

Marital Mediation: An Emerging Area of Practice

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Abstract

This article describes the process of “Marital Mediation” as a relatively new field of family mediation , designed to keep couples together using established family mediation techniques. Previously many of these techniques were used solely in divorce mediation. We begin by describing what the process involves, how it differs from both couples counseling and divorce mediation, and why we believe it often works for couples when counseling has not. We also discuss suggestions for promoting the development of Marital Mediation using both research and marketing techniques.

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Article:

Marital Mediation is a growing area of family mediation designed to help couples stay married; under this general umbrella a variety of approaches are rapidly evolving. In this article we explain what the Marital Mediation process involves, as well as how we each came to this area of practice and use our own mediation styles to achieve the same result; how Marital Mediation is different from both couples counseling and divorce mediation; how Marital Mediation works; and, finally, we provide suggestions for its continued development.

How Marital Mediation Evolved

To our knowledge, John Fiske (1997) first coined the term “Marital Mediation”. Each of us had his or her own epiphany, a dawning realization that as mediators we are in an extraordinary position: we give people a place they can talk without the “pathologizing” that unfairly accompanies couples counseling. Many clients have told us at some point, “If we had just known how to talk like this before, we wouldn’t be getting a divorce.” For years we sighed, “Too bad,” and helped them get divorced. Then we began to realize we could ask them if it was not too late: “Would you like to talk about the possibility of staying married?” When they overcame their astonishment some said “Yes,” and we began

to adapt mediation to help them do it. Some of these couples are still married, thanks in part to this process.

The Marital Mediation Process

Marital Mediation is useful for some couples who want to stay married, or if not married, to stay living together. The process begins by helping couples identify their common commitment to their union and then responds in a flexible manner, depending on their issues and the approach and training of the mediator. Marital Mediation uses mediation techniques to open and improve lines of communication, helps couples address areas of friction in their relationship, and develop “guidelines” that focus on the behavioral changes each person will make in order to lessen future conflict. The process varies with the mediator, depending on factors such as personal style and prior training, (for example whether they are an attorney or a mental health specialist). Some of us believe the process should result in a written agreement, (a post-nuptial agreement which would be executed with formalities including review by outside attorneys and notarized). Others of us feel less of a need to focus on a written agreement and instead use the process to improve communication and help couples gain a deeper understanding of their relationship. The decision about whether to have a written agreement as the end result of the mediation is generally client-driven, with guidance by the mediator. Our styles vary, from ascertaining what each person wants even using a written list of possible issues and discussing them until they agree in writing, to a more open-ended approach that involves seeing what develops, and how disputed issues might be transformed by talking with communication assistance. Some of us ask the clients what three things bother them the most about their relationship, and others feel it important to explore how conflict was addressed in their family of origin, particularly for many clients unaware of the importance of their family history in their present conflict management. When meeting with a couple where one party says that they want to get divorced and the other says

that they want to work on the relationship, one of us often asks the “non-initiator”: “Is there anything that you can say to him/her that might get them to change their mind about working on a divorce right now?” The initiator may in fact be willing to give the marriage another chance.

In spite of our style differences, we all follow a common methodology doing Marital Mediation.

1. Explain the Marital Mediation Process. The mediator explains their role as a neutral third party and that their role is to listen to the couple, help them talk to each other, and help them craft an agreement (whether written or spoken) resolving their issues in conflict.
2. Listen to their Presenting Problem. The mediator listens, making sure each client gets to say what he or she wants to discuss, paying great attention to their interactions and communication difficulties.
3. Look for Issues that can be Mediated. Listening to the couple, the mediator seeks issues that can be mediated: sometimes the clients identify them, and sometimes the mediator has to discern. A sound hypothesis is critical (Haynes, Haynes, and Sun Fong, 2004) since the mediation centers on this issue: exactly what is their conflict about?
4. Teach Communication Skills. “We teach, we model, we discuss, we listen because we are genuinely interested in what people are saying” (Mayer, 2004, p.120). In every case, the couple’s stress and marital disharmony has been exacerbated by poor communication skills. From her/his neutral seat the mediator can “normalize” and give feedback to what the couple is feeling. The mediator can help each one understand the hard but true fact that BOTH are right: each has a right to their feelings. In so doing, each spouse acknowledges the other, a central foundation of the marriage: s(he) has her/his own reality to be heard even if the other considers it not to be true. These and many other skills can be taught to the Marital Mediation clients for future use on their own. One strength of the process is to give couples their own

communication tools, with recognition of the backup value of further counseling or mediation if necessary. Deutsch (1973) describes the idea that it is more difficult to resolve conflict born of fear than of desire. Giving clients the tools to better able to communicate and help overcome their fears helps reduce conflict.

