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Mediation Works Even After A Complaint For Divorce Has Been Filed

By Nicole K. Levy | July 19, 2019

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Divorce Mediator Nicole K. Levy explains why mediation can still work, even after a complaint for divorce has been filed.



One question I frequently hear from people investigating mediation is whether they can use mediation after a divorce case has been opened in court. Spouses often feel that once they have initiated litigation, mediation is no longer an option. This misconception leaves people feeling that after a divorce has been filed or served, they have no choice but to move forward with expensive litigation. Thankfully, this misconception is not true. As a divorce mediator, I work with people at all stages of divorce, including pre-litigation (the most common time that people mediate), during divorce litigation, or even in post-

litigation, after the initial divorce has been resolved. Prior to filing papers with the court, people commonly seek out mediation to avoid litigation. This allows spouses to work on an agreement without the deadlines set by the court and the fear of being served with papers for a court hearing. The advantages to this are numerous. But it is not the only way.

Mediating a Divorce During Litigation: An Underrated Option

While pre- and post-litigation mediation might seem straight-forward, it is often pending divorce cases that create the most anxiety. Granted, once litigation begins, spouses are [on the court's schedule](#) and are subject to being hauled into the courtroom for a motion with little notice. However, this does not prevent spouses from initiating mediation. Indeed, mediation can happen at any stage in litigation. Spouses can work with a mediator even when motion dates are scheduled, pretrial conferences are looming, or even trial dates have been set. Mediation can move forward even if each spouse has a lawyer or a partial agreement has been reached. Sometimes it seems to take the time consuming and costly nature of litigation to make one or both spouses understand that *perhaps* slugging it out in the courtroom is not the most effective way to resolve the issues standing in the way of an amicable divorce.

Post-Litigation Mediation: Mediating Contempt or Modification Issues

Post-litigation mediation is commonly associated with the resolution of a pending contempt action or the modification of an existing separation agreement. One or both former spouses may need to change their divorce agreement, or one person may not be following the agreement, creating exposure for a finding of a contempt. Rather than sprinting into court for judicial intervention, former spouses often find that mediation can resolve post-divorce issues [quickly, efficiently and amicably](#). Only recently I worked with parents whose oldest child was entering college; however, their agreement was vague regarding their respective obligations to contribute to the cost of college. Realizing that spending money on two attorneys (and multiple court dates) would only deplete from the available college funds, the parents opted to resolve their respective college contributions outside of the courtroom.

Attorneys Can Help the Mediation Process

Mediation can include your attorneys, if you have them, or not. Some attorneys will (silently) attend mediation session, while others (more commonly) continue to act as a spouse's counsel, providing advice and feedback outside the walls of the mediation. When you mediate, you are not obligated to come to an agreement, nor are you barred from speaking with your counsel about the mediation. Indeed, mediation-

friendly attorneys often play a constructive role in the mediation process, helping each spouse understand the legal issues surrounding the divorce, and advancing the settlement process by offering suggestions to improve the language used in agreements. The beauty of mediation is the flexibility and [creative solutions embodied within the mediation process](#) itself. There is no issue too big or too small to address in mediation. Perhaps you have an ongoing divorce case, and there is already a motion for temporary orders scheduled. This does not prevent mediation. Perhaps a judge only recently entered temporary orders – new orders may present a mediation chance to break a deadlock on a tough issue. I tell spouses to never let preconceived notions about mediation limit what you think can be done. An open divorce case isn't a barrier to mediation, it's an opportunity. Whatever stage your divorce might be in, there is always a chance to mediate.



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Nicole Levy
Family Law Mediator

Nicole is a divorce mediator for South Shore Divorce Mediation, located in Hingham, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Nicole 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 Nicole Levy, 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

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