

Mediation: A 'Win-Win' Option

by Joan Kristall and John Spiegel
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In describing what she felt when her husband of 25 years left her to raise her four children by herself, Joy used this metaphor: "It felt as if I had fallen to the bottom of a very deep well and the only tool I had to get out was a spoon." Frightened, disoriented and depressed, Joy was called upon to make legal, financial, educational and parenting decisions that would affect her life and the lives of her children for many years to come.

A legal battle ensued for several years between Joy's attorney and her husband's attorney until an agreement was finally reached. Surveying the emotional and financial costs of the litigation, she and her husband proclaimed, "There has to be a better way to divorce."

In fact, there is. Divorce mediation provides a humane and effective alternative to litigation. In mediation, the separating couple talks to each other directly, rather than through attorneys. With the help of the mediator — a specially trained neutral person — the couple figures out their own solutions to the three key legal issues posed by separation and divorce: developing a parenting plan for their children, dividing their property, and making adequate financial provisions for each family member. These issues are addressed in a structured sequence of meetings that promote thoughtful resolution.

In mediation, both parties have a chance to be heard fully and to listen to each other. Although the mediator does not make decisions for the couple, the mediator can often suggest useful options for the couple to consider. The goal is to find a "win-win" result: a comprehensive settlement that is good for both spouses and good for their children. In some cases it can be helpful for a therapist to work in collaboration with the mediator. In separate meetings with the clients, the therapist can assist the couple to work through their "hot" emotional issues. Therapy can prepare and empower the couple; not for battle, but for negotiations.

At the end of mediation, the couple's decisions are written up in a draft separation agreement, which they then are urged to take to their own individual attorneys for review. Once the separation agreement has been signed, the couple can use it as the basis for seeking an uncontested divorce decree from the court.

Divorce mediation can be tailored to suit the special needs of Jewish couples, providing expertise for resolving such specifically Jewish issues as obtaining a get (religious divorce), post-separation planning for bat/bar mitzvah and religious education, and helping children deal with different levels of religious observance in their parents' separate homes. Success rates are high: most couples in mediation are able to reach a comprehensive settlement of all parenting, Jewish and financial issues.

Rabbis, who are sometimes asked to help separating couples in their congregations reach a divorce settlement, have offered strong support to religiously sensitive divorce mediators.

One local rabbi told a story about a bitter divorce battle involving one of the most prominent families in his congregation — a battle that ended up literally impoverishing the couple. After the divorce, the husband, who had previously been a key donor to the synagogue, came to the rabbi and with embarrassment asked for a free ticket to an annual banquet. He had no funds to purchase one. The rabbi said that he had tried without success to assist the couple and in retrospect realized that professional mediation assistance might have produced a workable settlement.

Another Baltimore rabbi pointed out that mediation is deeply rooted in Jewish tradition because shalom (peace) is an activist concept. Jews are taught, he said, not to wait for peaceful solutions to fall into our laps, but instead to seek peace and pursue it.

A third rabbi compared divorce mediation to the ancient Jewish traditions of helping the widow and the orphan, caring for the stranger, visiting the sick and comforting families in mourning. When people are in special need, the Jewish community has a responsibility to be pro-active in offering assistance.

"Your mediation program is part of that tradition," he said to us, "and it will have my full support."

John Spiegel, an attorney, and Joan Kristall, a clinical social worker, have combined their efforts for the past three years to establish the nationally recognized divorce mediation program at Jewish Family Services.