

Cal Divorce 123

Mediation Definitions

- ◆ **Mediation.** A process by which a third-party neutral facilitates parties in resolving a dispute. The role of the mediator is to facilitate communications between the parties, assist them in focusing on the real issues of the dispute, and generate options for settlement. The goal of mediation is that the parties themselves arrive at a mutually acceptable resolution of the dispute. (Kimberly Kovach, *Mediation: Principles and Practice* 17 [1994])
- ◆ **Co-mediation.** Mediation is frequently conducted by interdisciplinary teams, often consisting of therapists along with lawyers. Co-mediation can be effective as a result of the diversity of mediation teams (such as gender, expertise, style). The teams can work together at all times or meet with couples (or individual spouses in caucus) separately. Forest S. Mosten, *The Complete Guide to Mediation* 420 (ABA 1997)
- ◆ **Co-mediation with attorney and therapist.** The focus of the therapist is to improve communication, identify the underlying issues, and deal with emotional conflict that interferes with the negotiations. The therapist can also function as a resource person by providing information about the children's needs, the emotional dynamics of divorce, and the restructuring of the marital relationship into an effective parenting unit.

The lawyer provides information about statutes, case law, and local judicial tradition. Legal standards can be used to establish parameters within which bargaining can take place. It is assumed there are rights to private ordering [cite omitted]. The lawyer serves to remind the couple that they are bargaining in "the shadow of the law" and that if negotiations fail, legal rules would be invoked. Having an attorney as part of the team may make the parties more aware of the legal standards, although the lawyer does not represent either party and each is advised to seek independent counsel. Lois Gold, *Lawyer and Therapist Team Mediation, in Divorce Mediation: Theory and Practice* 209-24 (Jay Folberg & Ann Milne, eds., 1988)

Debra Crawford Annis
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