

Divorce Mediation Myths

Debunking divorce mediation myths: Facts about the mediation process.

Myth: Mediation allows one spouse to dominate another.

Fact: A good [mediator](#) pays close attention to the power balance between the spouses and uses specific techniques to address any imbalance. If one spouse persists in dominating behavior, the mediator will call a stop to the [mediation](#) rather than allowing it to continue. One caveat: Even the best mediator can be unaware of a power imbalance if it only goes on outside of the mediation sessions and the spouses don't let the mediator know about it.

Myth: Women are at a disadvantage in mediation.

Fact: Women are no more at a disadvantage in mediation than in [divorce](#) court. In fact, women can often obtain a better result in mediation than they can in court, because the mediation process allows separating spouses to negotiate an agreement that considers nonlegal factors. Also, except for court-ordered (mandatory) mediation, a woman is free to stop the mediation or refuse to sign an agreement that seems unfair to her.

Myth: Mediation is more of a hassle than hiring a lawyer to handle the divorce.

Fact: Whether divorcing spouses mediate or hire a lawyer to handle the divorce, they have to do a certain amount of gathering information and making decisions. Mediation offers a streamlined approach to the information-gathering and decision-making processes. In contrast, using the courts is cumbersome and expensive.

Myth: Mediation is for wimps.

Fact: In mediation, the spouses stand up for themselves and what they want. They don't have lawyers speaking for them and telling them what to do. As a result, people who mediate often come out of their divorce with enhanced communication skills and self-confidence, as well as agreements they can really live with.

Myth: Mediation makes the divorce take longer.

Fact: Mediation almost always takes less time than litigating a divorce. Unless the spouses have worked everything out ahead of time, hiring lawyers to handle the divorce will almost always take as long or longer than mediating, even if the lawyers are able to settle out of court.

Myth: There's no place for lawyers in mediation.

Fact: Lawyers who understand and support mediation can help mediating spouses in several ways: by informing them of their legal rights and options, by coaching them through the negotiations, by coming up with creative settlement ideas, and by preparing the necessary divorce paperwork once an agreement is signed. Most consulting lawyers charge a reasonable hourly fee and don't require a large [retainer](#) (advance deposit). A spouse pays for only as much consulting time as is needed. (To learn more about getting a lawyer's help in mediation, read Nolo's article [Lawyers and Divorce Mediation](#).)

Myth: All divorce lawyers understand and support mediation.

Fact: Divorce mediation is still a relatively new way of approaching divorce. Many adversarial lawyers have little or no experience with the nonadversarial approach used in mediation. Some even disapprove of mediation, arguing that divorcing spouses should not negotiate on their own but only through lawyers. These attitudes are slowly changing, as divorce lawyers become more aware of mediation and its benefits for their clients. Meanwhile, spouses wishing to mediate their divorce need to find consulting lawyers who are "mediation-friendly."

Myth: In mediation, the mediator decides what's fair.

Fact: Unlike a judge or an [arbitrator](#), a mediator has no power to make decisions for the divorcing spouses. The mediator's job is to help the spouses negotiate an agreement that each of them considers fair enough to accept.

Myth: Mediation is always the best option for every divorcing couple.

Fact: Mediation works for most divorcing couples. As long as both spouses are able to speak up for what's important to them and can behave themselves appropriately in mediation, the process can work for them. On the other hand, mediation may not offer enough protection and structure for some couples. For example, a couple with domestic violence or substance abuse issues may need to have lawyers speak for them instead of trying to negotiate directly. In addition, some spouses may prefer to assume the risks and cost of adversarial litigation in order to make a point or assert a legal right rather than compromise in a settlement.

Want More Information?

To explore all avenues for obtaining a divorce without resorting to litigation, get [Divorce Without Court: A Guide to Mediation & Collaborative Divorce](#), by Katherine E. Stoner (Nolo).

by: [Katherine Stoner](#)

Will Divorce Mediation Work for You?

Learn when divorce mediation is likely to succeed -- and when it might not.

[Divorce mediation](#), a process in which divorcing spouses sit down with a neutral third party to resolve the issues in their divorce, can be a great option for some couples. Even if you (or your spouse) don't feel ready to mediate, when you consider the financial and emotional costs of a contested [divorce](#), you might want to give [mediation](#) a try. But before you do, consider your relationship with your spouse. You are most likely to have a successful mediation experience if all or most of the following statements are true.

The Decision to Divorce Is Mutual

Sometimes, the decision to divorce is mutual. Both spouses come to the conclusion, more or less at the same time, that the [marriage](#) is over. For other couples, the decision is more one-sided. One spouse decides that a divorce is necessary, while the other spouse is unprepared for, and perhaps opposed to, the idea of getting divorced.

When the decision to divorce is mutual, spouses usually find it easier to begin working together on a settlement in mediation than they would if one spouse initiates the divorce. Where one spouse makes the decision, it is natural for the other to resist cooperating with any requests to move along in the process, including a request to mediate. This usually changes with the passage of time, so factor timing into your assessment of your readiness. If the divorce was more one person's decision than the other's, more time may be needed before you begin mediating.

