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What Is Divorce Mediation?

In eighteenth-century England, there was a custom called “jumping the broom.” A woman and a man who wished to marry had to jump over a broom, taking care that no piece of their clothing touched the broom. If the woman’s clothes touched the broom, it meant that she was pregnant or had lost her virginity. If the man’s clothes touched the broom, it meant that he would prove unfaithful. Historians today describe this event as one of that century’s common-law marriage rites.

Many of our laws are based on the old common laws of England; some of our divorce laws seem to make about as much sense as jumping the broom. Our present court system creates an adversarial contest between spouses seeking a divorce. Adversarial means “one who opposes or fights against another.” We see the result when one divorcing spouse wins and the other loses. In all probability, the loser will then take the winner back to court again and again. All family members suffer emotionally and financially each time this occurs.

Divorce mediation is being heralded as a civilized way

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to reach a divorce settlement. It can be used to reach one or more agreements, or to establish the complete divorce settlement. The method involves using a professional, neutral mediator. “Neutral” does not mean that the mediator has no feelings or opinions; rather it means the mediator does not actively take the side of either spouse. The mediator guides the divorcing couple using a structured, step-by-step approach. It is essential, however, that both spouses agree to mediation. It can’t work with only one spouse wanting to use it.

During most of the mediation sessions, the clients and the mediator meet together. At times, the mediator may meet with the husband or wife separately; this is called “caucusing.” If the mediator has a caucus with one spouse, then the mediator will also caucus with the other spouse.

Each mediation is tailor-made for the individual couple, but here are some of the areas that are typically resolved in mediation:

- Parenting arrangements for minor children. The courts call these arrangements “custody” and “visitation.” They include present and future parenting guidelines, schedules, and changes.
- All the aspects of child support and future college expenses.
- The division of marital property, which might include a house, furniture, stocks, savings accounts, IRAs, pension plans, cars, and grown-up toys such as stereos and VCRs.
- Alimony—always a hot issue.
- Other assets, pension plans, and vacation and rental property may be addressed, as well as such sophisticated plans as stock options and tax shelters.

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- All of the couple's debt is considered: charge cards, car loans, mortgages, personal loans, and even gambling debts. Divorcing people have a higher rate of debt than the average American; no one has quite figured out why.
- Medical and dental expenses and insurance, life insurance, and disability insurance. (This area ties into the support issues.)
- Self-employment income, which can present quite a challenge to people during divorce negotiations. All income must be verified, and self-employment income is not as easy to verify as employment income. However, this area is much easier to settle in mediation than in a contested courtroom battle.
- Business valuations and welfare regulations are some unusual areas that may play a role in working out a settlement.

Separating men and women are often shocked to discover that a judge has the final say over their divorce settlement. I have met many people who assume they can make any kind of a divorce agreement they want to, because "this is a free country." It may be a free country, but you cannot make any kind of divorce settlement you want. A state court must approve your settlement. This is an important function of a mediator—to frame a divorce settlement that the court will approve. At your final mediation session, you will be presented with a written Memorandum of Understanding. When both parties sign this document, it is a legally binding contract. This document is then submitted to the judge for approval, and becomes part of the divorce decree.

Mediation has been called a form of therapy. It isn't. It may be therapeutic, in the same way that the color blue is

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more soothing than the color red, but it isn't therapy. Mediation can be therapeutic because it:

- Creates a cooperative atmosphere.
- Clarifies the issues between spouses.
- Fosters clear communication between spouses.
- Keeps emotional tensions separate from financial decisions.
- Provides a neutral person to help both parties.

Mediation is therapeutic in that the process helps each person to heal emotionally by providing a means to work out the end of their relationship in a way that makes sense and is sensitive to their needs.

