

Introduction

Divorce. The picture years ago was this: Divorcing men and women hiring cutthroat lawyers to fight their battles in divorce court. Divorce lawyers inciting their clients to litigate. Packed courts filled with lies and counterlies. Embattled parents using children as custody trophies. Men and women beginning their new lives bitter and vengeful. And their children, the real victims of the divorce court battles, learning to cope with the changes.

Many people, from divorcing couples to the professionals who work with them, have begun to realize that hiring adversarial lawyers to do battle with a spouse only serves to promote expensive litigation, incur health-risking stress, heighten the bitterness, and create lifelong scars. More than ever, we realize that people need the kind of assistance that will not exacerbate the problems of divorce, as in the old model, but rather the help to reach a fair agreement and, just as important, allow family members to get on with their lives.

During the 1980s, our cultural attitude toward divorce changed profoundly. Where once society condemned divorced people, we began to find ways to help them: Churches, originally the leaders in opposing divorce, started to provide support groups; community centers offered informative programs for those con-

templating divorce; and schools organized groups for children whose parents were divorcing. Therapists began to talk about the stages of the process, authors wrote books describing healthy ways to divorce, and even lawyers gave second thought to encouraging their clients to wage destructive custody battles.

We now recognize that there is a better way to reach a divorce settlement—through a process called mediation. In the 1990s couples are turning to mediators as a means of reducing the terrible financial and emotional costs of divorce. Though divorce remains a difficult process, the use of mediation provides a civilized approach to the issues facing those who are ending their relationship as husband and wife. And the challenge now is finding a good mediator.

I began as a mediator in January 1981. Up until that time, I was in private practice as a therapist, but I wanted to have the same kind of telephone listing for my mediation practice as I had as a therapist. I called my local Yellow Pages advertising department to place a new ad, with a listing for my new occupation—divorce mediator.

“What in the world is a . . . divorce *mediator*?” the representative asked incredulously.

“It’s a mediator,” I corrected (one of those early times in a stream of hundreds, maybe thousands, of times of correcting that word), and gave a brief description of the mediation process.

“Seems like a good idea to me. I could’ve used you for my divorce. It was a mess. But,” he added, “I can’t give you a listing for that.”

“Why not?”

“Because there is no listing for ‘mediator.’ There’s just no such category,” he answered.

Five years later, however, the Yellow Pages finally agreed to list “Mediation Services.” Almost immediately, several other names appeared under the listing, and just as suddenly, the listing appeared in many other directories. Look in the Yellow Pages of

your phone book, and you'll see the problem of choosing the right one for you.

Why is it so difficult to find a good divorce mediator? There are three primary reasons: Divorce mediation is a new profession, just twenty years old. There is either no or insufficient licensing or regulating of the qualifications for who can be a mediator. And there is a lack of recognizable indicators of mediator competence.

Although the profession of divorce mediation is very young, other kinds of mediation have existed for some time. Foremost among them is labor mediation, in which a third party provides a reasonable forum to resolve labor-management disputes while maintaining the ongoing relationship between the workers and managers. Mediation worked extremely well and is used in other "sensitive" areas, such as international conflict. Divorce, however, was considered fair game for bitter and expensive court litigation. The relationship between a divorcing man and woman—even those who had young children—was not considered a "sensitive" relationship that would benefit by a more humane dispute resolution process. Only when divorcing individuals got fed up with the tremendous expense and turmoil of the old system did the idea of divorce mediation take root.

The first divorce mediator was retired lawyer turned psychotherapist, **O.J. Coogler**, whose successful work with teens and their parents convinced him that conflict between angry family members could be resolved with a process known as mediation. Coogler used the process with his divorcing clients, with immense success. Now, there was a better way. The year was 1976, and the field of divorce mediation was born.

Twenty years is simply not enough time for a profession to create standards for itself—to say "this is what a mediator does" or "just this and nothing else," or "a mediator should do all of this" or "a mediator never does that." There is a lot of very different mediation practice out there, and I don't just mean in personal style. Differences in actual practice, from methods of

mediation to the type of final divorce document created, can vary widely.

A second problem is that mediators are not licensed in the same way as other divorce professionals. This is a critical difference. Divorce lawyers, for example, must be licensed by the state in which they practice and in order to be licensed, they must meet stringent criteria. In virtually every state, with the exception of Vermont, where one may practice law without attending law school, a lawyer must graduate from an approved law school, which means three years of rigorous full-time education. But education is only part of the story. The state further mandates that the law school graduate must sit for that most formidable of tests—the bar exam. Professionals in the field of mental health have similar requirements in order to be licensed. A licensed therapist, psychologist, or psychiatrist must achieve specific educational requirements and, in addition, must fulfill a period known as supervision or internship, during which the new graduate works under the direction of an experienced practitioner.

It is a very different case with the profession of mediation. In most states, anyone can hang out a shingle proclaiming him- or herself a mediator.

Although a small number of states provide for the certification of mediators—a step well below the rigorous requirements for licensing—the vast majority of states do not. But let me be clear: Certification does not mean a mediator is competent. What it does mean is that the mediator has met minimum criteria. However, the concern with mediator certification today is that the required criteria are very low. Even the Academy of Family Mediators, a national organization comprised primarily of private divorce mediators, does not certify mediators (which it could do and is contemplating). The Academy does offer two levels of membership: a General Member, which just means having paid a fee, or a Practitioner Member, which currently requires only sixty hours of mediation training and one hundred hours of mediation experience. In comparison, this sixty-hour

requirement is much lower than some states' training requirements to license hair dressers or plumbers.

Many divorce professionals are dismayed by the lack of requirements for divorce mediators. It is hoped that this situation will be addressed soon and that the appropriate requirements will emerge. Until that time, however, and until there are recognizable indicators of a mediator's competence (knowledge of divorce law, for instance), divorcing couples need guidelines to help choose a mediator who is both competent and the right one for them.

In the pages that follow, I offer those guidelines. After an overview of the mediation process itself and a discussion of what types of marital disputes are appropriate and inappropriate for mediation, I go into how to assess your own needs to determine what skills and expertise you will want your mediator to have. (For instance, if you have children, you will want someone with a background in child development and a knowledge of local court practices regarding custody. If you own a house, you will want your mediator to have expertise in real estate transactions and tax consequences.) I then suggest ways to generate the names of potential mediators and the best way to approach them. I discuss the questions you should ask during your initial interviews, such as how long they have been mediating, what training they have, do they provide a free introductory session, and so forth. I discuss the unavoidable question—the gender of the mediator, and why that makes a difference—and, finally, whether you will eventually need a lawyer.

I hope that this book will show how vital it is to choose your mediator carefully—one who is both competent and right for your specific needs. It will be well worth the time and effort involved to ensure that you and your spouse are satisfied with the results of your mediation.