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How Different Mediation Styles Address Power Imbalances

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Divorce mediator Kimberley Keyes explores how power imbalances can be addressed using different mediation styles.



Unequal power dynamics can be an obstacle in some [divorce mediations](#). While mediators are well aware of this potential problem, not every [mediation style](#) is equal when it comes to dealing with power imbalances. Mediators who rely strictly on a facilitative approach can face difficulty when faced with the problem of a dominant spouse. By blending other mediation styles with a facilitative approach, however, divorce mediation can succeed, even when one spouse suffers from a deficit of information or power.

Lopsided Power Dynamics are Common with Divorcing Spouses

Not all marriages are the same. Each and every spouse brings something different into the relationship. In some marriages, however, the skill, experience, education, and/or personality of one spouse may result in a power dynamic in which one spouse holds a disparate amount of information or expertise, or he or she simply dominates the couple's decision-making process and dictates most decisions. Often such patterns develop over many years of a marriage, and it is not a mediator's job to "fix" the dynamic between the parties. When the interests of both spouses are aligned, power disparities may not be a problem. However, in the context of divorce mediation, a significant power disparity can prevent the parties from reaching compromise, reigning in negative emotions, and allowing the less dominant spouse to pursue his or her interests and goals. In many scenarios, the dominant spouse can be his or her own worst enemy in the mediation setting. By preventing the less dominant spouse from exercising control over the negotiation process, the dominant spouse often triggers a fear response, resulting in the less dominant spouse pursuing litigation with a divorce attorney.

Power Differences Can Make Mediation Tricky

During mediation, power disparities between spouses can make the mediation process difficult because one spouse is used to getting his or her way, while the other spouse is used to giving in. Sometimes this dynamic results in the "stronger" spouse steamrolling the disadvantaged spouse in negotiations. More frequently, the disadvantaged spouse simply avoids the mediation process, instead opting to litigate the case with an attorney as her or his advocate. With critically important issues on the table like child custody and how to divide marital assets, it is important for spouses to approach mediation with a level playing field, even if elements of their relationship were unequal during the marriage.

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Mediation Styles Can Make a Big Difference

One of the main tasks for a mediator is to detect and address power imbalances that exist between spouses. If this is not done, it can end with a lopsided divorce settlement that perpetuates the power dynamic that may have led to the divorce – or a failure of the mediation process, where the disadvantaged spouse feels that a fair outcome is achievable through mediation. Mediators who rely exclusively on the [facilitative mediation style](#) may have their work cut out for them when power imbalances are present, because merely facilitating the negotiation may not address deep-seated disparities in power or information. When spouses are accustomed to their marital role—as they often are, especially after a long marriage—the resulting negotiation may fall into old dynamics. Mediators who use [evaluative mediation](#) or [transformative mediation](#) in these situations—either exclusively or as a supplement to a facilitative approach—are usually better suited to mediate a divorce when spouses are unequal. By focusing more directly on the objective strengths and weaknesses of each spouse’s [interests and positions](#), evaluative mediators can shift the negotiation away from power dynamics and towards the specific issues that the parties are seeking to resolve. Meanwhile, transformative mediators start the process by observing the communication styles of the parties, then adjust their approach to improve the parties’ communication style before proceeding to the substantive issues. Of course, not all mediators have the background or experience to engage in evaluative or transformative mediation. Mediators without law degrees or experience in family law may struggle to legitimately evaluate a spouse’s arguments over, say, [child](#)

support during the mediation session. Meanwhile, transformative mediation only generally works if both spouses – including the more dominant spouse – buy into the process and have confidence in the mediator’s abilities. When [searching for a mediator](#) who is the right fit for your case, take some time to think about whether a power imbalance exists in your relationship with your spouse. If so, you may prefer to choose a mediator who uses (or is able to use) an [evaluative or transformative approach](#) to the process, as opposed to a purely facilitative style.

Kim is a divorce mediator for South Shore Divorce Mediation, located in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Kim is a statutory mediator under [M.G.L. Ch. 233, s. 23C](#) and a proud member of the Massachusetts Council on Family Mediation. To read more from Kim Keyes, check out [her author page on the Lynch & Owens Blog](#). **Disclaimer:** The information you obtain at this site is not, nor is it intended to be, legal advice. You should meet with an attorney for advice regarding your individual situation. You are invited to contact our office. Contacting the office does not create an attorney-client or mediator-client relationship. Please do not send any confidential information to the office until such time as an attorney-client or mediator-client relationship has been established. This blog is considered an advertisement for the Law Office of Lynch & Owens, P.C. d/b/a South Shore Divorce Mediation. The Massachusetts Rules of Professional Conduct broadly govern all advertisements and communications made by attorneys and law firms in the Commonwealth. Generally, legal websites and any other content published on the internet by lawyers are considered a type of communication and an advertisement, according to the Comments to Rule 7.2.

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