

# Professional problem solving without lawyers

A mediator may make bridging an impasse at home, school or work easier than you think

by Nancy Hawn

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When kids fight on the playground or adults resort to angry exchanges, the intervention of an impartial individual makes it easier to solve the problem. Much like a neutral country's ambassador working with warring nations, the third party can cool hotheads and negotiate a truce.

A mediator is a professional problem-solver whose goal is simply to make agreement possible.

The mediator is not a lawyer or a therapist—he or she does not give legal advice, represent individuals or solve personal problems. The mediator creates a supportive atmosphere, establishes an agenda, and helps keep the discussions on track.

Mediation, a means of resolving conflicts between parties through the guidance of a third party, is increasingly viewed as an effective, cost-saving alternative to traditional litigation. While mediators generally charge the same hourly rate as lawyers, the speed with which matters can be resolved can make it tens of thousands of dollars cheaper than fighting it out in court.

Ninety percent of all matters that start through our legal system are resolved by negotiated settlement. Mediation opens the lines of communication between groups, gives individuals control over decision-making and reduces stress and conflict because it is a non-adversarial process—winning an argument or placing blame is not the goal.

Now in its third decade, mediation has grown in depth and diversity. Initially developed for use in areas of labor-management relations, community disputes and family conflicts, mediation is now used in peer mediation in schools, victim-offender programs seeking to heal, and management of large, multi-party environmental and public policy disputes.

Schools, in particular, benefit from conflict resolution and peer mediation programs, which are flourishing in many districts. Mediation has a positive impact on discipline and curriculum.

Teachers gain skills useful for teaching and class management, and students learn to take responsibility for their own actions. Conflict resolution and peer mediation programs lead to constructive problem solving.

The most common use of mediation, however, is in separation and divorce matters. A divorcing couple will meet together with a mediator in a neutral, confidential setting. With the guidance of the mediator, a couple identifies issues, gathers information and explores potential resolutions. Most couples know the issues that need to be worked out, like parenting and living arrangements.

One of the jobs of the mediator is to make sure all aspects of the divorce are discussed and covered in the final agreement, even if they are not the issues of disagreement for a particular couple. Couples must talk about medical insurance, life insurance, pensions and the children's college education. Documentation is gathered on income, expenses, assets and liabilities.

Another job of the mediator is to make sure both parties understand the decisions they are making. Sometimes, for example, couples are referred to their accountant to make sure they fully understand the tax consequences of their decisions.

Mediators even talk about how to tell children about the divorce and how both parents want to handle introducing future significant others to their children. The mediation process is designed to alter communication so that future interactions, particularly those that involve children, can be handled by the couple without the need of the mediator.

How long does divorce mediation take? The amount of time it takes to cover all of the issues of a divorcing couple will vary with the circumstances. A matter for a couple married a short time with no children and few assets can be completed in a couple of hours. Similarly, the matter of a couple married a long time with grown children and an

asset situation that is not complex can be completed quickly. Matters involving parenting issues take longer, usually six to twelve sessions.

One of the factors that determines the length of a mediation is the couple's dynamics. Some couples can express themselves well and talk about their individual concerns; others are angry, bitter or afraid and the mediator must take more time with them. Couples should not be discouraged if they think they will disagree on every issue. They may be pleasantly surprised at how close they are to agreeing on many points.

Is mediation for everyone? While most cases can be mediated, even if the litigation process has begun, there are some cases that are challenging to mediate. Both parties must be able to ask questions and freely express their concerns for the future. Inequities can exist, and the threat of violence, either to an individual or to a group such as union workers, can be damaging to that party's ability to participate in the process. But in most cases, if the parties are going to have an on-going relationship and continue to interact, such as teachers and their employers or neighbors across a property line, mediation is an effective and consensus-building device.

When a dispute has gone sour—either in a personal or business relationship—a mediator can set you on the right course. To find a mediator in your area, contact the Academy of Family Mediators or the New Jersey Association of Professional Mediators, both of which have referral services. When choosing a mediator, ask about his or her education and training, how long he or she has been practicing, and how many matters the mediator has handled.

Problem solving is seldom painless, but mediation can make the process more constructive and manageable.