

| | Litigation | Mediation |
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| Costs | The costs of litigating a divorce case vary widely, but are enormously more expensive than couples expect. | The costs of mediation are much more manageable and in control of the parties. Mediation involves only the mediator. Where experts are needed, the parties will often agree on using only one neutral expert. There are no court hearings, formal discovery, or trials. |
| Time for Completion | Because of the nature of litigation process as well as the overburdened court system, litigated divorce cases are often taking years to complete. | With mediation, there are no contentious pleadings or resulting court hearings. The parties can have the necessary legal documents filed as they are ready to do so and the timing of the process is within their control. It may be completed with 4-6 months, depending upon the needs of the parties. |
| Decision-Maker | Lawyers present the evidence and their arguments to a judge, who then makes the decision and enters binding orders and judgments against the parties. The parties have very limited input, except indirectly through their counsels. The decisions are law focused. They are supposed to be based upon the law as applied to the facts as presented to the court. | The decisions and final settlement agreement are arrived at by the parties. The mediator does not make decisions for the parties or issue orders against them. The decisions of the parties are driven by their goals, interests, and sense of fairness. The law is subordinate to parties' own sense of fairness. |
| Contention | Involving lawyers can make the entire process more litigious and contentions than the parties want, what is necessary, or even what is appropriate. Antagonistic pleadings and court hearings only contribute to these problems. The parties are discouraged from communicating with each other and the stage is set for future disagreements and litigation. | If the parties insist on being contentious, mediation will not work and they just as well pay for litigation. For those who wish to resolve their issues more quickly and less costly, the mediator can help them work with each other and avoid unnecessary contention which leads to better, more expeditious results. Communication between the parties is improved and sets the stage for joint decision making in the future without the intervention of lawyers and the legal system. |

BENEFITS OF MEDIATION V. LITIGATION

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| Uncertainty/Risk | In litigation, each party emphasizes their own strengths, overstates their demands, and downplays the other side's position. A judge will take into consideration whatever evidence he/she has received and the arguments made by the lawyers. The judge will also be affected by other factors including his/her impression of the parties, the evidence, the lawyers, and even whether he/she is having a bad day. While the judge is bound by the law, in reality the parties are subjected to a great deal of uncertainty and risk as to what the judge will ultimately decide. | Because the parties develop the settlement agreement between them, there are no surprises or exposure to the uncertainty and risk of what a judge may decide. |
| Flexibility | Court hearings are costly and contentious. The ultimate decisions of the court are not likely to please either party. Because courts do not want to address the same issues multiple times, getting back to court to address the same issue generally requires a showing of changed circumstances. Once a party begins to abide by the court order, each party may come to realize they wish they would have requested something different at the court hearing. Changed wishes are not changed circumstances. The consequences are that they are often stuck with a bad situation. | Mediation emphasizes problem solving to create a number of potential solutions for both parties. With mediation, the parties can experiment. They can make offers, consider alternatives, and enter into short-term agreements without being forced to make final decisions until they have had an opportunity to test different decisions and arrangements. If they find that their initial plans aren't practical, these can be easily addressed at the next mediation session. They can arrive at new agreements neither of the parties had previously considered. They don't give up any legal rights by trying mediation. |

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| Convenience | In litigation, the parties are at the mercy of the schedule of each lawyer, as well as the court. Also, hearings are generally scheduled at a particular time each day with dozens of cases scheduled at the same time. The parties may sit through dozens of hearings in other cases before their case is called by the court. (Meanwhile, the lawyers are billing for sitting there and waiting.) With all of these difficulties, scheduling at the convenience of the parties is not given much consideration. | With mediation, there are only three people whose schedules need to coincide—the parties and the mediator. The mediation conferences are not limited to mornings, and there is no sitting around waiting for others to present their case before the parties begin. Moreover, there are no rules that need to be strictly followed as there are for court hearings. |
| Privacy & Confidentiality | As described above, there is no privacy in court hearings. Several cases are called at the same time, so all of those parties, their families and support people, and their lawyers will hear about the parties' family and financial situation as well as their disagreements. The hearings are also open to the public. | Mediation conferences are held privately and entitled to confidentiality rules. Discussions and tentative agreements are confidential. What is discussed during mediation may not be presented in court. |
| Enforceability | Each order of the court, including the final decision, is legally enforceable. However, orders issued against parties through adversarial proceedings are resented and often require costly, legal proceeding to enforce compliance. | The final settlement agreement reached by the parties can be filed with the court to become a final judgement. It is legally enforceable in the same manner as a court judgement issued after a trial. However, having been reached through a mediation process, these judgments have a significantly higher rate of compliance without further legal proceedings. |