

The Divorce Agreement Newsletter

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The Elements of Effective Divorce Mediation

Divorce mediation became a national movement in the late 1970's. Forty years later we are still trying to sort out the elements of effective divorce mediation. Most mediators come from one of three quite different professional backgrounds as family lawyers, financial specialists, or mental health professionals. The starting point for most mediators continues to be their own professional field of origin. It's time to take a fresh (and broader) look at the skills, knowledge and personal attributes of divorce mediators:

The essential knowledge base. Ideally every mediator needs to acquire the following categories of professional knowledge: (1) the legal framework of divorce; (2) the emotional process of divorce; (3) the fundamentals of financial planning; (4) tested conflict resolution strategies; and (5) the principles of non-directive counseling. Each of the first three of these emanates primarily a different profession than the other two.

Mediator skills. Mediator skills are centered on the last two of the above categories of knowledge - conflict resolution strategies in the context of non-directive counseling. Counseling is non-directive if it is focused on the goals and realistic options of the clients. A mediator also needs an ability to identify and separate out the legal, financial and emotional factors in each case to determine the primary factors that drive the conflict.

The mediator as educator. The mediator can provide as needed or requested some useful information relating to the process so long as it is impartial and accurate, and does not constitute legal or financial advice.

Personal attributes of the mediator. Every mediator needs to be an active listener, and to have respect, empathy and a sense of humor. The ability to reframe is often useful.

The structure of mediation. Every mediation requires sufficient disclosures and proper preparation. Agendas are worked out in a collaborative manner. The mediator enforces civility in the process.

Drafting the results. The mediator drafts either a memorandum of agreement or, if appropriate, the actual agreement. Drafting in clear understandable non-legalistic English prose is an essential mediator skill, because tuning up such a draft in a collaborative manner becomes the capstone of the process.