

## The Pros and Cons of Mediation for Divorce or Paternity Cases

We receive many calls from people, perhaps like yourself, who want to know whether mediation would be right for their divorce or child custody/support case. Mediation can be successful under the right circumstances, typically, where the parties are friendly and open with each other and are in agreement as to how to handle all or nearly all issues. However, in many cases mediation simply will not work. Trying to force it will only cause delay, aggravation, and wasted funds. In those cases, it is often better for each party to retain his or her own counsel in which each attorney represents their client, guiding the process along to a completion.

Mediation is, in essence, where both parties jointly retain and pay one attorney to oversee the entire case from start to finish. That party will explain the process, explain the applicable law, provide all needed forms and documents for the parties to sign and serve to each other, file them, and assist the parties in resolving all issues (child custody, child support, spousal support, division of assets and debts, etc.). That attorney will also oversee the drafting of a final Stipulated Judgment and all required forms to resolve all issues once and for all.

The following are the pros and cons of mediation to help you determine whether it is right for you.

### Pros of Mediation:

1. There is no mystery involved when both parties are present for the discussions. Both sides know exactly what is being discussed.
2. In the right situation, mediation can be the least expensive option. This is due to the fact that there is only one attorney involved for *most* of the process and costly litigation is avoided.

*Note: After the settlement agreement is drafted and agreed upon, both parties are recommended to have a short consultation with their own independent attorney who will sign off on the agreement. This ensures there is no misunderstanding and makes the agreement more enforceable.*

3. Where the parties are agreeable on all or nearly all issues, the process can be sped along.
4. Mediation can promote good communication and continued good relations between the parties, which is particularly important where children are involved.

### Cons of Mediation:

1. Both parties jointly retain the attorney handling the mediation. Thus, he/she cannot be one party's advocate over the other e.g., advising one party how to get an advantage over the other or whether the party should not take a deal that is being offered. The attorney can only explain what the law generally is as it pertains to any particular issue. The mediating attorney must remain neutral.
2. Either party can decide at any time that he/she no longer wants to proceed with the mediation for any reason. If that happens, the attorney that the parties had used in the mediation will not be able to represent either party any longer. Thus, both parties will need to find (and pay) entirely new attorneys. To an extent, they will have to start over.

3. Cases involving complex property issues, large estates, disputes over child custody and/or decision making, have a history of abuse or domestic violence, or where one or more of the parties is highly emotional over the break up, are usually unsuccessful in a mediation setting. The same is true where one of the parties is against moving forward with the case in the first place and wants to stay together.

It is important to note that many of the pros of mediation, such as keeping costs and animosity to a minimum, can be accomplished via a traditional divorce or paternity case if the parties and counsel are committed to remaining cordial and reasonable. In this situation, in lieu of sharing one attorney as a mediator, one or both parties can elect to retain their own counsel to attempt to negotiate an expedient settlement and draft the necessary court documents.