Couples often find mediation helpful because they need to know about divorce *before* the actual filing. There are millions of divorced people who become divorce experts after their divorce becomes final, when it is too late to use their knowledge. During mediation you'll acquire a lot of vital information, including:

- The latest divorce-related parenting information.
- Typical divorce settlement provisions.
- Specific financial tools.
- Methods for anticipating your future needs.
- The court's attitude toward similar divorce settlements.

All this information helps divorcing people achieve a mutually satisfying settlement that each person feels is fair and that both can live with.

How Mediation Proceeds

By now you may be wondering how an actual mediation works. Let's briefly take a look at the mediation sessions

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of former clients of mine, Ellen and David, who have given their permission for this outline. Ellen and David are a fairly typical couple, and though their specific sessions may differ somewhat from yours, there will be more similarities than differences. The following account is an overview; the actual dynamics and details of their sessions will be fully presented in chapter 4

The First Contact

Ellen called me at the end of July with questions concerning mediation. She had heard of the method through a friend of hers and had read a newspaper article on the topic. She asked me the most popular question I get on that first call, “How long does it take?” The answer I give to everyone who calls is that the average mediation consists of five one-and-a-half-hour sessions.

One of Ellen’s concerns was how to get her husband to come to mediation. As a first step, I offered to send a mediation packet to her. It was helpful for Ellen to have written material to show David, since he tended not to be responsive to any ideas from his soon-to-be ex-wife. (I would never just send out the divorce mediation packet to David, as he had not requested it.) He looked it over and decided to come to the introductory meeting with Ellen.

The Introductory Meeting

Ellen and David walked in to their initial appointment looking wary and anxious. I could almost hear Dave thinking, “What the hell am I doing here?” I began the meeting with a short description of mediation, since most people

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need such information—I have stopped being surprised at the number of people who are uncertain what they’re doing in my office.

The first half of the meeting ended with an explanation of the guidelines of our sessions. There are three fairly simple rules:

1. Husband and wife will take turns talking.
2. Each will make a full financial disclosure of all income, assets, and liabilities (joint and individual).
3. Both will sign a mediation contract with me before we begin. It is a short contract that the three of us sign. This is the only document they sign during mediation.

During the second part of the meeting I gathered information about their specific circumstances: children, employment, finances, property, debt, insurances, temporary agreements, and other pertinent information. I looked for the kind of background material and financial information that I would need to mediate. Some of my questions were personal, such as, “Why are you getting a divorce?” and “Is there any way in which either of you could change that would make you want to stay married?” This type of information is necessary to successfully mediate a divorce. The emotional components in a divorce often play a key role in the negotiations. Understanding the emotional dynamics lets the mediator guide the couple out of any impasse.

This appointment also offered Ellen and David the chance to see if each of them felt they could work with me. Often people don’t appreciate the value of personality compatibility. You should have the feeling that the mediator is competent and someone you’d like to work with. If you

don't feel this way, it might be a good idea to interview another mediator. (This advice holds true for virtually every professional you'll ever have to deal with.)

By the end of the meeting, they wanted to start mediation, which, I pointed out, was their first agreement. They were each given a copy of the Divorce Mediation Contract (see Appendix I), and we made an appointment for the following week.

The First Session

Since this couple had children, we began our session with a discussion of parenting issues concerning Jennifer, age fifteen, and Jeff, age eleven. I explained the area of legal custody, which must be decided for all minor children. There are different types of legal custody, depending on which state you live in. Most individuals who mediate their divorce choose joint legal custody, though some choose sole legal custody. Joint custody, also called shared custody, occurs when both parents legally retain the prerogatives of being a parent; either may sign the medical permission form in an emergency room and either may sign their child's report card. (It doesn't mean both have to sign the permission form or the report card.) Sole custody, on the other hand, means only one person (the parent with custody) can sign the medical form or the report card. Ellen and David chose joint legal custody of their children.

