

## Getting Your Spouse to Use Mediation

**A**t least once a day—more often three or four times—an urgent-sounding caller asks this question: “I want to use mediation and not get divorce lawyers involved. What can I say so that my spouse will agree to see a mediator?”

“It’s not easy,” I reply, “but I can certainly give you some ideas.” For many divorcing men and women, the problem is not so much about a basic difference concerning how to resolve conflict. Rather, it’s that during divorce, a spouse is distrustful of any idea that emanates from the other. The distrust is created in two ways. First, the societal attitude encircling divorce holds that the end of a marriage should mean anger and bitterness (when, in fact, some couples are looking for a civilized approach). The adversarial system has created a world whereby if one spouse says “black” the other is sure to answer “white,” and on and on it goes. Where once there was a way for this couple to make joint decisions, the means for suggestions, discussion, and agreements have eroded. This makes taking that first step toward the mediator’s office a very difficult one.

The second way in which distrust is created between divorcing spouses is that one spouse changes—too often manifested by having an affair. The human response to infidelity is hurt and

anger, often translating into revenge. The faithful spouse's feeling of betrayal is intense. Though the affair is often a symptom of the marital problems, it is treated as a cause, a reason for the break-up.

Change may also be exhibited by an individual's emotional midlife crisis, or becoming sober, or embarking on a new career. To the spouse who has not changed so dramatically, it feels like a betrayal. During one session with my clients, Peter and Marie, married twenty-one years, he suddenly turned to his wife and, with bitter resentment, accused her, "Listen to the way you're talking—you've changed since I first met you." Too often, we do not allow our spouse to change; we expect him or her to stay the same. But, of course, change is inevitable. We all change, though many relationships seek to deny or prevent a spouse from doing so.

In the typical situation, one that rings true for more than 95 percent of the couples I see, either the husband or wife is reluctant or, more accurately, resistant to the divorce. When someone does not want a divorce, it only stands to reason that the individual may very well reject a process that leads to divorce, no matter how civilized and cost-effective it is.

Couples with the best chance of getting into mediation with the least amount of pain are those in which both spouses want the divorce and neither blames the other. In fact, prior to the divorce, they are typically considered the perfect couple. These exceptional divorcing couples mutually accept the termination of their relationship and many even intend to remain friends. Most people would expect, and it is generally true, that these couples used marriage counseling to try and save their marriage. What is less expected but is just as true is that they have reached an understanding that each needs to separate in order to be able to sustain individual growth and well-being. This man and woman acknowledge the sadness which pervades the end of a relationship, and though many divorcing couples acknowledge this feeling, what makes this couple unique is that neither partner is stuck in the anger stage of the divorce cycle. The

anger is there, of course, along with other conflicting emotions, it is just not all-consuming.

Those friendly divorces do not emphasize the hateful attitude that typifies the usual demeanor of those about to end a marriage. The angry behavior so often exhibited is not evident; indeed, friends and relatives, neighbors and co-workers are all shocked that this couple is on the road to divorce.

Typically, this seemingly perfect couple receives very little support from the people in their lives in their decision to divorce. In fact, the couple may be each other's best support person, as only the spouse truly understands the paradox that although they care for each other and are compatible, each believes that divorce is the best route. Even the divorce professionals who come in contact with this couple may find that the end of this relationship is harder to accept than most.

In our society, we accept divorce only as a last resort for situations in which a man and woman cannot live together without causing themselves or their children an unconscionable existence—where physical beatings, alcohol or drug abuse, cheating, and the like occur—and even then, we wonder if there isn't another solution. We have come to our modern-day acceptance of divorce reluctantly. When we read of violence permeating the lives of a husband and wife, when we personally visit a couple whose house resonates with constant yelling and disparaging remarks, when a woman or a man continues to drink, we will accept the termination of the marriage. But when a married couple are civil to each other and appear to care for each other, society questions and even rejects the termination of that relationship.

