

# DIVORCE MEDIATION: AN ALTERNATIVE TO LITIGATION

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■ **What is mediation?** Mediation is a process in which the husband and wife work with a neutral third party who facilitates an agreement on child support, alimony, equitable distribution and other issues involved in their divorce.

**\*When is mediation an appropriate alternative to litigation?** Mediation may be an appropriate alternative to litigation when both parties seek to resolve their divorce issues by agreement and want to avoid a trial or other adversarial court proceedings. Mediation may not be appropriate if there has been domestic violence in the family, if one party feels controlled by or fearful of the other party or if either party is not willing to provide full disclosure of their income, assets and debts.

**\*Who should mediate?** The mediator is a neutral person, preferably an attorney or mental health professional, who has completed formal training in mediation and has been accredited by the sanctioning body of professional mediators in that given state (Colorado Council of Mediators and Mediator Organizations).

**\*If we have an attorney-mediator, will he or she represent both of us during the divorce?**

The mediator is a neutral facilitator and doesn't represent either party. Each party should obtain independent legal advice from an attorney of their choice and should consult with him or her regularly during the mediation process. I also recommend that a Certified Divorce Financial Analyst be consulted regarding all financial matters of divorce. Neither party should engage in mediation without knowing their legal rights.

**\*If we need a mediator and two attorneys, won't that increase the cost of the divorce?** A litigated divorce is an expensive process. Even a simple court proceeding often requires hours of preparation and waiting time with additional follow-up work afterwards. The attorney's time in making court appearances, as well as the time he or she spends on discovery, depositions, motions and telephone calls can be costly. Mediation, on the other hand, is a more amicable process which takes fewer attorney hours and results in lower total fees, even when the expense of the mediator is included.

**\*How long does mediation take?** Mediation usually takes between 3 and 10 sessions depending on the complexity of the issues and the needs of the parties. If the parties cooperate in providing discovery and are able to schedule appointments weekly, the entire divorce should be completed in less than 3 months. A litigated divorce averages about 1 year but may take as long as 3 years (or more in some counties) if a trial is necessary.

**\*What happens at the end of the mediation process?** With the advice of your attorneys and the help of the mediator, you and your spouse will reach agreement on the issues. The mediator will then draft a Memorandum of Understanding setting forth your agreement. One of the attorneys will incorporate your agreement into a Property Settlement Agreement to be signed by both parties. One of the attorneys will be designated to file a Complaint for Divorce and, shortly thereafter, a court date can be scheduled for the final hearing.

**\*What if my spouse and I can't agree on all the issues?** Any issues which are not resolved through mediation can be decided by the court or negotiated by the attorneys.

**\*Can we mediate disagreements which arise after the divorce?** It is inevitable that there may be disagreements with your former spouse concerning the children or other issues even after the

divorce. Mediation is always an alternative for resolving these family disputes, whenever they arise.