Our next issue concerned the physical custody of Jennifer and Jeff—determining which parent the children will primarily live with. Most parents in mediation choose physical custody with one parent, though I am seeing more parents who choose joint physical custody. (Joint physical

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custody, in which the children live with each parent roughly one-half of the time, is talked about more often than it is done.) Not everybody is able to resolve the question of physical custody in one session, but David and Ellen had a fairly easy time making this decision; they both wanted Jennifer and Jeff to live primarily with Ellen.

The parenting schedule was our next step. (In the old days this was called visitation.) The entire area of parenting is probably the most important issue for families as it has far-reaching effects on the divorcing parents and their children, yet it receives little time or attention in the hands of most divorce lawyers and the courts. (Yet visitation is the single most common reason why divorced people go back to court.) In contrast to this approach, mediation stresses the importance of parenting guidelines and takes the time to work out a parenting schedule that suits the needs of both parents and children.

David had difficulties with Jennifer that seriously interfered with the parenting schedule, so we dealt with this immediately.

Like many of the people that I see during a first session, Ellen and David were not ready to make any permanent decisions at this time. Each person must feel totally comfortable with any and all decisions they make during their sessions. My purpose is to introduce and explain the area of divorce we are looking at, then to allow people time to consider the decisions they must reach. I am only too aware that for most people, this is the first time they have heard anything of what I am describing.

At the end of the first session I gave each of them a budget to complete at home.

The Second Session

The session began with my review of Ellen's and David's separate monthly budgets. Budgets are a useful tool to help focus on finances. The figures and the discussion gave me an idea of how much financial knowledge each person had. There is often an obvious imbalance in this area, and I must balance their knowledge of financial matters. In this case, Ellen did not have as much tax knowledge as David did, and I worked to help her gain the understanding she would need. (The mediator can either explain the information to the person who needs it, or refer her or him to another professional.) At the same time, I enlisted the support and cooperation of the more knowledgeable spouse—in this case, David; I helped him to realize it was in his best interest to have Ellen understand the decisions they must make together. Ellen was a fairly quick learner, though it wasn't an area she felt comfortable with. I find that nearly everyone can understand the basics well enough to learn what they need to know.

The purpose of this session was to discuss child support—a significant issue for parents. It is important to establish a support plan that both parents consider fair and that provides for the needs of their children. The definition of fair is more vital than most people realize. What matters in the long run, after the judge has approved the settlement and the lawyers have submitted their final bills, is that Ellen and David know that each got a fair deal. Otherwise, one or both may not live up to the agreement, may seek court action to change the agreement, or may personally strive to make their ex-spouse's life hell.

Several factors are taken into account in determining the amount of child support: each person's needs and expenses

at this time and in the future, present and future income, a detailed examination of the state guidelines, and what each person considers to be fair.

The Third Session

The primary focus of this session was on the house. They had been in conflict during the entire time of their separation over the use of their house. Ellen wanted to remain in the house for several years with joint ownership, while David wanted the house sold now and the equity divided between him and Ellen.

A marital residence is often a hotly contested issue, with the most common disagreement focusing on whether to sell or to keep the residence, and who gets to live in it if they keep it. Their house was the main dispute between Ellen and David and the primary reason they wanted a mediator's help. We began looking at several options that were available to them but which they had not considered.

After the house discussion, I provided the necessary information concerning alimony. Alimony is often a loaded word for both men and women. Husbands tend not to want to pay alimony, and, nowadays, many wives are ambivalent about wanting to receive alimony. In the cases where the parties agree that support is required, though the payer (usually the husband) initially does not want to pay alimony, after understanding the tax implications, he often prefers to pay alimony rather than a maintenance form of support or a larger property division.

I ended the session by asking them to make a house contents division list.

The Fourth Session

The session began with guidelines for their continuing joint house ownership. Along with parenting disputes, joint ownership is a common reason people end up in court. It is important to make clear what each person's responsibilities are concerning the house.

