



Six Key Disqualifiers for Divorce Mediation

Which Path is Best for Your Divorce?

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The word is spreading over coffee cups and in the carpool lane: if you can handle your divorce through a mediator, you'll avoid a great deal of drama, almost certainly end up with a fair and equitable settlement, and pay a fraction of the cost.

But in my practice as a certified divorce mediator, I've seen at least six situations that tell me my would-be clients won't be settling with me. I advise these couples that it's time to give up the dream of negotiating a simple, low-cost divorce; instead they need lawyers.

Domestic violence. I don't work with couples when one is physically abusing the other. Mediation requires both participants to sit down together and be clear about what they think is fair. If honesty in my office is going to result in physical retribution at home, then both parties need the protection of lawyers, and possibly a protective order.

Child abuse. Divorce mediators in most (if not all) states are “mandated reporters”. That means that even an unprovable allegation of child abuse must be reported to the authorities. If I hear that a child might be in an abuse situation, my neutrality ends. Once that happens, I cannot effectively mediate a divorce case. It’s best to go straight to the divorce lawyers in those situations.

Belief that a spouse is hiding money. When one partner has always had control of the finances, the other can be left wondering what they don’t know. However, being uncertain is not the same as a strong suspicion that one spouse is hiding funds. If you’re simply not sure of the finances, you can certainly benefit from divorce mediation. If you think you’re going to need a forensic CPA to comb through your records in a quest to uncover hidden money, you’ll be better off with a divorce lawyer.

Refusal to get divorced. Sometimes I come across couples in which one person simply refuses to participate in any conversations related to divorce. This can be for religious reasons or simply an inability to face a painful reality. However, when one person is simply stalled by the fear of an uncertain future, that is fairly common and divorce mediation can be a great benefit in helping that spouse overcome his or her fears.

Unwilling to even consider compromise. When divorce is particularly painful, one spouse may react by making the divorce as challenging as possible for the other. That makes the reasoned and thoughtful discussions I have with my clients very difficult. Often the spouse in pain seeks out the most shark-like divorce lawyer (regardless of the thousands of dollars that will drain from any possible settlement) in order to exact retribution. Mediation works best when fairness and thoughtful decision-making are the goal.

Inability to tell the truth. Lies and half-truths are common between divorcing couples. It’s not usually a case of compulsive lying; rather, most lies are rooted in the impossible desire to lessen the pain of divorce. It never works; lies simply make a divorce more painful – but we are all only human. Still, if one partner is incapable (for whatever reason) of telling the truth, then mediation – which requires honesty – will not be successful.

Many clients are surprised by the conditions that are not automatically disqualifiers. I regularly work with clients who have mental illness, personality disorders, substance abuse problems, porn addiction, and repeated infidelities. In fact, people with these problems account for a large percentage of my successful divorce mediations. This makes sense considering it is these very issues which are often the cause of the divorce in the first place.

All I need for a successful mediated divorce settlement is a couple who can sit at my conference table, for two or three visits, with a willingness to listen, compromise and with the desire to get through the pain and move on to a happier, better adjusted future.