

STRATEGIES TO CREATE A PEACEFUL DIVORCE

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“We must pursue peaceful ends through peaceful means” – Martin Luther King Jr.

How is it possible to create a peaceful divorce when there is so much hurt, anger and lack of trust between our clients? With the pain of ending a marriage, there is the tremendous stress, grief, conflict escalation, and financial devastation which may end in a courtroom battle. The key to a peaceful divorce is to collaborate with opposing counsel, and to encourage your clients to engage in mediation with a mediator who can help guide your clients and facilitate the negotiation process. The goal of mediation is to empower attorneys and clients to problem solve so a satisfying settlement will be reached. As you help your clients to create solutions to issues, their cases will finalize successfully for their family. When you serve as consulting counsel in mediation, your clients will be using your services to educate them in legal and financial matters. Your coaching relationship in mediation helps clients take an active role in the important decisions. It also builds a positive attorney-client bond.

Effective Mediation Promotes Peace

“It is understanding that gives us an ability to have peace. When we understand the other fellow’s viewpoint, and he understands ours, then we can sit down and work out our differences.” – Harry S. Truman

For you and your clients to feel comfortable with divorce mediation (whether you directly participate in the process or serve only as coach outside the process), you must have faith that the process will be fair, and that your client’s rights will be protected. You’ll need to rely on the mediator’s negotiation skills, experience, legal expertise, conflict management tools, and sensitivity to your client’s concerns to ensure that a

reasonable agreement will be achieved. Here are things to consider when you and/or your clients interview a mediator. Discuss these questions and issues with your clients when considering mediation to resolve all or a part of the dissolution.

Facilitating and Educating-Not Giving Legal Advice

1. Does the attorney/mediator have extensive training in mediation skills as well as family law? Will he/she educate your clients as to their rights and responsibilities under the law *before* they begin to negotiate the issues so that they will make informed decisions? Will the mediator advise your clients to sit down with you for legal advice at any time during the process? As a neutral, the mediator cannot ethically give either party legal advice, but should explore legal options. Will the attorney-mediator prepare all the court documents and agreements, but advise your clients to review and receive further advice from you as consulting counsel *before* signing any agreement?

Building Trust

2. How will the mediator build trust in the process with your clients? Will the mediation sessions always include both spouses? Occasionally, when necessary, each party may need to have an *individual caucus* by phone with the mediator if there is a sensitive issue to discuss about the process. But unlike commercial mediation, it is best if both parties are in session together with the mediator. Both spouses should receive identical summary letters after each session documenting interim agreements and setting forth tasks to perform. These letters help consulting counsel (who often is not present during meetings) to catch up quickly if there is a need during the process. Reviewing these summary letters with your clients gives you, the attorney, a good handle on the crux of the issues. With authorization by your client, you and the mediator can work as a team with opposing counsel to get the best settlement possible.

Creating A Serene Atmosphere

3. Does the mediator set forth a peaceful atmosphere? Is he or she serene and composed when speaking with you or your clients? How will the mediator make you and your clients comfortable? Will the mediator set forth enforceable, positive ground rules that require respectful behavior (i.e. no interrupting, no accusing, no yelling, etc.) so that both parties feel safe and secure? Will the mediator accommodate both attorneys by addressing their concerns too?

Confidentiality and Privacy

4. Does the mediator stress confidentiality and have all parties (and their attorneys, if present) sign a confidentiality agreement to protect everyone's privacy? Does the mediator protect you as independent counsel by requiring clients to sign written authorizations so that the mediator may speak to their clients' attorney(s) and experts if necessary? Does the mediator limit the scope of your liability with language in the Marital Settlement Agreement as to the boundaries of your involvement?

Balancing Power

5. How will the mediator balance the power so that your client doesn't feel manipulated, controlled, or bullied by the other party? How will the mediator deal with opposing counsel if there are threats brought to the mediation? An effective mediator must treat both the parties and the attorneys even handedly, yet still foster cooperation, full disclosure, and commitment to fairness.

Decreasing Acrimony

6. How will the mediator reduce acrimony and keep everyone focused on problem solving instead of arguing? When parties are in mediation, the threat of litigation is there, but the focus should be on settlement. The mediator's job is to de-escalate conflict, reduce stress and disputes, so that the parties may engage in brainstorming solutions that are mutually acceptable.

