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## **What to Expect in Divorce Mediation**

Mediation is a resolution process recognized by the courts as an effective and rewarding alternative to litigation. Mediation is different than binding arbitration. Arbitration is allowing a neutral third party, often a judge or a lawyer, decide a conflict with no alternative to litigation. Litigation is allowing the courts to decide the outcome of your conflict. By nature of their training, attorneys seek to represent the best interest of their clients. Thus, when a husband and wife both obtain attorneys, each one seeks to represent his or her best interest. This can quickly lead to an adversarial relationship and a costly divorce.

The average cost of a traditional divorce is \$50,000 if the court is involved. Even if you work things out, the cost is usually \$10,000 at a minimum. Bitter and expensive divorce proceedings can leave both partners with scars that take years to heal. If children are involved, it becomes increasingly vital for parents to find common ground. The children can suffer the most from a divorce.

Mediation is a totally voluntary alternative dispute resolution process involving both parties with a neutral third party – a mediator. Mediation is client-driven. The mediator is your facilitator. An experienced mediator will draw out options, seek to discover important issues, and work through emotions to create a peaceful solution. The purpose and benefit of mediation is to avoid adversarial relationships and create a peaceful agreement in a difficult time of life. Genesis Mediation uses a collaborative approach, allowing the couple access to professionals in finance, counseling, and law, if necessary. Mediation is almost always less expensive than involving attorneys in a divorce process.

When the mediation process is complete, the couple receives a Mediation Agreement. The couple can choose to submit the agreement on their own or use either a paralegal service or a collaborative attorney to file their paperwork. The couple must use the proper forms and terminology required by the court of the county in which they file.

Please check with your mediator on his or her hourly rate. No retainers are required. A simple divorce mediation can be completed within 2 - 6 hours (no children involved), or 6 - 10 hours (with children). This works out to be less than 30% of the average retainer of one attorney. Both husband and wife each need an attorney in a traditional divorce.

### **The Process:**

#### **First Session: (sessions typically last 2 hours)**

1. Introductions.
2. An explanation of mediation with time for questions and answers. Signing the Mediation Agreement.

3. Covering the ground rules of the Mediation Process.
4. A brief history and an assessment of conflict styles.
5. The mediation begins with any agreements made up until this point.
6. Homework and the agenda for the next session is established. Worksheets are provided to assist in preparation of the Parenting Plan.

### **Second Session:**

1. We begin with the Parenting Plan and the visitation of children for each spouse. If couples come prepared, often one session is sufficient to cover the Parenting Plan.
2. Parenting Plan areas include:
  - Custody (revolves around decision-making of the major areas of religious training, elective medical care and education.)
  - Weekly, summer and holiday schedule of visitation.
  - If children are involved, the mediator may desire their input and voice in the process
  - Other parenting concerns.
  - If there is considerable disagreement on a number of topics, then additional sessions will be necessary.
3. Homework is assigned for the settlement of assets and debts along with Cash Flow Budgets. Worksheets are provided.

### **Third Session:**

1. Financial Settlement. A Certified Divorce Financial Analyst is sometimes consulted if financial settlements are complicated and entangled. The Financial Analyst will supply you factual information on asset distribution as well as fiscal forecasting. The mediator assists with disagreements or impasse over assets. Personal property with emotional attachment can be the most difficult for couples to divide.
2. Depending on the issues and complexity of assets, more than one session may be needed. Couples with straightforward and minimal assets can usually accomplish settlement quickly (within one session).
3. Areas of Financial Settlement:
  - **Assets** - autos, banking, investments, retirement, stocks, real estate, etc.
  - **Debts** - mortgages, credit card, student loans, etc.
  - **Parents** - insurance, out of pocket expenses, college, educational costs, etc.
4. Budgets and cash flow are important elements surrounding finances. Each party must demonstrate positive cash flow going forward. Worksheets are provided.
5. Assets such as retirement plans and a 401ks need special legal work to divide (QDRO).

### **Fourth Session (if necessary):**

1. Often the most controversial elements of divorce includes Child and Spousal Support. The State of Oregon uses a Child Support Calculator of which gross income and overnight stays become the largest variables. The calculator does not take into account things like music lessons, sports, private education or other special interests for the

children. Thus, Child Support is negotiated to include the manner in which parents desire their children to live. Various alternatives are available to include these extra expenses. Often this amount is above the state minimum required.

2. Spousal support in Oregon comes in three forms:

- **Compensatory** (when a spouse has significantly assisted the other in attaining the standard of living both enjoy)
- **Transitional** (often to assist a spouse in education or training to reach a higher pay grade for future income potential)
- **Maintenance** (to assist in creating equity between a higher wage earner and a lower)
- These are very brief descriptions. A wide variety of elements come into play to determine spousal support. Consulting an attorney to determine a range of spousal support is very helpful in mediation for both parties.

3. If couples have come to agreement on all issues, a Mediation Settlement Agreement is drafted and reviewed by both parties. The Mediation Settlement Agreement is a simple, complete compilation of all agreements reached necessary for a divorce. This document needs conversion to the legal language necessary for the local county. Parties have the choice of self-submission, use of a paralegal service, or a collaborative attorney. A physical meeting may not be necessary for this step. Unless your divorce is very simple, a consultation with an attorney is highly recommended if papers are not drafted by one.

### Other Notable Items:

- Payment of services is expected after each session (usually two hours). Genesis Mediation accepts cash, check, money orders, VISA and MasterCard.
- Genesis Mediation has cultivated relationships with a number of reputable collaborative attorneys. If you would like a consultation, please call for a referral or check our website. You do not need to place an attorney on retainer for mediation purposes. Many collaborative attorneys will give you consultation as needed for an hourly fee.
- A Collaborative Family Law approach is very healthy and helpful for those seeking divorce. Professional team members include Divorce Coaches, Certified Divorce Financial Analyst, Child Therapist, and Collaborative Attorneys. Genesis Mediation offers facilitation with the professional team in this process.