We went on to review David's house contents list. Lawyers refer to this as the "pots and pans" issue. They often describe it as a volatile area that is difficult to settle. People who have gone to divorce court fighting over their house furnishings often spend thousands of dollars in legal fees to win items that are worth far less. An attitude of cooperation and mutual benefit goes a long way toward helping to work out who gets the pots and pans. The conflicts are easier to resolve in mediation. Ellen and David disagreed over three items, and as you will see in chapter 4, I was able to help them resolve this.

David's pension plan turned out to be a difficult issue to settle; the issue of pensions is often touchy. David initially felt that he was entitled to the entire pension, and Ellen seemed to agree with him. This is often a tricky situation for a mediator to deal with, since it feels to one person as if the mediator is taking sides. I explain to both individuals not only what I am doing, but why I am doing it—that correct and complete information is necessary if we are to create a settlement that lasts, one that is considered fair by both parties, and one that reduces the potential for litigation.

Like most of the people I see, neither David nor Ellen had information concerning marital property before coming to mediation. I explained the definition of marital asset: it is a very important term for people to understand, and it

varies from state to state. Most states are equitable property states, while only eight states are community property states. This may not sound very significant, but it means that every asset you have, from your house to your pension, can be legally treated differently in each state. Equitable division means that the judge may assign property and assets to a spouse based on the judge's opinion about what is fair. Community property means that the spouses each own a 50 percent interest of the marital asset. You should understand the concept of marital assets in your state in order to make decisions concerning these assets. Once I describe the legal basis of pensions, there is frequently a lively interchange between the couple.

We continued with their remaining assets, and they disagreed over the division of their five-thousand-dollar bank account.

The session ended with a listing of joint debt and who would be responsible for the liabilities. Ellen and David were unusual in this often important area; they didn't have a large amount of debt.

The Fifth Session

This last working session dealt with some decisions they still needed to make: the division of their joint bank account and their house contents, and the payments of their children's college expenses.

The main areas of their divorce settlement had been decided, and this appointment focused on the details that had to be worked out. These details included future transfer dates for assets, their specific responsibilities for continuing joint ownership of their house, child support increases, and some minor issues.

They had almost completed the verification of all accounts by bringing in written bank statements, insurance documents, deeds to property, et cetera. They would send in any remaining documentation.

The Last Session

During the last session, Ellen and David reviewed the final written agreement, called “Memorandum of Understanding” (see appendix 11). Each person received a copy of their settlement and a hearty congratulation for a job well done.

The entire mediation took them exactly two months; they filed for a no-fault, uncontested divorce in Middlesex County, Massachusetts, after our final session.

HOW DID DIVORCE MEDIATION START?

In 1974, a man by the name of O. J. Coogler was on the board of directors of a nonprofit community agency in Georgia. This group was starting a new program called The Bridge, whose goal was to get runaway adolescents and their parents to sit down and work out their problems together. To achieve this difficult goal they decided to try a method called mediation. The program worked exceptionally well, better than anyone had dreamed possible.

The success of The Bridge set Coogler thinking. As a divorce lawyer and therapist, he experienced daily frustration with the emotional and financial problems faced by divorcing men and women. He asked himself if mediation could possibly succeed in another difficult context. Could this method be useful with a divorcing couple?

Coogler had been a lawyer for twenty years, then left his practice after becoming extremely dissatisfied with the adversarial method of divorce. In his book, *Structured Mediation in Divorce Settlement*, Coogler wrote that “in marital disputes, this legal struggle is frequently more damaging for the marriage partners and their children than everything else that preceded it.” Eventually he changed professions and became a licensed therapist. Soon after the success of The Bridge program, Coogler created the procedure he called structured mediation in divorce settlement. Not surprisingly, he is considered the father of divorce mediation.

