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A Comparison: Divorce Mediation Vs. Divorce Litigation

By Kimberley Keyes | July 10, 2017
[Mediation](#)

Hingham Divorce Mediator Kimberley Keyes compares divorce mediation and divorce litigation.



If you and your spouse have decided to pursue a divorce, you have probably looked into the different paths that you can take to resolve your differences and make the decision final. Two of the most common paths that separating spouses take in Massachusetts are divorce litigation and divorce mediation. These two methods have similarities and differences that are important to understand when one is trying to determine if they should [choose mediation over litigation](#). Divorce mediation and litigation are similar inasmuch as they are each methods of

dispute resolution, rather than answers to a dispute themselves. For example, if you and your spouse disagree over who will keep the family house if you divorce, neither mediation nor litigation is the correct answer to your problem: Instead, they are each ways of finding an answer.

Divorce Mediation and Litigation: Same Issues, Different Processes

[Divorce litigation and mediation generally resolve the same issues:](#) child custody, child support, alimony and/or the division of assets. This is where the similarities between mediation and litigation often end, however. The techniques these two dispute-resolution methods rely on to resolve issues for divorcing spouses starkly contrast each other. The

differences between mediating and litigating a divorce stem from the different values that each process aims to promote. Litigation promotes the adversarial system that our courts are founded upon, and relies on the judge ultimately deciding the issues on which the parties cannot agree. Mediation, on the other hand, promotes the ideals of cooperation and mutual respect, declining to focus on who was “right” and who was “wrong” and instead aiming to help both spouses reach their own agreement and move on after the separation.

Differences Between Mediating and Litigating a Divorce

Because of the significantly disparate value systems at play in mediated and litigated divorces, there are numerous practical differences between each process, such as:

- **Mediation Offers Speed and Control.** Because mediation focuses on cooperation and mutual agreement, courts are not involved in the process by which spouses resolve their differences with the help of a neutral third party. This leaves the spouses largely in control of how quickly their divorce progresses.
- **Mediation is Less Expensive.** Litigation is an adversarial structure, and usually involves one or both spouses being represented by an attorney. Mediation, on the other hand, does not require either side to be represented, though some spouses do choose to hire a lawyer as a mediation “coach” so they fully understand their rights during the process. (Each spouse is also encouraged to have an attorney review their final separation agreement before they sign it.) This leads to another practical difference between divorce mediation and litigation: Mediation tends to cost far less than protracted litigation.
- **Mediation Encourages Creative Solutions.** Mediation is a far less formal process than litigating in a courtroom, where the rules of evidence and professional decorum are observed. Mediation promotes a free exchange of ideas and communication in a way that is not permitted in court. Because [mediation encourages creativity to resolve disputes](#), rather than caution and defensiveness, spouses can often reach agreement far quicker than in litigation.
- **Mediation Narrows the Issue.** Even when mediation does not result in a full agreement, the [mediation process narrows the](#)

issues in dispute in litigation. Spouses generally risk very little by attempting mediation.

The View from the Courtroom: Stress and a Lack of Control

Put simply, it is difficult to overstate the difference in stress, conflict and sense of control experienced by those who choose to litigate their divorce:

- **Stress and Conflict in Litigation.** One of the most important differences between divorce mediation and divorce litigation is the amount of stress involved. Litigation pits spouses against each other and pushes them to fight for everything on the table. Mediation, however, relies on spouses working cooperatively to establish common goals and pursue them through rational discussion and reasonable compromise to get to the resolution that they both want.
- **Your Judge Chooses For You in Litigation.** Spouses who opt to litigate their divorce have no control over which judge will be assigned to their case and ultimately decide issues that they cannot agree upon, including for example who will have custody of the children or who will retain which assets. In the Massachusetts Probate and Family Court, you are likely to have the same judge for the life of your case, which may be good or bad, depending on your point of view. With mediation, however, you decide who your mediator will be, so you can make sure she or he is a good fit for your case before you begin the process.
- **No Privacy in Court.** Litigation proceedings are almost always held in open court, meaning your personal business is discussed before a roomful of strangers. Mediation is a private process that involves just the spouses and the mediator. In fact, Massachusetts law provides that anything related to the mediation that a spouse says to a qualified mediator must be kept confidential.

These are just some of the most prominent differences between litigating and mediating a divorce. We review these and many others in more detail elsewhere in our blog.

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