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When Should You Start the Divorce Mediation Process?

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Divorce Mediator Carmela M. Miraglia reviews the best time to start divorce mediation.



One of the advantages of the divorce mediation process, compared to the litigation process, is that mediation rewards creativity and encourages flexibility by allowing to spouses set the pace for resolving their divorce. While many spouses will complete the mediation process before filing for divorce, we also frequently encounter spouses who turn to mediation after a

complaint for divorce has already been filed. It's not always easy for spouses to know when to begin the mediation process, but it is reassuring to know that once you start mediation, you are in control. There are several mediation-timing issues to consider if you and your spouse are considering using mediation to resolve your divorce.

Start Divorce Mediation Early to Avoid the Cycle of Fear and Uncertainty

In certain fundamental ways, divorce mediation is all about avoiding and mitigating the mental and emotional damage that can result from divorce. Unlike therapy, the motivation for limiting such damage in the mediation context is not the spouses' mental health, so much as the mediator's desire to guide spouses towards resolution without getting "stuck" on issues like anger, resentment and fear. Breakups are often stressful. The breakup of a marriage is especially stressful, where divorce combines the emotional stress of a losing a close companion with real world fears about finances and children. Divorce-related stress has a way of cascading and growing in a vicious cycle, as uncertainty over financial and child-related issues drives anger and resentment – and vice versa. The sooner a divorce mediator becomes involved, the sooner the mediation can begin teaching each spouse how to separate the other spouse's emotional turmoil from his or her real-world concerns about finances and their children. The goal of every divorce mediation is to salvage enough elements of the working partnership that all spouses share during the marriage to allow spouses to recognize that they have shared goals and objectives. The longer that spouses simmer in the breakup stage – rehashing grievances with one another while privately stressing over pocketbook issues or worries about their kids – the bigger the challenge for the mediator. The sooner a mediator becomes involved, the sooner that mediator can help spouses develop the skills and techniques they need to separate their emotions from the real-world concerns they must resolve.

What About Spouses Who Aren't Even Sure They Want a Divorce?

When is the best time to start mediation? Whenever you and your spouse each feel ready to start mediation. All things being equal, however, starting mediation earlier in the divorce process is superior for a variety of fundamental reasons. It is never too early to meet with a mediator. It is not unusual for divorce mediators to meet with individuals who have not even made the final decision about whether they want a divorce. One of the best attributes of divorce mediation is flexibility. Unlike divorce litigation, in which the attorney's job depends on the parties actually ending their marriage, the divorce mediation service model is simply pay-as-you-go. Most mediators are happy to meet with spouses for two hours or twenty hours. As long as the spouses walk away satisfied, we have done our job. Strange as it may sound, it is not unusual for married individuals who are contemplating divorce to sit with a divorce mediator, discuss what the divorce process might entail, and ultimately decide to keep trying in their marriage. Even if you and your spouse have not made the final decision to divorce, you can still benefit from the mediation process. Speaking with a divorce mediator can help you sort through the issues that are upsetting your marriage. Mediation can be very useful for spouses who are going through marital issues and who feel their relationship is splintering, but who have not yet made the final decision to divorce, or for those who may not have even spoken about the possibility of a divorce. Mediation is also a way for struggling spouses to understand the practical consequences of divorce as they make hard decisions about their relationship and family. Although it may seem premature, meeting with a divorce mediator will open the lines of communication that have shut down. The mediator is trained to understand the issues and to assist you in resolving the problems you face with the contemplation of a divorce.

Spouses Who are Discussing Divorce During Therapy Can Benefit from Speaking with a Mediator

To be clear, mediation is not marriage therapy. However, many spouses engaged in marriage therapy eventually discuss the possibility of a divorce. There's only one problem: most therapists are experts on

emotions, not the divorce process itself. And discussing divorce without a divorce expert on hand can sometimes make a bad situation worse. Many spouses in a struggling marriage fear that even broaching the subject of divorce is a risk, given how emotionally loaded the topic is. A good divorce mediator is not a therapist, but he or she is trained to discuss divorce in ways that *minimize emotional conflict* and seek to resolve stress points rather than exacerbate them. If spouses have reached the point where they are seriously discussing divorce during the marriage therapy sessions, it might be time to meet with a divorce mediator. A good mediator understands how to facilitate discussion about divorce between married individuals in a way that *preserves the relationship while addressing challenging subject matter*. Divorce is such a taboo subject that it is often subject to rumors, fear and misinformation. A mediator can help spouses understand the facts about divorce, while guiding spouses towards a real understanding of what divorce would actually entail for their family if they ultimately pursue a divorce. Because mediation is flexible, a good mediator always adjusts the mediation “product” to suit the needs of his or her clients. If spouses want to explore the real-world implications of a possible divorce without committing to the divorce process itself, using a mediator is often a great option.

It Rarely Hurts to Try Mediation, Even if Litigation is Likely in Your Divorce

Mediation is a confidential process. Under the Massachusetts mediator statute, your mediator cannot be forced to testify in a divorce case, nor is any of the mediator’s “work product” admissible as evidence. Even the statements made by the spouses to each other during mediation are inadmissible in a later-filed divorce. What does this all mean? Only this: it rarely hurts to try mediation before turning to litigation. Even if the mediation does not resolve the entire divorce, in many instances, a partially-successful mediation results in *agreement on specific issues that can limit the cost, scope and conflict of divorce litigation*. Because mediation is a *low-cost, low-commitment process* compared to

litigation, spouses often have nothing to lose – and quite a lot to gain – by trying mediation.

It is Not Too Late for Mediation, Even if Divorce Papers Have Been Filed

*Likewise, it is never too late to meet with a mediator. Mediation works **even after a complaint for divorce has been filed**. A significant percentage of divorce mediations involve spouses who are at some stage of the litigation process, with mediation occurring between court appearances. Many stressed out spouses “hit pause” on their divorce to try mediation **long after litigation has started**. Because the spouses understand what is preventing agreement from the litigation process, a targeted mediation can focus on the tricky issues that the spouses and their attorneys cannot get past to reach consensus.*



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Family Law Mediator

The Earlier, the Better is the Rule of Thumb with Divorce Mediations

*Of course, the general rule of thumb is to begin the divorce mediation process sooner, rather than later. By meeting with a mediator as soon as you and your spouse realize your marriage is beginning to unravel, you can avoid a great deal of the strain and emotional turmoil that comes with marital issues that frequently lead to a divorce. Mediation is as much a mindset as a dispute resolution process, and the sooner you and your spouse begin thinking of your divorce in terms of cooperation and compromise, the more **stress, conflict and cost you can avoid**. Mediation can help you **better understand the source of the difficulties in the relationship** and provide the calm and supportive atmosphere essential to helping you work through the issues. Mediation is also useful to outline **the issues that you and your spouse***

will need to resolve if you decide to divorce, and to begin the process of developing creative solutions that suit the unique needs of your current relationship and future life goals. By being proactive with the divorce mediation process, you may be able to avoid a great deal of the emotional strain and trauma that divorce stirs up, and work toward creating a practical solution before it becomes too difficult to communicate effectively with your spouse.

Carmela is a divorce mediator and mediation coach for South Shore Divorce Mediation, with offices 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. Carmela 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 Carmela Miraglia, 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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