The procedure of mediation has a long history as an elite type of conflict resolution reserved for delicate international disagreements and complex labor-management impasses. You may have heard nightly news reports of international mediators scurrying between terrorists and powerful national leaders. Or you may have read about labor mediators meeting with General Motors’ union and management leaders to ward off a massive strike. Until recently, however, no one had thought to use mediation to resolve a domestic conflict between two ordinary people. Coogler, however, saw mediation as a way to reduce the emotional trauma of the divorcing couple’s struggle over their settlement.

In the amazingly short period of time since Coogler’s idea was publicized, mediation has become the alternate way to reach a divorce settlement. Since 1980, divorce mediation is showing an astounding growth rate of 25 percent each year. Now it is being recognized as the civilized way to divorce in America.

Is Divorce Mediation Helpful Only for Custody Disputes?

A lot of people perceive divorce mediation as useful only in a contested custody battle. Divorce mediation first came of age as a way to resolve contested custody battles, and the method was immediately successful in reducing trauma and resolving the conflict. Now people are looking toward mediation to help in the financial areas of divorce settlement.

Mediation succeeded so quickly in the custody area because it answered a need that virtually every professional working with divorce knew was not being met. Professionals believed, and numerous research studies verified, that parents and children locked in a custody dispute paid a high emotional price for their battle. A prominent Massachusetts judge publicly stated that he'd rather make a decision on a death sentence than on a difficult custody case.

The following factors make custody mediation successful:

- 1.** Both parents decide the parenting arrangements. Some sociologists have noted that Americans are not very good about obeying others when it comes to their children. A parent who didn't like a judge's decision simply appealed the decision in court or disobeyed it in practice. People often spent several years in court rehashing the same old fight.
- 2.** Parenting arrangements are geared to the specific family needs, rather than following general rules that can't fit everyone's life-style. Mediation offers specific guidelines for divorced parenting as well as information on how similar situations were resolved.

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3. Clients in mediation learn the skills necessary for resolving future disagreements about their children. There's probably no other skill that will be as helpful in their joint parenting. Situations change and people need to be able to change. Courts assumed people could negotiate their future parenting conflicts, but many people need to be taught these skills.

Over one-half of divorced people end up back in court within one year of their divorce! The number one issue they are fighting over is their children. Studies in Colorado and California show that mediation reduces this litigation rate. Mediated agreements last, and people don't constantly drag each other back to court.

Why Has Financial Mediation Been So Long in Coming?

Three important reasons account for the late start of financial mediation. The first has to do with the background of mediation; it was initially used by mental health professionals who were familiar with custody dynamics but had little or no knowledge of the financial areas of divorce.

Soaring divorce costs are a second reason for the delay. These costs are a severe problem for divorcing people, but not necessarily for the professionals who earn an income from them. Divorce lawyers are usually not happy about turning over their income-producing clients to divorce mediators. The clients save money, but the lawyers lose a lucrative source of income.

The third reason is that divorcing people have not had the same exposure to financial mediation that they have had to custody mediation. Much of the time people have

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no choice with custody mediation—it is ordered by the court. Financial mediation is not yet court-mandated.

Though financial mediation may have been long in coming, it now offers a host of advantages over a court-fought divorce:

1. Mediation provides both husband and wife with a sound understanding of individual finances.
2. Mediation provides the opportunity for considering fresh options to help resolve financial problems.
3. It reduces conflict, thereby reducing the emotional trauma of financial disputes. This can benefit your children as well. Studies show us that children suffer whenever their parents fight. You might feel that if your courtroom battle with your spouse isn't directly about custody, it does not affect Johnny or Susie, but studies prove that children do indeed feel the pain of the battle, regardless of what issue you have chosen or been forced to fight over. Children often don't know what the fight is about; they only know that their parents are fighting.
4. The financial agreements, which include the important area of child support, last longer.
5. Divorcing people deserve a sane place to make their important long-term financial decisions. "Courtroom step" agreements (made by the couple's respective lawyers while literally on the courtroom steps) are not in anyone's best interest.
6. Mediation is an open process and allows for other professional input.
7. It saves each person the often excessive amounts of money that would be spent on litigation.

