

Why Resolve Family Law Matters by Mediation?

by Stephen M. Gaddis

1. The Parties Are the Decision-makers

- a. The Parties, not a *stranger* to the family, make the decisions
- b. The Parties *choose* the neutral person (mediator, arbitrator, master), involved
- c. The Parties *choose* the process and degree of formality to be followed in the process
- d. The role of the neutral *can be to provide* education, equality and empowerment
- e. Adults are treated with Respect, they identify their own Issues

2. The Parties Retain Ownership of the Issues and Fully Participate in their Resolution. The parties fully and directly participate in the process of defining and resolving the issues. They can dialogue directly with all counsel, each other, and the mediator – none of which happens in court.

3. An Agreed Resolution Can Give the Parties Finality of Outcome. Mediated outcomes are final and not subject to appeal. Litigation, to the contrary, creates a “loser,” and gives that person the right of further litigation by appeals, motions for reconsideration, petitions to modify, motions to set aside the judgment and endlessly onward.

4. Confidentiality Is Only Available in a Private Proceeding

- a. Court proceedings are recorded and documents are scanned and can go on the internet.
- b. In Mediation what you say in the room is confidential; the only documents that need appear on the Internet are the final orders – not nasty declarations or the intimate personal or medical details of your life.

5. Loss of Friends and Support System. Conflict and fighting impairs the dignity and respect of each party for the other; it alienates friends and family who must testify on behalf of one side or the other; and it decreases the parties’ ability to work together in the future. In court the goal is to discredit the other party by telling harmful stories about them.

6. Uncertainty/Unpredictability of the Court Outcome. The only certainties of court proceedings are: that there will be a great cost attaining the resolution; that the decision will be made by someone less informed about your family than you; and that the criteria applied are those that serve the interests of the court and legislature, not your family.

7. Increased Efficiency / Reduced Costs of the Mediation Process. In mediation, parties frequently stipulate to the use of neutral experts. Often both sides work simultaneously on different aspects of the settlement in different rooms; while office staff drafts final papers at the same time. If there is uncertainty as to factual information, this can be resolved by a telephone call or checking values on the Internet. In litigation, competing forensic experts are hired, at twice the expense. During court, only one person speaks at a time, and all must listen. One person... at...a...time...

8. Major Difference in Core Values as Between Mediation and Court. The goal of mediation is to find a balanced resolution that respects the needs and resources of each party and which fosters and protects the best interests of the children. In court, the overriding goal is consistency, which we package as “due process,” “equal protection of the law” or some call it “homogenized justice” –which does not work in Family Law, because no two families are alike. Different families require different solutions.