



Mediation vs Litigation: To Punish or Not to Punish, That is the Question

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Many people go into a divorce with swords pulled. They want to get even. They want to punish their spouse for making them feel bad. Humiliated. Depressed. When divorce is not your idea, you may even go into a classic defensive “stall mode” to try and drive the other person a little crazy with angst.

Going about settling your divorce case is, for most people, the biggest negotiation of their life. The stakes are huge: Your children, your money, your sanity.

Most people feel the need for professional assistance to make sure they are getting their fair share and that their children’s best interests are being protected.

In rare cases, divorcing couples are able to settle their matters “at the kitchen table.” In Northern Virginia, though, where cases tend to be financially complex, this is often not the case. Though divorce lawyers are the go-to professional for most divorcing spouses, there is an excellent alternative: The Divorce Mediator.

Mediation is about finding ways to fairly, efficiently and inexpensively create a solid foundation upon which both spouses can launch their new independent lives and best function as co-parents to their children. The mediator makes sure that both spouses have all of the information that they need to settle their case and acts as a guide and assistant throughout the negotiation process. Mediation is light on the concept of punishment and focuses, instead, on creating mutually agreeable solutions to divorce-related problems. If you choose mediation, make sure your mediator knows the law, finance, tax, and the effects of divorce on children.

Litigation is about winning and often seeks retribution for past behaviors and transgressions. In divorce litigation, the fight is on. In their role as advocate, divorce attorneys have an ethical obligation to zealously represent their clients. They are also permitted to act as legal counselor, but that is not where they make their money. If you choose litigation, make sure your divorce attorney listens to you, understands what your goals are, has a strategy that you approve of, and that you thoroughly understand what

your case will ultimately cost.

So why don't more divorcing couples mediate their settlement? Because someone --or perhaps both parties-- is angry and wants to get even. Now what?

- So what should an angry spouse do to get even?
- How can you get through a divorce and make up for some of the hell your spouse has put you through?
- What is best in terms of finding a way to properly punish your husband or wife for what he or she has done to you?

The answer is usually not found in the courthouse.

The best way to get even with a bad partner is to find a way to be successful and happy in your own right. If you feel you must punish the other person, let them see that they have no control over you and that you are better off without them.

After 14 years of practicing family law and mediation, I can tell you that focusing on the punishment of your spouse for negative and hurtful past acts and behaviors is risky in terms of (1) actually getting the satisfaction that you want; and (2) draining your wallet. Most judges are not very interested in dirty marital stories or idiotic behavior. They have limited time and a high mandate to make sure that they make decisions that are in the best interest of children. Adult feelings of humiliation and sadness are low on most judges' agendas when it comes to both property distribution and spousal support.

Many people litigate because they want their story to be told. They want to be heard.

This can be done in mediation and is often times effective in making real change in how parties deal with one another. If you mediate your divorce settlement, you will not only be talking to your spouse, but there will also be a mediator there to help you find the best words so that your message will actually be heard. You cannot change someone's way of thinking, necessarily, but it often does feel very good to be sure that you have been heard. On the other hand, if you choose the courthouse because you are looking for a judge to slap down your spouse for behaving badly, you may end up very disappointed when a judge just doesn't want to get involved in the details of your hurt.