

What is divorce mediation, and how is it different from arbitration?

Divorce mediation is a process in which divorcing spouses try to negotiate an acceptable divorce agreement with the help of a neutral third party: the mediator. The mediator helps the spouses to communicate and negotiate but doesn't make any decisions for them.

Both mediation and arbitration involve a neutral third party who is not a judge. In mediation, the neutral party has no power to make decisions. In arbitration, the neutral third party -- the arbitrator -- listens to the facts and then decides the case, just as a judge would. Although the parties can present evidence and make arguments, they have no say in the final decision.

Why is mediation better than going to a lawyer -- or is it?

Using mediation to negotiate a divorce agreement is almost always going to take less time, cost less, and result in a more solid agreement than using a lawyer to take the same case through the courts. When you are going to have an ongoing relationship with your ex-spouse, such as when you have kids together, mediation can help to improve communication and make your future interactions a little bit easier.

For some couples, however, negotiating directly with each other, even with the help of a mediator, is not possible -- either because of problems in the relationship (such as domestic violence or substance abuse) or because a spouse is unwilling to mediate. Even if you decide to mediate, you may want to hire a lawyer in a limited capacity to consult with you outside of the mediation. Many mediating spouses find it helpful to work with a consulting lawyer who can offer legal advice and review the settlement agreement before it is signed.

What is the difference between court-ordered mediation and private mediation?

As its name implies, court-ordered mediation is mediation that is required by the court as a part of a divorce proceeding. In many places, mediation is mandatory when there are custody or visitation issues. In fact, court-ordered mediation usually is limited to child custody and visitation issues, while private mediation often also covers financial issues and property division. There is often no fee charged for court-ordered mediation, whereas private mediators usually charge an hourly or per-session fee. The mediator in a court-sponsored program often makes a report to the court; private mediation is usually confidential.

How do mediating spouses protect their legal rights?

Because divorce involves legal questions, every divorcing spouse should know and understand his or her legal rights before agreeing to a settlement. One way for a mediating spouse to do this is to work with a consulting lawyer who knows and understands mediation. Doing some independent legal research is another option. It's best to do this as early in the process as possible, then follow up with a legal review before signing the settlement agreement that comes out of the mediation.

Does the mediator meet with both spouses together or separately?

Some mediators prefer to work separately with each spouse, acting as a go-between. Others prefer joint meetings where both spouses are present and communication is more direct. There can be advantages and disadvantages to each approach, depending on the circumstances of the particular couple. This is a question that divorcing spouses should address in advance with a potential mediator.

How much does mediation cost?

Most mediations involve an hourly or per-session fee, except for those that are ordered by a court or conducted through a community-based mediation agency. These agencies may provide mediation at a reduced cost or even for free. The number of sessions needed to gather information and negotiate an agreement will vary from couple to couple, so the cost of the mediation will also vary. Mediation, however, will usually be much less costly than adversarial litigation. Our fees can be found [here](#).

How long does mediation take?

Mediation almost always takes less time than litigation. Depending on the issues, it can even take place in one day, although most divorcing couples meet for several sessions on separate days over a period of days or weeks or months.

Further Information

See *Divorce Without Court: A Guide to Mediation & Collaborative Divorce*, by Katherine E. Stoner (Nolo).