

# What is Mediation?

by  
Linda Gryczan  
Mediation Works

*My husband and I are going through a divorce. A friend suggested we go to mediation? What is it exactly? How does it work?*

Mediation is a way to resolve conflict where people who disagree meet with an impartial third party to help them create a mutually acceptable agreement.

Mediation is:

- **Confidential** – you won't be reading about the results of your agreement in the paper.
- **Voluntary** – you can leave at any time for any reason, or no reason at all. Even if mediation is court ordered, if you make a good faith effort to come to agreement, you will fulfill that obligation.
- **Neutral** – A mediator's job is to create a safe and productive environment, not to decide who is right or wrong.
- **You have control over the outcome**– You do not have to agree to anything that isn't right for you.

Mediation is confidential, voluntary and neutral. You have control over the outcome & do not have to agree to anything that isn't right for you.

There are two types of mediation practiced in Montana, evaluative and facilitative.

An evaluative mediator focuses on the legal rights of the parties, and helps them reach agreement according to the legal definition of fairness.<sup>1</sup> The mediator is

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likely to evaluate how a judge might rule. The meetings are most often held in separate rooms, with the mediator shuttling back and forth.

Because of the legal knowledge required to evaluate a case, and lawyers' tradition of meeting separately, most evaluative mediators are attorneys.

A facilitative mediator uncovers the needs behind a stated position, and helps the parties find a solution that meets those needs. He or she will help the parties communicate clearly, keep everyone focused, respectful and moving towards a resolution. A facilitative mediator does not make recommendations, offer advice, or analyze the parties' chances in court. Facilitative mediators most often meet with everyone in the same room, with an occasional private meeting with each side. They come from all backgrounds, including the legal profession.

Even if your mediator is an attorney he or she won't be offering legal advice so both styles of mediation encourage the parties to have an attorney review any agreement before signing.

### What style of mediation best fits your situation?

It is important to consider which style of mediation best fits your situation. Here are some questions and see the chart at the end of this article.

- Do you want a process that also works on improving communication in a continuing relationship? Is a "just-the-facts" negotiation style more to your liking?
- Do you want your legal position evaluated by your mediator in the mediation or later by your attorney?
- Do you prefer to meet around the same table or in separate rooms?
- Do you want more or less direction from your mediator?

### Who should not mediate?

Because mediation depends on the honest disclosure of financial assets, if there is a concern that someone might be hiding money or property, that issue should be taken to court.

Traditionally mediation has not been used in cases of domestic violence, and Montana law allows domestic violence survivors to opt out of even court ordered mediation. Some survivors want to have more of a say in the outcome of their divorce.

If you are a domestic violence survivor & you want to mediate, make sure your mediator will make it emotionally and physically safe.

If this is your situation, and you want to mediate, it is important that your mediator understand the dynamics of domestic violence and designs the session to be emotionally and physically safe. Some survivors can comfortably advocate for themselves in the same room. Others need to meet separately, arrive at different times, be behind a locked door, or mediate by phone.

You don't have to mediate alone. If it is acceptable to all parties, you may bring in a friend, family member or an attorney to help you negotiate, be an advocate or to help think of new ideas.

Whatever your preferences, there is a mediator who suits your needs and will help you reach an agreement that works for you, taking less time and costing less than a court battle.

<sup>1</sup><http://www.mediate.com/articles/zumeta.cfm>

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<b>Facilitative Mediation</b>	<b>Evaluative Mediation</b>
Usually meet in same room	Usually meet in separate rooms
Less directive	More directive
Proposals based on needs & interests of the parties	Proposals based on legal fairness
Attorneys for the parties may or may not be present. Parties advocate for themselves with support of attorneys.	Attorneys for the parties nearly always present & may negotiate on behalf of their clients.
Focus on communication & a continuing relationship	Focus on the facts

*Linda Gryczan helps people transform conflict to cooperation at Mediation Works in Helena, Montana. She mediates; divorce, parenting plans, small claims, family and neighborhood disputes. She can be reached through [www.mediationworks.tv](http://www.mediationworks.tv), [lindag@mediationworks.tv](mailto:lindag@mediationworks.tv) or (406) 431-3635. For conflict solving tips, follow her on Twitter @\_mediationworks.*