Why do people become upset upon hearing that a seemingly perfect couple is considering divorce? Virtually all married people consider divorce, if only for a fleeting moment. They may wonder—if only for a second—if they should continue in their marriage or if divorce wouldn't free them to experience something else. And the divorce of the seemingly perfect couple ex-

acerbates that momentary vision of something else. For if that couple chooses divorce, what of those who are not perfect? Shouldn't they divorce as well? The divorce of the "perfect couple" threatens those who choose to continue in their marriages.

Married people are not alone in feeling threatened by the divorce of the perfect couple. It also threatens those who are not married but hope to be one day. Single people look to the seemingly perfect couple as the ideal embodiment of marital life. Over the years, studies have conclusively shown that men and women alike believe in marriage. They invest heavily in being able to predict which couples will make it and who then become role models for married life. If that kind of couple divorces, people may question whether anyone can make a marriage work.

In one area, though, the couple does receive support. Their decision to use mediation meets with approval from friends and family. Secretly, however, these friends and family confide the hope that mediation will end in reconciliation. Yet, the couple has decided upon a specific future—one which does not include the other.

As a mediator, I have a number of seemingly perfect couples among my clients. However, you can rightly assume that most couples do not fit this profile. In the majority of the couples I see, one spouse does not want the marriage to end and holds the other spouse responsible for initiating the break-up. In these situations, the spouse who calls me must deal with the first step: how to get his or her spouse to use mediation.

The best way to get your spouse to consider mediation is to first provide him or her with information about the process. Since the mediator has had the opportunity to speak with the calling spouse, the information packet was designed to explain the benefits of mediation to the spouse who is uninformed or ambivalent. I have included a sample packet at the end of the book (see appendix C, page 121). Once he or she is aware of it, the benefits of mediation are likely to appeal. Often, a caller

wants me to call his or her spouse to convince that individual to attend a mediation session. This is not something I can do. A mediator cannot make an unsolicited call.

I receive many calls from individuals who are still living with their spouses. In these cases, even though one spouse doesn't want the divorce and there is a lot of blame, the situation makes it easier to deliver the information packet as well as to describe the advantages of mediation. Though a period of time spent living together in anticipation of divorce is a stressful time of life, the fact that you are still living together may make it easier to share information.

If the couple have already separated and are living apart, I try to help the caller find an appropriate way to get the information to the spouse. In some relatively calm situations, he or she will simply be able to send it, the spouse will read it and wish to cooperate in mediation. However, for many people, it won't be that easy. Such a caller is aware that the spouse is too angry and resentful to read any material; therefore, the caller needs to figure out another way to get him or her to read the information.

If you think your spouse may be resistant to information that comes from you, the best way is to find someone whom your spouse knows who has actually used mediation. If the person happens to be a close friend, his or her approval will carry a lot of weight. However, even if it isn't a friend and is instead a neighbor or an acquaintance, do not underestimate the importance of a personal recommendation. If someone is considering mediation but is wary of embarking on an unknown process, such words are invaluable. When you first consider mediation, mention this to a number of people. You may get some help.

If you don't know anyone who has personally used a mediator, another option is to find someone who is still on speaking terms with both of you and who you think may be supportive of mediation. Since that person might never have heard about mediation, you will need to supply details, and an information packet is a good way to start. The use of a mutual friend or a rel-

ative is an excellent way to get your spouse to consider mediation. However, I find that less than half of my clients have such a person in their lives.

There is just one person that you cannot use—your minor child. In the adversarial system, both parties are strongly—and rightly—advised to keep the child out of it, to protect the child from the two parents. Causing such harm is not a by-product of the mediation process. Instead, studies of children whose parents are in mediation have consistently shown that these children have a significantly better adjustment to divorce. Children benefit enormously when their parents use mediation. Let me be clear: I am *not* recommending that a parent attempt to get the child on his or her side or to use the child against the other parent.

However, in trying to obtain the cooperation of your spouse to try mediation, the assistance of an *adult* child is invaluable. It works best if the child is at least beyond high school age. But there are no hard and fast rules. The emotional maturity of people differs, and the emphasis on adult child is *adult*. Remember, you need to be clear that the only help you are asking from your child is getting your spouse to consider mediation.