Full Disclosure

7. What will the mediator do to make sure that both parties fully disclose all issues and financial documents in a timely manner so that property can be divided fairly, and support calculated and determined correctly? To be effective the mediator assumes a role similar to an “Escrow Officer” making sure both sides produce and exchange documents without delay or frustration.

Effective Listening

8. How will the mediator deal with the intense (even volatile) emotions that are revealed in session? Will the mediator listen effectively and help the parties to express their feelings to clear the air (in an appropriate manner) so that negotiations are enhanced and forgiveness can take place? You’ll need to evaluate your client’s concerns to understand whether the mediator has the expertise to deal with your client’s personality and emotions.

Empowerment

9. What approach will the mediator use to empower a spouse who is fearful or is uncomfortable asking for what he/she wants? Your client’s mediator should gently prod and ask open-ended questions to elicit your client’s true needs and desires. The mediator must be sensitive to empower both parties to be open and honest.

Honoring Commitments

10. How will the mediator ensure that the parties (and attorneys), honor commitments as they move through the stages of the process? The mediator must create trust and confidence among the parties as well as the attorneys.

Dealing with Complex Issues

11. How will mediation deal with complex issues such as stock options, the sale of a business, equity shares, business evaluations, and retirement accounts? The mediator should encourage the parties and counsel to jointly use an

agreed upon forensic accountant and neutral experts to assist the process, so that expenses are decreased, and wise, informed decisions can be made.

Effective Co-parenting

12. What tools does the mediator use to guide the parties to co-parent effectively?

Finding an attorney-mediator who also has a background and training in counseling or psychology may help deal with these highly emotionally charged issues.

Once your clients (with your guidance) have interviewed and chosen a mediator with whom both parties are comfortable, your clients will need to do some work to prepare for the process. Consider encouraging your client to take the steps to ensure serenity, knowledge, and success.

HELPING YOUR CLIENT TO FIND PEACE WITHIN

“It isn’t enough to talk about peace. One must believe in it. And it isn’t enough to believe in it. One must work at it.” Eleanor Roosevelt

Counsel your clients to do the following:

Emotional Help

1. Encourage them to work on their serenity by understanding their emotions. Reading self-help books on relationships is helpful; however the feedback and reflection they receive from a therapist is most productive. Their hurt, loss and disappointment are legitimate, and how they process these emotions will have a great impact on the peacefulness of their divorce and their lives right now. Ask them to consider referrals from you, the mediator, friends, and religious leaders. They are going through a confusing and challenging life change and your encouragement to get help is highly influential.

Legal Education

2. Educate them with information about their legal rights. Ask them to read “Divorce Magazine”, and visit nolopress.com, findlaw.com, and other Internet sites. The legal section of a bookstore or library will give them additional knowledge. Encourage them to ask you and the mediator good questions to feel more confident about the law and the process.

Nurturing During Challenges

3. Divorce is a stressful life change that can feel overwhelming. Meditating, praying, divorce recovery workshops, and exercising, can relieve the stress. Even a massage, nature hike, and reading inspirational works will nourish them. Whatever they can do apart from the divorce process will help them achieve balance.

Ending the Blame/Guilt Syndrome

4. Since we are practicing in a “no-fault” divorce state, it’s helpful to end the cycle of blame, guilt, and resentment. Your clients can learn that both spouses did the best they could with the relationship tools they had. Although they both made mistakes and experienced failed expectations, each of them is only 50% responsible for the problems in their marriage. Counsel them not to re-live what their spouse did or didn’t do. Focus on how they can be fair to themselves and their children. The greatest gift you can give them is peace, and final resolution. You are in a unique position to lead your clients away from a highly conflictual, painful experience, and turn it into a problem-solving process, which creates a fair and mutually acceptable agreement.

Inspiring your clients to choose a collaborative mediation process enables you to also experience a more peaceful process yourself. Working everyday with hostile situations creates anxiety in your life and you may carry this pain home to your own family life. When you become involved in a positive

approach and help your clients to be creative in the “solutioneering process”, your own stress is reduced and your job satisfaction increased.

“Peace does not dwell in outward things, but within the soul.” Francis Fenelon.

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