

# We've Tried To Work This Out And Can't!

## HOW IS MEDIATION GOING TO HELP?

Here's a question I get frequently from divorcing couples and others in conflict. Having disagreements and having been arguing back and forth for some time, they are doubtful that putting another person into the mix going to change anything. Hearing that 75-85% of disputes get resolved using the mediation process is puzzling to those in the thick of a conflict. It's difficult to explain in just a few words what happens in mediation to turn conflict into resolution.

**Communication:** Of course, this is a big part of it. When people are in conflict, they usually don't slow the communication down enough to hear relevant information from the other person. I can't count the number of times in my ten years of mediating that I've listened to two people in mediation going back and forth on an issue when it becomes apparent to me that they are talking about two different things.

Example: a couple in divorce mediation is arguing about whether or not they will have "joint custody" of the children. The term is being bandied about furiously, there is a lot of talk about their "legal rights," and lines are being drawn in the sand. From listening closely to what is being said, I have a suspicion that they may not be clear about what each of them mean by the term "joint custody."

So, I ask the question: "What do you think he means by 'joint custody'?" Mom thinks that Dad wants the kids 50% of the time, every other week. Dad is surprised. Though they've been arguing about this issue for some time, he says he never said he wanted to have them half the time. He just knows other fathers who have been cut out of their kids' lives after a divorce, and he wants his rights as a parent!

By asking the question, I've slowed the conversation down, forced the parents to get clear about what each of them mean by the term, and start taking them to the next step in getting to resolution –

**Interest-Based Negotiation:** Most people come to a mediation having defined the issue and decided on

their preferred solution. Their solution is their "position." When people are negotiating from their positions, they often simply assert their solution and try to convince the other that they are right. Mediator can help people dig beneath their positions to get to the underlying needs (interests) that their particular solution fulfills.

In this example, the positions on custody are: Dad for joint, Mom against joint. Defining what joint custody means to them is a good first step. Next, asking "What's important to you about that solution?" helps them to break down what each of them needs in the parenting arrangement.

What's important to Dad is to be involved in decision-making. He doesn't just want to see his kids

every other weekend like many guys he knows. He wants to see them frequently, he doesn't want Mom to be able to move them far away, and he wants to stay involved in their sports and school activities.

Mom wants the children to have a stable home, to remain with her most of the time, since she's been the primary caregiver. She had no intention of cutting them out of Dad's life and she's very willing to find ways that he can have frequent contact and involvement with the children.

Now we have something to talk about! Now that we know each parent's underlying interests, we have broadened the range of solutions that could meet the needs of each of them. Interest-based mediation takes the dispute from an "either/or" situation to a discussion of the specifics of how to satisfy the interests of both parties. As the mediator, I can help them to focus on these underlying interests and find solutions that work for them.

At this point of giving an example, everyone wants to know what the solution turns out to be. The key is that there is no one solution. In this example, it means finding ways to maximize Dad's involvement while addressing Mom's concerns about stability. The work now is to help the parents craft a plan unique to their family, their schedules, and their priorities.