

Mediation for Self-Preservation

When your family breaks up, it feels like your very survival is threatened. Mediation merges all of the aspects of repairing a broken family – including the legal, financial, and emotional facets.

By Judge Michele Lowrance (ret)

Before I became a mediator, I spent 19 years as a judge in divorce court, preceded by 20 years as a divorce attorney. During those four decades, I have been a witness to the consequences of divorce on three generations of divorcing families. I have spent years trying to make sense of the painful process of divorce as played out in the theatre of the courts. As a child of divorce myself, changing the experience for those impacted by the breakdown of a marriage has come to be something of a mission for me. At first, my goal was to understand and create a formula for settling cases to keep people out of trial and court. But I came to realize that the goal had to be much bigger: I had to find a way to help the parties on so many levels that went beyond just the stamped Divorce Decree. I became fascinated with mediation because it merges all of the aspects of repairing a broken family, including the legal, financial, and emotional facets.

Breakup and the Brain One of the primary reasons I became a mediator is that mediation addresses the emotional and brain ecology that is unique to divorcing and separating couples. Love and attachment is a very special kind of emotional bond, which is wired into our brain by millions of years of evolution. It is part of survival. When your family breaks up, it feels like your very survival is threatened because so many aspects of security are removed. The human brain codes the breaking of attachment bonds as danger – and this is true even when one or both spouses don't like the person they are divorcing. This danger signal creates a stress response, which can include a depletion of feel-good brain chemicals like serotonin and dopamine. Stress and anger releases cortisol, which impacts your physical health and can compromise decision-making and problem-solving abilities. This kind of chemical interplay occurs at a time when you have to make some of the most important decisions of your life. So much of the divorcing process feels dangerous and unfamiliar. When you are in the adversarial mode, your fear centers become overly sensitized; as a result, you may be overreacting to danger signals that are imagined rather than real. The more these fear centers are activated in the adversarial process, the more you can increase your sensitivity to negative events. This might lead to more “false alarms”, which can then make the process more adversarial.

Grieving Disrupted

Healthy grieving is essential in adapting to the loss of what was once an intact family. There is a necessary grief process even if you are the one who desperately wanted the divorce. When the divorce process is an adversarial one, however, it becomes more difficult to go through the stages of healthy grieving. For people who have lost a loved one to death, there are defined stages of grieving, including: denial, bargaining, anger, depression, and finally acceptance. For death, grieving usually ends with acceptance – but in divorce, the stage where acceptance is supposed to occur is often replaced by an adversarial process. This can eradicate the necessary

stage of acceptance. Ultimately too many people get stuck in one part of the cycle – and too often, it is anger and blame. We have all seen people frozen in the anger stage long after the divorce is over.

Building a Divorce “Immune System”

I think of the mediation process as building a strong immune system for a divorcing family. A good immune system can't prevent *all* health problems, but without one, even the smallest germs can lead to serious consequences. Because mediation can help people work through sadness, anger, and other negative emotions, it often helps people's brain chemistry get back in balance. It can be utilized at any point in the proceedings, no matter how much conflict has transpired.

Ten Protective Aspects of Mediation

Here are ten ways that mediation can reduce stress and improve outcomes for divorcing couples and their families.

1. **Protects children.** The parties can really focus on a parenting plan that meets first and foremost the needs of the children, but also the needs of the parents. Current research tells us that the longer the conflict continues the more it wears negatively on the children. Mediators can explain to the parents how this can occur in ways the parents may not have realized.
2. **Reduces future disputes.** Mediation greatly reduces post-decree litigation.
3. **Creates better co-parenting relationships.** Research has shown that parents who choose mediation remain more involved in their children's lives post-divorce or separation than those who go through litigation. Mediation addresses many issues of co-parenting, including how to resolve current and future disputes, and communicate regarding the changing needs of the children.
4. **Expedites information gathering.** If the mediator is trusted by both sides, the mediator may be able to induce the parties to reveal financial information, as well as information about their underlying needs, priorities and aspirations that they would be reluctant to disclose to an adversary.
5. **Explores alternatives.** Mediators realistically assess alternatives to settlement. A mediator can discuss the unpleasantness of continuing the dispute: including loss of morale, declining work productivity and parenting performance.
6. **Saves financial and time costs.** Mediation saves time, money, and emotional depletion of the parties. People feel that they must fight for what is fair but very few have the money to sustain that fight in court.
7. **Creates better communication.** Mediators make it possible for the parties to retreat or make concessions without losing face or respect, by increasing constructive communication between the parties. This helps couples keep their focus on the actual issues.
8. **Reduces polarization.** If the disputes are polarized and repetitive, every time you negotiate it is like putting fresh water over an old tea bag. Mediators reframe the issues in more tolerable and creative ways.

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9. **Stops attorneys from fueling disputes.** Sometimes, opposing counsel seems to get in the way of settlement – or your relationship with your attorney may be shaky, but you don't want to spend the time or money to start over with new counsel.
10. **Empowers parties to create custom-made outcomes.** A judge, who only has a snapshot of you and your situation, may not see your position the way you do. When you go to trial, you give up power over the outcome.

It is not possible to fix the entire separation or divorce process, but we can try to improve those areas that are within our reach. The divorcing process can be like riding a bull in an earthquake: the bull creates one set of problems, but the earth moving presents an even bigger challenge. Mediation offers a different terrain – a stable place to stand where you and your family can be protected. Yes it can be hard work, but in the words of the Scottish philosopher Thomas Carlyle, “No pressure, no diamonds.”