

The Decision to Mediate

Divorce mediation as a form of marital dissolution is fast becoming the largest single growing area in the field of alternative dispute resolution. In less litigious states especially those in no fault jurisdictions mediation has been popular for years. Initially handled by therapists or social workers in a therapeutic setting, mediation became popular for its non-involvement with the legal process.

This theory however, turned out to be somewhat disingenuous in that the agreement reached still needed to be placed in proper legal form and filed correctly in order to hold any legal weight. The divorce paperwork still had to be handled by a knowledgeable legal professional and submitted according to the jurisdictional requirements.

As these agreements however, aged over time, it became apparent that when not drafted by an attorney inevitably certain foreseeable items were not addressed and forced the parties to revisit issues later in family court or a redraft of parts of the agreement using independent legal counsel.

Some agreements were so badly written that entire actions needed to be brought in order to modify what was now a judgment. Inevitably the parties exclaimed that they weren't properly advised of their rights, which of course was correct. Law from giving legal advice even if they are familiar with the law prohibits a non-attorney. This offense is a misdemeanor in New York State and is one of the reasons why clients are beginning to make attorneys the popular choice when choosing to mediate.

Choosing the right attorney is essential for the overall success of the mediation. An attorney walks a fine line during the mediation process, and may not act as an advocate for either party. The attorney is merely a dispenser of the laws, which apply, and the statutes, which govern the matter. All financial documentation belonging to the parties must be shared within the mediation process and the parties must agree to full disclosure of all assets.

An attorney may voice an opinion as to the fairness of a particular directive addressed by the clients and must insure that each is fully aware of the alternatives and of course their right to seek independent counsel to review the final document.

An ethical attorney will be quick to refuse to attach their name to a document they feel is overly unfair or one sided and advise each to retain independent counsel in the event the parties are unable to reach a fair settlement.

Helping their clients to decide if mediation is the right course of marital dissolution is something the attorneys at the Law Offices of Barbera & McElhone P.C take very seriously. Janine A. Barbera Esq. has been practicing in the field of matrimonial law for almost 20 years and has the knowledge and experience to advise you on all aspects of marital dissolution including mediation. Contact Janine A. Barbera, Esq. for a free consultation.