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Divorces are costly: Private proceedings reduce those costs

Private mediation in divorce cases allows parties to resolve disputes confidentially and efficiently, significantly reducing both the financial and emotional costs compared with traditional court proceedings while giving families control over outcomes.

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When couples dissolve their marriages, the emotional and financial costs can be enormous. Former spouses must work through painful issues: abuse, betrayal, loss of trust, loss of identity. At their most vulnerable, these parties must also navigate a legal system that imposes a steep price at each step and decision they make.

When those steps are taken before a public court judge, the financial costs can be exorbitant. Monetary costs include, among other things, attorney fees, expert fees, court reporter fees and court costs/filing fees. Non-monetary costs can include the parties' time; the psychological and functional toll of the proceedings on the entire family, and the lack of personal privacy from consistently appearing in a public courtroom where many other litigants are present listening to the parties' case details as they await their cases to be called.

Part 2 of this series will discuss the options available to parties to retain a private mediator in conjunction with a privately compensated temporary judge (PCTJ). The costs will be discussed in more detail in Part 3.

Benefits of private mediation

Private resolution of these cases can significantly lower the financial costs of the process and can go a long way toward mitigating the mental and emotional burden on parties.

Mediation



Traditional Litigation



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The most significant benefit of private mediation is the parties' ability to decide the outcome of their own dissolution case instead of leaving the outcome to a public court judge with little knowledge of their family. With guidance from attorneys versed in California family law, parties can use a private mediator to help them make their own decisions. The ultimate outcome will be a decision that reflects their family's specific situation. When parties have designed their own resolution, they are far more likely to comply with it than if they were ordered to follow a plan designed by a judge.

Judges are compelled to follow the law, but the same is not true of attorneys and parties in mediation. A mediated agreement can vary from the default law in certain ways, such as including a lump sum spousal support buyout, a spousal support waiver, or an unequal division of community property. Mediation allows attorneys to design solutions that work for the entire family. This eliminates the need to predict what a judge will do later at a hearing or trial regarding assessing credibility, assigning weight to evidence, or issuing ultimate orders. Attorneys who resolve cases creatively, avoid-

ing these risks, become heroes to their clients.

Private mediation also allows parties to have input to select a private mediator of their own choosing, based on experience and expertise in the specific areas involved in their case, as well as their mediation style.

Because private neutrals only schedule one case at a time, they can focus the entire mediation day on the parties' particular case instead of dividing their attention among a number of cases on the same day.

In cases with urgent issues, the flexibility and availability of the private mediator provide a huge ben-

efit. Unlike a public court, a private mediator can accommodate the scheduling of an urgent mediation date. If multiple mediation dates are needed, such neutrals can set consecutive mediation dates, avoiding long delays and the need to refresh memories before each mediation date.

Other benefits of using private neutrals include the ability of private mediators to hold mediations that will accommodate different in-person venues, virtual sessions, and varying start and end times.

Timing of private mediation

Although the goal of mediation is generally a settlement on all issues, timing issues can affect the goals for a limited-scope mediation. Private mediation allows parties and their attorneys to choose how early in their case they schedule mediation.

If both parties are amenable to settlement based on a “rounded-corners” approach that avoids getting stuck on smaller issues, early mediation can result in substantially lower costs; each side has not yet invested heavily in work by attorneys and experts. Preparation can be limited to the exchange of informal discovery, leaving expensive formal discovery to be conducted only if the parties end up in litigation.

Mediations held at the midpoint of the process will allow for adjustment of each party’s position based on access to more complete information. Through the exchange of financial disclosures and the work of their attorneys and experts, the parties should have sufficient information, including information regarding assets, expenses, and custody issues, to successfully resolve their case.

Parties can still resolve their entire case even if they wait until close

to trial to mediate. They should have completed formal discovery and exchanged settlement proposals. If the parties do not settle at this mediation stage, they will likely have narrowed the disputed issues to be resolved at the upcoming trial. The attorneys can now organize and prepare the remaining issues for a streamlined trial, reducing overall trial costs.

Attorney time

In a typical mediated case, each party’s attorney will spend time preparing the client’s case. The attorneys will likely meet and confer with each other about all issues to be resolved. They will also work on their individual clients’ financial disclosures, make informal discovery requests for additional information needed from the other side, and work with necessary experts on reports to support their clients’ positions.

Regardless of whether the parties choose a mediation or litigation process for their dissolution, and whether the parties use the public system or a private neutral, their attorneys will still need to perform the above tasks. The principal difference will be whether those tasks are handled in a more streamlined and cordial manner, making the process less expensive and less time-consuming for the parties.

Once attorneys and parties agree to retain a private neutral for mediation, they may participate in a joint conference with the mediator to provide the mediator with case background and discuss mediation logistics.

Private resolution costs

Private mediation will generally take one full day, but it may extend to additional sessions or additional work to finalize the parties’ settlement.

Attorneys’ fees for each party will range, depending on the complexity of the case and the number of issues to prepare. Each attorney may spend between 30 and 40 hours of work in the three to four months prior to and including the day of mediation. At an average hourly rate for California family law attorneys of \$500, each attorney’s fees would be between \$15,000 and \$20,000.

Generally, the parties also share the cost of the mediator, who charges between \$10,000 and \$20,000 per day of mediation. A forensic expert, at an average hourly rate of \$400 per hour, can be expected to perform about 25 hours of work preparing and presenting reports and attending the mediation, totaling approximately \$10,000 in costs.

The total estimated costs per party will therefore be between \$30,000 and \$40,000.

These costs are only estimates, and cases vary in the number and complexity of issues. Attorney, expert, and mediator hourly rates will differ based on experience and expertise. Attorneys can help their clients understand potential costs by pro-

viding a detailed outline of the necessary tasks to be completed prior to mediation to reach a full resolution.

There is a substantial difference between the costs of mediation and litigation. When parties have their dissolution cases determined in litigation, instead of through mediation, their costs could be multiplied tenfold or more.

Conclusion

With the help of a skilled mediator, parties can settle their differences out of court in a single day. Mediation offers customized solutions designed to address the unique needs of each case. The confidential mediation process is designed to allow parties to communicate honestly and openly with the mediator without fear of backlash in a future hearing.

Private neutrals can adapt the mediation environment to assist both sides with reaching resolution. In addition to a faster process, the parties will enjoy the benefits of a significantly lower financial burden, enabling them to move forward with their lives.

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