5. Reaching Agreement. Whether in a written legally binding Marital Agreement, or in a more informal unwritten understanding, the purpose of Marital Mediation is to lead to an agreement of some sort. This focus on the future is a common thread in all our Marital Mediation work. For example we each ask such questions as : “What do you want to do tomorrow?” or “What would you like your marriage to look like in the next year?”

Marital Mediation, Couples Therapy, and Divorce Mediation

These professional disciplines complement one another, and differ in several respects. We find some couples coming to us after years of couples therapy, wanting the Marital Mediation emphasis on practical focus, settlement of one or more specific issues, and behavioral change, or even new legal terms for their marriage. Couples sometimes prefer Marital Mediation simply because it is *not* therapy and in particular not to be labeled as “therapy.” Marital Mediation uses mediation techniques and takes a specific form of intervention that is not the same as couples therapy or marriage counseling. He who says, “I don’t need therapy” may be interested in Marital Mediation to define, for example, the basic terms of divorce if they ever decided to get a divorce, thereby removing that specter of doom hanging over their tenuous marriage.

Divorce mediation has many similarities with the Marital Mediation process in terms of basic mediation techniques, but there are major differences as well. In divorce mediation couples produce a signed Separation Agreement defining their terms and then usually file it in court for approval. Their agreement, and even the mediation process that helped them produce

it, is fraught with adversarial elements. Marital Mediation clients are very different: the whole force is centripetal, to pull together. He may stand up when she enters the room, or hold her chair, or they may hug each other at some point. These people are here to work on staying together. They may not know they can agree to stay married until the mediator points that out.

How Marital Mediation Works

Because Marital Mediation is so focused on specific issues or problems as with divorce mediation, it is usually very short term. A typical Marital Mediation involves several sessions, each 1 1/2 to 2 hours in length. While the process is not meant to be therapeutic, the effect of a successful mediation on one or both of the clients may be therapeutic or psychologically beneficial (See Kelly, 1983, for a discussion of the differences between divorce mediation and psychotherapy). The goal of the Marital Mediation process is to bring about behavioral change, rather than internal change based on insight as with couples counseling. However, given that some psychologists believe that people make attributions about their internal states by observing their own behavior (Bem, 1972), it stands to reason that changing behavior can influence one's attitudes.

Although research shows that mediation combined with a counseling approach can be helpful, and couples counseling and mediation complement each other (Curtis & Bailey, 1990), we frequently wonder why Marital Mediation may work for couples after counseling has not. One reason may be readiness to agree, to move, to do something. "The readiness is all," says Hamlet at the very end of Shakespeare's play. Marital Mediation is positive, with its eschewing of fault or blame and its allowing clients to feel competent. We have yet to find a negative "stigma" to going to see a mediator, without suggestion of some recondite mental health problem.

The mediation process is empowering to couples because it is so client-driven: the emphasis is always on the clients themselves, respecting their ability to recognize their own issues and craft their own solutions. They keep hearing “It’s up to you,” and they own the result. Research (Fisher and Ury, 1981; Friedman, 1993) has suggested that people feel happier and more committed to decisions they’ve had a part in making. Agreements which are jointly made are more stable and people feel more likely to uphold them. For example, Wen (2005) describes how it frequently helps couples to resolve their conflict by developing a post-nuptial agreement over which they both have control. Furthermore as Friedman (1993, p. 157) describes it: “Experience has taught me that people who choose freely are usually more willing to accept responsibility for having made the choice and to make choices that honor others.”

However, there may be legal questions as to the enforceability of marital agreements. For this reason we may insist that each spouse has his or her own attorney review the agreement. The enforceability of postnuptial agreements varies from state to state. Whether enforceable or not, many couples will want to follow their own agreement because of their sense of ownership. In Marital Mediation (as opposed to divorce mediation), the process may be more important than the resulting agreement. Learning to have better interactions and communication so that the next disagreement can be taken care of by the couple themselves, without the assistance of the mediator, is one of the joys of the process.

