spouse have not yet had an opportunity to share directly your concerns about settlement. For example, you might be worried about how the temporary parenting time arrangement is impacting your children, but have not yet talked to your spouse about it. A mediation session or settlement conference can be a safe place for you and your spouse to communicate your concerns about your children or your finances through the third party mediator.

Fulfilling Your Children's Needs. You may see that your children would be better served by you and your spouse deciding their future rather than by a judge who does not know, love, and understand your children like the two of you do.

Eliminating the Risk and Uncertainty of Trial. If a judge decides the outcome of your divorce, you give up control over the terms of the settlement. The decisions are left in the hands of the judge. If you and your spouse reach agreement, however, you have the power to eliminate the risk of an uncertain outcome.

Reducing the Risk of Harm to Your Children. If your case goes to trial, it is likely that you and your spouse will give testimony that will be upsetting to each other. As the conflict increases, the relationship between you and your spouse inevitably deteriorates. This can be harmful to your children. Contrast this with mediation, in which you open your communication and seek to reach agreement. It is not unusual for the relationship between the parents to improve as the professionals create a safe environment for rebuilding communication and reaching agreements in the best interests of a child.

Having the Support of Professionals. Using trained professionals, such as mediators and lawyers, to support you can help you to reach a settlement that you might think is impossible. These professionals have skills to help you focus on what is most important to you, and shift your attention away from irrelevant facts. They understand the law and know the possible outcomes if your case goes to trial.

Lowering Stress. The process of preparing for and going to court can be stressful. Your energy is also going toward caring for your children, looking at your finances, and coping with the emotions

of divorce. You might decide that you would be better served by settling your case rather than proceeding to trial.

Achieving Closure. When you are going through a divorce, the process can feel as though it is taking an eternity. By reaching agreement, you and your spouse are better able to put the divorce behind you and move forward with your lives.

Although mediation is not mandatory in dissolution of marriage actions, some form of alternative dispute resolution is usually required, or at least expected by the trial judge, in all cases. Accordingly, talk to your lawyer about the benefits of mediating your dissolution case and how mediation may save you time, money and stress.

About the Authors:

[Marlene Pontrelli](#) is a Member in our Phoenix office. Marlene is a certified specialist in family law. Her practice focuses on all aspects of family law including dissolution, post-dissolution, paternity, child custody and child support matters. She is admitted to practice in California and Arizona. She is a member of the State Bar's Family Law Practice and Procedure Committee and is a judge pro tem for the Superior Court of Maricopa County in family law. She has extensive trial and appellate experience including appearing before the Arizona Court of Appeals, Arizona Supreme Court and Ninth Circuit Court of Appeals.

Ms. Pontrelli has written several books, including as a co-author of the *Divorce in Arizona* book. She is a frequent lecturer in the area of family law and has conducted workshops throughout the country. Ms. Pontrelli is also an adjunct professor at The Sandra Day O'Connor School of Law at Arizona State

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