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Financial mediation is, in fact, a type of mediation that we will see more and more of. Custody mediation has provided solutions in the very difficult area of custody disputes; now financial mediation will help the millions of people who are engaged not in custody battles, but in battles over money.

CAN YOU USE MEDIATION FOR ANY KIND OF A DIVORCE?

Very simply, yes.

Some readers may not be aware that there are two kinds of divorce in this country, fault and no-fault. A fault divorce means there are reasons, called grounds, for the divorce, and one spouse is legally to blame for the breakdown of the marriage. No-fault means both people believe the marriage is ending with no one legally to blame.

Divorce is controlled by state law, and each of our fifty states has its own set of divorce laws. The fault grounds for divorce differ from state to state, which creates severe confusion for divorcing people who move across state lines. Some of the more common types of fault grounds are adultery, desertion, mental or physical cruelty, chronic drunkenness, and insanity.

In 1970, the United States joined the rest of the progressive nations of the world when California introduced no-fault divorce. Since 1970, legislatures in every state in our country have passed no-fault laws. (When it was first proposed, many people were convinced the new law would lead to a dramatic increase in our divorce rates, but actually the opposite occurred.)

Lawyers using the adversarial process often use fault

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grounds as a strategy. They may request a certain kind of divorce to enhance their client's precarious adversarial position or to scare the other spouse into agreeing to something else. The most typical example of this is when a parent counterfiles for custody of the children, claiming the other parent is unfit, because he or she wants to pay less money in support. Often the custodial parent is terrified of losing the children, and he or she will agree to less support rather than face a trial.

Most people filing for a divorce are not even clear about the kind of divorce they are getting. They may think they have filed for a no-fault divorce, when, in fact, the lawyer filed for a divorce on the grounds of mental cruelty. In fact, I've met hundreds of divorced men and women who don't know what kind of divorce they have received.

Another distinction plays a key role in divorce; a divorce may be contested or uncontested. Contested means that one of the spouses does not agree, either to the divorce itself or to the spouse's settlement offer. Uncontested means both people agree to the divorce and/or to the settlement. A divorcing couple and their lawyers who file for an uncontested divorce may have waged the most bitter, expensive, and vicious battle in their negotiations, but by the time they finally get to court, the disagreements have been ironed out and the divorce is filed as uncontested.

A contested divorce serves various purposes. It can delay a divorce if you don't want one, serve as a bargaining tool if your spouse doesn't want to be labeled as the one at fault, or show your resistance to the entire idea of a divorce. Years ago, preventing a divorce was a lot easier than it is today. Today you can slow the process down, or cause your spouse and yourself to spend a lot of time and money, but you cannot actually prevent the divorce.

To summarize, there are four types of divorce:

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1. Uncontested no-fault divorce.
2. Uncontested fault divorce (with grounds).
3. Contested no-fault divorce.
4. Contested fault divorce (with grounds).

Most people who mediate their divorce settlement file for a no-fault, uncontested divorce. However, a small number of people do file for a fault divorce after mediating their settlement. Mediation can be used with a fault divorce or a no-fault divorce. It can be used to negotiate a settlement that was begun as contested. However, when the couple finishes mediation, their divorce (the settlement) is always uncontested.

Most people can use mediation, and they should consider mediation as a first step. Divorcing couples can always go to the adversary system if they don't like mediation. It is more difficult to go from the adversarial setting to mediation, and most people who do this are upset by the amount of money they have already spent on legal fees.

People who go from mediation to adversary divorce rarely feel that they have wasted their time or their money. Generally, the cost is minimal, and the men and women involved realize that their mediation was extremely helpful.

Some people assume mediation is only for perfect couples, meaning people who can communicate well and who are filing for a no-fault divorce. These individuals will certainly be able to use mediation, but it is the hostile couples who will benefit the most from this method. In certain situations, such as those involving people with mental disabilities, emotional dysfunction, retardation, or physically abusive relationships, mediation may not be appropriate.

