

# Divorce-Alternative to “Duking it Out”



Ann Marie Gennusa

In the old days of divorce, the goal of many spouses was to fight until someone became so exhausted from the struggle that they gave in to the other person or allowed a judge to make a decision, leaving both parties lacking what they really wanted. Unfortunately, the system at that time did not encourage people to take control of their own destiny. Divorce was synonymous with war and no one came out feeling victorious. Litigation did not create a warm and fuzzy climate and often the real victims were the children, the very people both parties were trying to protect.

Today, however, there are options to duking it out when a marriage is dissolving. The process known as mediation allows parties to work with a third party who is a neutral to sort out the details involved in the finalization of the matters. In this setting, the parties are able to explain to the mediator and the other party what their goals are and how they would like to proceed to work out the issues.

Mediation got started in the late 70's as a way to work out disputes and still maintain a relationship with the other party. Basically, any matter that is in dispute can be mediated in order to resolve the issues. The increasing trend in mediation is a combined result of people wanting to avoid the costs of litigation and the concern about maintaining an ongoing relationship.

It should be noted that in most

conflicts, the savings in using mediation as a remedy is not just money. People are able to work through their disputes and still maintain a relationship with the other party. Given the success that mediation has brought to the resolution of Family Law issues, many Courts have started to require the parties to attempt mediation before proceeding with litigation. While most mediation sessions are completed in one session, there are times when more than one session is needed. Initially, the mediator will determine what, if anything, the parties have already agreed to and then proceed to help resolve the remaining points of contention.

After that initial meeting the parties fill out paperwork regarding their asset, debts, and income information for the next session.

There are a series of sessions held until all issues are resolved. Once the parties have finalized all matters the mediator will prepare an agreement that becomes a contract between the parties. Most people who have been through the process are pleased because of the relationship they have been able to retain and in many instances develop with their former spouse.

The mediator at all times remains a neutral party. In this capacity the mediator can not give legal advice to either spouse. The mediator can, however, help the parties figure out options that would be beneficial in the agreement and guide them through the process as well as helping them to learn communicate about their differences rather than argue.

Although divorce mediation

seems like a new process it is becoming more and more popular throughout the country. Most people prefer to resolve their differences amicably, despite what they may feel initially and are happy to be able to control the outcome of their future. Mediation is a confidential process and with a few exceptions, what occurs in mediation can not be testified to in court. Additionally the mediator will not speak to one party without the other party's knowledge. There are some instances, however, where the parties will be in two different rooms and the mediator will go back and forth to discuss the party's position. This may be at the request of one of the party's or the premise of the mediator that an agreement will be more likely if the parties are in separate rooms. *WJ*

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*Anne Marie Gennusa earned her J.D. Degree from Temple University School of Law in 1994. While in law school she received numerous awards for her advocacy and public service contributions. She started her legal career in the New York Legal Aid Society's Criminal Division- Bronx County, where she worked as a criminal defense attorney for over 4 years. Ms. Gennusa believed that in starting her own practice, she could be more effective in helping people deal with a variety of legal issues. In 1999, Ms. Gennusa founded The Law Offices of Anne Marie Gennusa, PA.*

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