You Have No Desire to Reconcile

If you and your spouse have accepted (however reluctantly) the reality of your [separation's](#) being permanent, and if neither one of you has an overwhelming desire to reconcile, then the odds are that each of you has reached an emotional point in the divorce when mediation can be productive. This doesn't mean you must rule out the possibility of reconciliation. But you do have to be ready to focus on what happens if you and your spouse don't get back together.

You Want to Stay on Good Terms With Your Spouse

Spouses who want to remain on good terms with each other, either because they have children together or because of their own values, can use this motivation to get through the rough spots in negotiating and compromising during mediation. It is not essential to a good mediation, but it certainly helps.

Do you have a high level of animosity toward your spouse that could undermine mediation? If so, you might find it helpful to work with a counselor on ways to keep this animosity in check while you go ahead with mediation. Another option is to find a [mediator](#) who will conduct some

or all of the mediation in separate meetings so that you don't have to deal directly with your spouse.

You Don't Blame Your Spouse for Your Separation

It's natural at times to blame your spouse for things that went wrong in your marriage or for the decision to divorce. But, if you feel that your spouse is entirely, or almost entirely, to blame, you might find it hard to enter into any agreement in mediation that your spouse considers acceptable.

Also, if you want your spouse to acknowledge and pay for his or her wrongdoing in some way, such as giving you the bulk of the [marital property](#), mediation may not succeed, because your spouse may not be prepared to accept any blame, let alone pay for it in some tangible way. If your state's laws allow you to prove fault as a ground for the divorce, and you have the emotional and financial resources for it, maybe a contested divorce is the right approach for you.

You Understand the Financial Situation

Financial issues are a big part of any divorce. In order to negotiate a good financial settlement, you need to understand the financial reality with which you are working. The mediation process can help you get a better handle on your financial situation, but the more you know to start with, and the more comfortable you are talking about financial matters, the more confident you will be going into mediation and the fewer surprises you'll encounter. If you know very little about your joint finances and your spouse is very knowledgeable, you may feel at a disadvantage going into the mediation.

Your Spouse Has Not Lied to You About Anything Important

If your spouse has lied to you in the relationship, you may need to take a close look at whether or not you can trust your spouse to be truthful and sincere during the mediation. If your spouse has lied to you about an affair, you may understandably be afraid to believe anything your spouse tells you, especially if you only recently discovered the deceit. But this doesn't necessarily mean that your spouse will lie about other crucial aspects of the relationship, such as finances and property.

If your spouse has lied to you about property or finances, you have a different problem. It might not be wise for you to rely on the voluntary exchange of information. You may want to consult a lawyer about other ways to verify important facts independently. You may even need to ask the lawyer to conduct legal discovery of the facts and records to give you a complete financial picture before starting mediation and attempting to negotiate a settlement. It may also be important to work closely with a lawyer or financial adviser during mediation to develop settlement options that don't rely on your spouse to provide information in the future.

You Can Disagree With Your Spouse Without Saying or Doing Things You Later Regret

If this statement is true, you have the ability to stand up for yourself during a conflict with your spouse without losing control of your own behavior. You don't need to be perfect to have a good

experience in mediation. After all, helping you communicate constructively is one of the mediator's main jobs. But, if your emotional reactions to your spouse are so strong that even attempting this seems impossible, then mediation may not be the right thing for you just now.

You Are Not Easily Intimidated by Your Spouse

In mediation, you will speak for yourself and negotiate your own agreement. If you find yourself easily intimidated in your spouse's presence, speaking up may be hard for you. Practicing in mediation, with the coaching and support of the mediator, can help you get better at this, but you'll need a minimum level of self-confidence just to start the process.

Physical Violence Is Not an Issue in Your Relationship

If physical violence is part of the relationship with your spouse, it may not be possible to keep the playing field level and tempers cool enough to negotiate an agreement directly in mediation.

Alcohol or Drug Abuse Is Not an Issue in Your Relationship

An alcohol or drug problem can impair someone's ability to think clearly and make sensible decisions. It can also lead to out-of-control behavior. This can undermine the success of any negotiation, whether it is conducted between lawyers or during mediation.

You Feel That Your Spouse Is a Good Parent

Mediation is usually considered one of the best ways for divorcing parents to negotiate agreements about their children. You can talk, parent to parent, about what is best for your children, rather than leaving the decisions up to strangers. Differences in parenting styles or the amount of time each of you spends with your children can be addressed in mediation.

However, if you and your spouse strongly disagree about the ability of one of you to take care of your children, you may not be able to negotiate an acceptable custody arrangement until that issue is fully evaluated. This is especially true if the problem you are concerned about is so serious as to constitute child abuse. If your disagreement about parenting issues is so pervasive that you cannot agree about how to proceed, you may need to get things started through the court. Even so, you might be able to use mediation to negotiate an agreement after the evaluation phase is completed. In fact, you may be required by the laws of your state to attend mediation in a court-sponsored program before a judge will even hear your case.

For more about divorce mediation, as well as the option of collaborative divorce, see [*Divorce Without Court: A Guide to Mediation and Collaborative Divorce*](#), by Katherine E. Stoner (Nolo).