

ALTERNATIVES TO LITIGATION **MEDIATE** or **LITIGATE**

By Audrey B. Schneiderman, Esq.



Not every divorce winds up in

the courthouse in front of a judge. Very often, the only time either party sees the inside of a courtroom is at the final hearing. This is true because most cases are settled prior to initiating any courtroom proceedings.

Q: Are there any alternatives to litigation?

A: There are a number of alternatives to litigation. One alternative occurs when you and your spouse are able to mutually agree as to all issues. This is the simplest and what is referred to as an “uncontested dissolution.” In an “uncontested dissolution,” both you and your spouse agree to all issues. The agreed upon terms are then reduced to writing. When you and your spouse cannot mutually agree to all issues, the courts in Palm Beach County will insist that both parties attend mediation. In fact, in Palm Beach County, the courts so favor mediation, that parties cannot appear in court for any monetary or custodial relief without first attending mediation.

Q: What is mediation?

A: Mediation is a process whereby a neutral third person, the mediator, acts to encourage and facilitate the resolution of a dispute between the parties. It is an informal, non-adversarial process that encourages the disputing parties, to reach a mutually acceptable, voluntary agreement.

Q: Who attends mediation?

A: Typically, the only persons in attendance at the mediation are the parties, their respective attorneys and the mediator. However, if the parties are not represented by counsel, then

Q: In mediation, who has decision-making authority?

A: In mediation, decision-making authority rests with the parties, themselves. In fact, the mediation process itself encourages you and your spouse to express your wants and needs to the mediator, who in turn encourages without coercion, that you and your spouse meet somewhere through compromise. The parties will make decisions with the assistance of both their attorneys and the mediator.

Q: How much does mediation cost?

A: Depending on you and your spouse’s combined income, a court mediator can cost as little as \$40.00 per party for the entire mediation session. However, court mediation is limited to an hour and a half for the entire mediation. Private mediation costs vary between \$200 and \$400 per hour. The cost of mediation is typically split between the parties and a private mediator will usually spend as much time as is necessary in order to facilitate an agreement.

Q: Why would we choose mediation over litigation?

A: Mediation has proven to be less expensive than long, protracted litigation and less stressful. Additionally, mediation allows you and your spouse to discuss all disputed issues in a relatively calm and non-adversarial environment. The thought is, that in this environment, you and your spouse can come to a resolve. In this manner, you and your spouse decide the outcome, rather than leaving your fate to the judge.

Q: What happens if we can’t settle

at mediation?

A: The mediator declares an impasse and the litigation continues. However, if you and your spouse are able to settle one or more, but not all issues, a partial agreement may be written up settling all agreed upon issues and leaving all disputed issues to be resolved by the court through the litigation process. This too helps narrow the issues, ultimately making it easier to come to a settlement. **stb**

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