Suggestions for Promotion of Marital Mediation

We are pleased to use this article to encourage our mediation colleagues to expand their practice to include this area of family mediation to preserve marriages and relationships. We also suggest two areas for future work: one is research, and the other marketing.

With respect to research, as in any developing field, it is imperative that we understand more about what the process involves, and how it works. This can only be accomplished through

research. We need to network with Marital Mediators across the country and talk with them about how they mediate, what they find helpful or problematic, and how they see the efficacy of their work. The current article is just a first attempt at describing Marital Mediation by a handful of mediators/colleagues working in the northeast: we welcome your responses and encourage your own ventures.

With respect to marketing, we see three important areas of work. One is participation in more conferences that include sessions on Marital Mediation, either as part of a general program or as the sole focus. A second component is training of marital mediators. Mediation training programs are numerous, but most are geared to divorce mediation. The exciting challenge and opportunity for all of us is that the development of Marital Mediation is approximately where divorce mediation was in the mid 1980's. Training specifically focused on the Marital Mediation process is a next step. Finally, we need to develop a Marital Mediation organization to foster research and cooperation among mediators. An organization devoted to this process would enable us to network more efficiently and promote the process more effectively. Having one centralized internet site with the names of marital mediators would be helpful in connecting clients to mediators. The website would also increase search engine results for "Marital Mediation" and similar terms, and would help clients and mediators learn more about Marital Mediation.

Conclusion

Marital Mediation is an important, effective process in the field of family mediation that is worthy of continued practice, research and development. This process has often succeeded in resolving marital conflicts when other interventions have failed. It provides a professionally satisfying opportunity for mediators to help put a marriage back together instead of rendering it asunder.

References

- Bem, D. J. "Self-Perception Theory." In L. Berkowitz (ed.), *Advances in Experimental Social Psychology*, Vol. 6. New York: Academic Press, 1972.
- Curtis, F. A., and Bailey, B. "A Mediation-Counseling Approach to Marriage Crisis Resolution." *Mediation Quarterly*, 1990, 8 (2), 137-149.
- Deutsch, M. *The Resolution of Conflict*. New Haven: Yale University Press, 1973.
- Fisher, R. and Ury, W. *Getting to Yes*, Houghton Mifflin. 1981.
- Fiske, J.A. "Marital Mediation as Another Helpful Path." *Massachusetts Lawyers Weekly*, 1997, December 8, 26, 753.
- Friedman, G. J. *A Guide to Divorce Mediation*. New York: Workman Publishing, 1993.
- Haynes, J.M., Haynes, G.L., and Sun Fong, L. *Positive Conflict Management*. Suny Press, 2004.
- Kelly, J. B. "Mediation and Psychotherapy: Distinguishing the Differences." In J. A. Lemmon (ed.), *Dimensions and Practice of Divorce Mediation*, *Mediation Quarterly*, 1983, (1),33-34.
- Mayer, B. *The Dynamics of Conflict Resolution*, San Francisco: Jossey Bass, 2004.
- Wen, P. "Sealing a Contract After the Marriage." *Boston Globe*, 2005, December 19, 1.

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Susan K. Boardman received her Ph.D. in Social Psychology from Columbia University. As a psychologist, she has specialized in family mediation. She served on the board of the Connecticut Counsel for Divorce Mediation and Collaborative Practice for five years. Her recent publications include “Personality and Conflict” in The Handbook of Conflict Resolution and “Personality and Marital Conflict” in the International Encyclopedia of Peace. She has been teaching, training and conducting research in negotiation, mediation, and communication for over 15 years. Her website is:

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Partner in Healy, Lund and Fiske, now Healy, Fiske & Richmond, since September 1, 1979. His practice is predominantly mediation, and he is an active presenter on mediation. He has mediated about 2,000 divorces, separations and contract to stay married since 1979. In response to requests from families, he has expanded his mediation practice to include a broad range of disputes, from siblings trying to decide questions of care of a relative to a father and son reaching a financial agreement. As John states, “Mediation is a creative, efficient process for addressing human conflict. You get a place to talk. You stay in charge of your life.” His website is: www.mediate.com/fiske

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