

I May Not Be the Answer

Judge Lynn, a graduate of Harvard and The University of Pennsylvania Law School served as a municipal court judge for 8 years.

She is currently the Judge on the nationally syndicated television show, Divorce Court and author of the book, My Mother's Rules: A Practical Guide to Becoming an Emotional Genius

I suppose it is an occupational hazard. It happens regularly. First there's a moment of awkwardness. They recognize me but don't know why. Then it hits them, I am the judge on Divorce Court, and that is when it begins. Those who have had a particularly unpleasant experience tell me about their divorce. They want to inform me, not of personal wrongs, but of their sense of lack of control. Their story, of course inevitably stars the very same trinity of evil: their jerk ex, his or her vulture attorney and that idiot judge.

Yes, divorce is a legal proceeding sanctioned and granted by a court. But litigation and adversarial maneuvering are not the only ways to reach that legal end. Divorcing couples need to consider all of their options before they embark on their journey towards separate lives including Alternative Dispute Resolution (ADR). Specialized ADR allows divorcing couples to avoid handing over the most important aspects of their lives to a third party. It can help both sides walk away with, not only a mutually tolerable result, but a greater sense of control.

ADR is not new nor is it always the answer, but it should be considered since it is increasingly available, expanding in scope and being continually refined. ADR is not, as many believe, only effective when a divorce is friendly. Of course, if the War of the Roses has already begun, it may not be an option but some animosity is anticipated and can be effectively dealt with by a trained mediator.

The advantages are many. Independent of dockets and judicial backlogs, ADR can speed up the divorce process. Designed to avoid ever-mounting attorney's fees incurred while wrangling over every issue, it can save both parties money. Moreover, the proceedings are privileged and confidential, so if unsuccessful, the parties can always resort to litigation.

In Divorce Mediation an impartial third party acts as a facilitator helping the parties come to an agreement on disputed aspects of their divorce. Mediators set boundaries and employ skills designed to de-escalate emotional situations. They then help the parties find and build on common ground. They may 'caucus' with one side during negotiations if that person is not fully engaged or is stonewalling. They can suggest creative solutions to custody, support and property division issues with the particular wants and needs of the parties in mind. In a Collaborative Divorce both sides are represented by an attorney who is specially trained in the collaborative process and divorce issues. Dedicated to a negotiated solution, collaborative counsel must withdraw should litigation become necessary. Financial and other experts are often employed to assist both sides. In addition to the benefits of mediation a collaborative divorce can help level the playing field if there is an imbalance of power in the relationship.

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as featured in **DIVORCE MAGAZINE** Summer / Fall 2008

As I've said this is an evolving field. More recently a hybrid called Collaborative Mediation has emerged as well as the concept of Cooperative Divorce. The former combines aspects of both mediation and collaboration. The later employs the collaborative method's dedication to negotiation between the parties' attorneys but without the requirement of withdrawal should litigation become necessary.

Of course, this is just a broad overview of what is available. You will need to investigate the options where you live. Some courts have their own mediation services. Many independent ADR services exist, but you should make sure they specialize in divorce and possess any state required certifications. They should adhere to any Standards of Practice for divorce mediation adopted by your state or, if none, the Model standards developed by the American Bar Association or other such reputable source. In fact, a review of those standards (available on line) will give you a good idea of what to expect in a mediator



There are, however, situations in which ADR is inappropriate: where there is a gross disparity in power between the parties; child or spousal abuse exists, or there is a history of financial misconduct, serious mental illness or substance abuse.

Sometimes you need that which only the judicial system can offer. A judge has coercive and protective methods at her disposal that some situations require.

We do the unpleasant things that particular circumstances demand. But we are, increasingly, not the only game in town. Nor should we be. Knowledge is power. Be aware of your options. I may not be the answer.