



# Family Law Mediation

## *Achieving Wellness in an Uncertain Economy*

By Barry T. Harlan and Vanessa Soto Nellis

**F**RANK AND JAMIE McCOURT ARE GETTING divorced. They are litigating their case in a public courtroom, and the press is actively involved in reporting every detail of their personal life. They will likely spend several million dollars on dissolving their marriage and dividing assets, one of which is the Los Angeles Dodgers.

In contrast, a high net worth couple (one of whom is an actor on a hit television series) with two minor children and significant assets, including houses and retirement plans, recently had all issues in their dissolution resolved through a participatory process with no attention from the press. Total cost to the parties – \$12,500. Why the difference between the McCourts and the television personality? The difference was that the television personality utilized the services of an experienced family law mediator.

Most people have heard of family law mediation but are not sure what it is or how it works. Mediation involves two parties sitting down with a neutral, experienced family law attorney to divide up their community property assets, confirm separate property assets and, if there are minor children, agree on how to share time with their children, determine child support, and determine spousal support, if applicable. The mediator does not represent either party but assists the parties in arriving at an agreement that is consistent with California law.

Many parties retain their own consulting attorneys to review the Judgment of Dissolution prepared by the mediator and address any concerns before finalizing the Judgment. The parties can also have their attorneys participate throughout the mediation process. Mediation is a voluntary process that allows both parties to be involved in resolving their dissolution issues, as opposed to having a third party judge make the decisions for them.

In contrast to judicial proceedings, mediation is private and confidential (Evidence Code §§1119, 1121; *Eisendrath v. Super. Ct (Rogers)*(2003) 109 Cal. App. 4th 351, 364; see also *Foxgate Homeowners' Assn., Inc. v. Bramalea California, Inc.* (2001) 26 Cal. 4th 1, 4). The confidentiality component,

with its absolute immunity (preventing the parties and the mediator from testifying in court) makes mediation a safe haven for the parties to freely discuss all information about assets, debts, custody and support issues. When parties voluntarily exchange financial information, it is much more cost-effective than engaging in formal discovery by attorneys (e.g., request for documents, interrogatories).

As part of every dissolution proceeding, both parties are required to make a full disclosure of all property, debts and investment opportunities (*Family Code* §2100 et seq.). If a party does not accurately disclose all asset information, the court can impose serious penalties (See *Marriage of Rossi* (2001) 90 Cal. App. 4th 34, holding that wife had to turn over all \$1,336,000 in lottery winnings she concealed from husband; see also *Marriage of Feldman* (2007) 153 Cal. App. 4th 1470, where Husband was ordered to pay \$140,000 in fees and \$250,000 in sanctions for failing to update his disclosure forms).

California public policy requires that both parties have full and complete information so that they can make informed financial decisions. The confidentiality of a mediation makes it a cost-effective forum to make their financial decisions.

In mediation, the parties can choose to minimize the involvement of expensive professionals, which helps keep costs down. For example, if the parties are unable to agree on child custody issues, instead of having their attorneys litigate the issue and each party hiring their own mental health expert, the parties can jointly retain a trained mental health professional to assist in resolving a custody dispute.

Mediation is always a more cost-effective option for dissolving a marriage than litigation. The parties usually split the cost of the mediator and jointly retain experts so that both parties are vested in the mediation process. If each party is responsible for one-half of the mediation fees, the parties are more likely to have productive mediation sessions and remain vested in the process (because mediation is voluntary either party can withdraw from the mediation at any time).

Mediation often decreases the stress and anxiety felt by clients during the emotionally-charged dissolution process. One reason for this is that mediation allows the parties to express their concerns and desires during the dissolution process. It is a common perception that when parties litigate their dissolution, they will get their “day in court” and they will be able to tell the judge about their family situation and the cause of the marital breakup.

The reality is that California is a “no fault” state and any evidence of fault regarding the breakdown of a marriage is inadmissible under California law (*Fam. C. §2335*). The courts are unable to give substantial time to each case, and as a result, many parties who litigate their family law issues are disappointed that they are never able to talk directly to the judge.

In mediation, the parties can talk to the mediator in a confidential setting concerning their beliefs, observations and what is very important to divorcing parties, their feelings. One party may ask to speak to the mediator privately (called a “caucus”). The information revealed in the caucus remains confidential unless the party gives the mediator express authority to disclose the communication to the other party.

In addition to emotional considerations, the paper work required to complete a dissolution can be overwhelming. The mediator eases the anxiety of the parties by filing the required court documents and preparing the Judgment of Dissolution of Marriage. The mediator assists both parties through the dissolution process and makes sure that the final Judgment of Dissolution comports with California law.

Another practical advantage of the mediation process is that mediation appointments can be scheduled at times that are convenient for the parties (e.g., early mornings, evenings or sometimes on weekends). In contrast, dissolution litigation hearing dates and times are based on the court’s schedule and only heard during daytime hours which often conflict with the parties’ work and personal schedules.

Mediation is ideal for two individuals who are serious about resolving their dissolution issues, and willing to make compromises so that they can move forward with their lives. The biggest benefit of mediation is that it allows both parties to be directly involved in the dissolution process. Given the common need and desire to make informed financial decisions and conserve resources in the present uncertain economy, mediation should be considered by every couple at the onset of dissolution. 📌

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