A good number of the divorcing couples I see have been married for a long time, thirty to forty years. For these men and women in their fifties and sixties, it is not uncommon that the person who brought up the idea of a mediator was their adult child. I am always moved when parents confide in me that it was their child who first made the suggestion. Typically, these clients had not heard of mediation until their son or daughter suggested it. These parents trust that their child has their best interests at heart.

The callers who are the most upset are those whose spouses have consulted with a lawyer. Such situations often require creative methods for getting their spouses to use mediation. Recently, when I spoke to a caller, Gary, his voice reflected how upset he was. Anxiously, he explained, “My wife hired a divorce lawyer, and she had me served with a summons while I was at

work. Would you believe that a sheriff came to my office and actually served me with a summons in front of everyone? I felt like a criminal, which, I'm sure, is exactly what she wanted. She succeeded in humiliating me.

"I went to talk to a lawyer," he continued, "to reply to that summons, and he advised me to retaliate. He said that I could get her. Of course, then he asked for his \$10,000 retainer! Now, I'm not stupid. I know this will just turn into a costly war. The only ones who will win are the divorce lawyers. I don't want to spend money for that."

I asked what he would like to do. "I want to use a mediator," he replied. "But I just don't know how to get her to come."

In divorce, revenge may be sweet, but as Gary pointed out, it is also costly. He was sophisticated enough to realize that a retainer is only the upfront money. His lawyer described legal action that would use up that money in no time, so that Gary's legal fees would be substantially higher as the adversarial course escalated.

Not long after, a woman named Judy called. She said that she had seen a canceled check from her and her husband's joint checking account that her husband had written to his lawyer, for \$7,500. On the morning of her call to me, her husband told her he would be writing yet another check to his lawyer. Judy was upset. "He's forcing me to hire a lawyer, but I really don't want to spend all our savings on lawyers," she said. "We are not wealthy people. I know that there has to be another way." When I asked her how I could help, she replied, "I want us to use a mediator, but I don't know how to go about getting my husband to meet with you."

I suggested to both Gary and Judy that they write a letter to their spouses and enclose the mediation packet I would send them. I told them that in their letters they should outline their concerns and suggest that the couple see a mediator in order to reach a fair divorce settlement. I told them to be sure to say that they could call the mediator first and to suggest that the spouse also seek the names of additional mediators. I explained that

they both could come in for a free introductory session. And above all, I said, remember to be polite and listen to your spouse's concerns.

Shortly after my conversation with Gary, he and his wife scheduled a mediation session and successfully reached a divorce settlement, spending \$4,740 on mediation fees, which included their divorce agreement, and without incurring any additional legal fees. Judy and her husband also used mediation. Their total mediation cost was \$6,110, which also included the cost of their divorce agreement. Judy had an additional legal bill of \$545 for an attorney she consulted. Her husband had already spent \$15,500 on his attorney fees.

If writing to your spouse doesn't work, another way is to ask him or her to read a book or article about the subject. Sending the book or article is a lot more effective than simply providing the name or title, because the latter option requires your spouse to do extra work—to go to a library or to a bookstore. It makes sense for you to take the extra step.

A couple, Robert and Julie, once had a terrible argument in my office after she found out that he had never read my first book before sending it to her and suggesting she read it, which she did. Julie complained that her husband had once again done less work than she—an old, sore issue with Julie. She felt that Robert went through the motions of working on their relationship, but he didn't do the actual work (here represented by reading the book), while she carried the burden. They continued in mediation, but it caused a lot of unnecessary turmoil. It is always helpful to have written material to share with your spouse. Good written information helps people to make good choices. A reminder—and an important one—first read any book or other material that you send to your spouse. (See the resource list on page 194 for a list of helpful books.)