Let me add that mediation is frequently used to resolve a single conflict. Mike and Joan came to see me concerning

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Joan's moving out of state. They had been divorced for three years, and Joan wanted to take their two young children and move to South Carolina where her new husband was being transferred. Mike strongly objected and had spoken angrily of taking custody. Joan made threats of running away and spoke of wanting more child support. Four weeks later they had resolved their problem through mediation and came up with a plan that both felt was fair. Joan agreed to wait two years before moving, at which time Mike would be supportive of the move. They would share travel expenses for the children and change their parenting schedules to fit the new situation. Joan and Mike felt the scheduling changes were in the best interests of their children. I spoke with each of them shortly before Joan's move, and their situation was proceeding smoothly. Mike was behaving as he had promised, and everyone felt that the children and Mike would continue to be in close contact. Joan was making more money than she had been at the time of mediation, and they had worked out an arrangement whereby Joan would share the cost of sending the children by plane to spend time with their father.

Mediation may not work miracles, but you can use it in all kinds of divorces. The method can be started at any time during a separation or a divorce, and it can be used to resolve one conflict or to reach a complete settlement.

HOW LONG DOES IT TAKE?

Let me provide some background about the two phases involved in getting a divorce. 'The first phase is the settlement negotiations and the second is the routine filing for

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the divorce. You can, however, file for your divorce first, and then try to work out a settlement. The danger with filing first is that you may not have enough time to work out a settlement before your court date, and then a judge may end up making your decisions.

The filing is simply a request to a state court to approve your divorce and to schedule your day in court. The person who does the actual filing could be a paralegal, a clerk, a lawyer, or yourself, depending on which state you live in. If the court approves your divorce settlement, you are granted a divorce. Most states have a waiting period before the divorce is final.

Mediation is concerned with the negotiating phase of divorce. This is by far the most important and complex of the two phases. The mediation period generally takes six to twelve weeks. It takes more in the nature of six months to three years to arrive at a settlement with an adversarial divorce. Clearly there is quite a difference in the span of time required for an adversarial versus a mediated divorce. There are extreme examples, of course, and many of you probably know cases where the divorce has taken years to obtain. I hope none of you will compare to the man recently described in an article in the *American Bar Journal* who has spent the past twelve years actively pursuing his divorce. (In case you're curious, he still isn't divorced!)

There are several factors that influence how long it will take to reach a mediated divorce settlement. If the following factors apply, it will probably take longer than usual to work out your settlement:

- One person absolutely refuses to accept the end of the marriage.
- The couple has a complex financial portfolio that in-

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eludes such investments as limited partnerships and tax shelters.

- One of the spouses is having an affair with the spouse's best friend.
- One spouse is self-employed, while the other spouse has absolutely no knowledge of the business.
- One person refuses to become informed about an important aspect of their divorce.
- Both are very silent and rarely take part in the mediation.
- Both spouses are extremely hostile and verbally attack each other.
- Both parents insist on full-time physical custody of their children for their own personal needs.
- The couple has been ordered to mediation by a court after an unsuccessful court trial.

People with the following characteristics will most likely have a shorter mediation:

- The couple chooses mediation voluntarily.
- Both have been emotionally healthy during their marriage and are in touch with how they feel.
- Each person can separate his or her anger from the concrete issues that must be resolved.
- Both can express angry feelings, rather than seeking revenge.
- Both want to make their own decisions.
- Each is willing to learn new information.
- Both are willing to let go of their marriage.
- Each has some respect for their spouse.
- Both are parents who want what is best for their children rather than what is best for themselves.

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It is a couple's attitudes that determine how long they will take to negotiate their settlement. Reasonable men and women will most likely have a fairly short period of negotiations. In almost all cases, mediated agreements are more efficiently reached than adversarial agreements.