Let me add one absolute: *Do not, under any conditions, send material that in any way insults or disparages your spouse or his or her behavior.* A woman named Susan once called and told me that she had sent her husband an article about men who run off with



their secretaries; her husband had an affair with his secretary and was now living with her. According to Susan, the article described the terrible consequences for that man's wife and children and, as far as I could surmise, the later anguish and regret of the errant husband. "Now," Susan said, "I want to send information about mediation to my husband, but he told me that he's so angry with me that he will return unread anything I send him. He's already sent back something important I sent him. He's really mad, which is so ridiculous. I'm the one who should be mad. He left me."

Susan is an example of a spouse who is either unable or unwilling to accept the consequences of her actions and has little insight into her interactions with her spouse. Such lack of insight makes it difficult for couples to reach an initial agreement to use mediation.

A number of callers are concerned that their spouses will automatically discard or ignore the material. If this applies to your case, try to think of another way to get your spouse to read the information. Keep in mind that you are the expert on your spouse. As you consider your approach, keep that knowledge foremost.

In many communities, various agencies (community divorce and resource centers, adult education seminars, lawyer and/or counseling groups) offer public lectures on separation and divorce, which can be a great way to introduce your spouse to mediation. However, be certain to give your spouse the option of going to the event separately from you, or offer to refrain from going yourself so that he or she can go alone. You might say something like, "There is a lecture on mediation next Wednesday evening. I'd like us to consider mediation, and I want to know if you'd go to the lecture to find *out* more about it. I'd be glad to let you decide whether we both go, and if so, if we sit together, or if you prefer that I don't go." And then, most important of all, listen to your spouse's response. Do not argue. If necessary, explain and offer to explain some more. And always,

in any discussion with your spouse, keep mud-slinging comments out of it.

As I've said, our office, like those of many other mediators, offers a free introductory session because a significant number of people want more information about the mediation process, as well as about the mediator, in order to make an informed decision. They are understandably concerned about venturing forward without enough facts to feel comfortable. An introductory session provides an important opportunity to meet the mediator, to hear about the mediation process, and to ask questions. Take advantage of this opportunity. If the mediator doesn't offer a free introductory session, nothing prohibits you from asking for one and, in fact, I suggest that you do. I have had clients who are so anxious to begin the process that they ask if they can skip the introductory session. My answer is that not only is it free, it is important. It is a rare couple who attends an introductory session and does not decide to use mediation. Once they hear what a common sense approach it is, they invariably choose the process. Though I don't keep actual statistics on this, I would estimate that not more than a half-dozen couples a year, out of more than three hundred couples who come to an introductory session each year, fail to mediate. So, while you are describing the mediation process to your spouse, do not forget to tell him or her about the free introductory session.

In one situation, getting mediation information to a spouse does present a serious problem — when there is a restraining order on one or both of the spouses that prohibits one from sending mail to the other. In the vast majority of situations, it is the woman who has obtained a restraining order on the man. (It is rare for me to see husbands getting restraining orders on their wives, though it does occur.) Whichever the case, in a typical order, neither can send mail to the other. My advice is that if a restraining order that prohibits sending material is present *do not defy the order*, even if you consider your intentions good. Instead, you must find an intermediary to deliver the information, or ap-

ply to the court for a waiver of the order in order to allow you to send it or have your lawyer send it to your spouse's lawyer.

At the end of one mediation, a client, Richard, wanted to tell me how he and his wife had decided to use a mediator. He arrived home one evening, listened to his answering machine, and heard a friend recommend a movie to him. Richard said the message sounded like, "Go see *Disclosure*-you'll appreciate it." Sure enough, Richard went to see the movie, and he was so impressed that the characters portrayed by Demi Moore and Michael Douglas chose to use a mediator that he suggested mediation to his wife. She considered it and agreed. Weeks later he saw his friend and thanked him for the suggestion. *Disclosure?* his friend responded in a surprised voice. "You know that's not my type of movie. I said, *Death Wish!*"

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Consider these suggestions and choose the ones that you think will work best with your spouse. After all, divorce professionals are just experts in their fields, not experts on your wife or husband. You know your spouse best, even if she or he may be temporarily acting in a way that is out of character. Be positive. Do not give up before you try. You have nothing to lose and everything to gain if your spouse will mediate.