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Mediation works in divorce — and sometimes in avoiding it

While once an anomaly, alternative dispute resolution has become de rigueur in divorce cases. Couples are drawn to mediation and collaboration both because of the benefits to the family — reduced cost, confidentiality, predictability of outcome and efficiency — as well as a means to avoid the emotional and financial toll and uncertainty of litigation.

Where litigation is by definition an adversarial system, the goal of divorce mediation and collaboration is to preserve an ongoing relationship between the parties.

This is particularly critical when children are involved. Where litigation is positional, collaborative and mediated negotiations focus on the needs and interests of each party. When each party's needs are met, he or she is more likely to follow through with the terms of the agreement, reducing post-divorce disputes.

The skills of the seasoned

mediator (perceptiveness, impartiality, empathy, creative problem-solving, persuasiveness, ability to reframe, etc.) are instrumental in helping parties overcome their differences to reach a needs-based agreement.

What if that same skill set was brought to bear on disputes before a marriage becomes irretrievably broken?

In cases where marital counseling has been unsuccessful or one party prefers not to participate, marital mediation could be a viable alternative. Similarly, not unlike mediation of professional differences among business partners, mediation of a couple's less-fundamental disagreements may also be appropriate long before marital therapy is needed.

There are some important differences between counseling and mediation. A mediator is trained in the art of impartial facilitation of agreements, not psychotherapy. As a result, mediation is



MODERN FAMILY

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not intended to be therapeutic nor is it focused on emotions; rather, it is designed to facilitate resolution.

Unlike counseling, marriage mediation is a short-term process, lasting several hours to several sessions. This may appeal to couples for financial as well as efficiency considerations.

Whereas third-party experts are less common in a therapeutic setting, professionals such as child specialists or financial advisers are commonplace in mediations. Unlike traditional therapy, marriage mediation can result in a written agreement between the parties, avoiding misunderstandings and clearly defining the plan of action.

Contrary to popular belief, many divorce lawyers aren't in the business of breaking up marriages that can be salvaged. Like the Hippocratic Oath, many of us subscribe to the philosophy of "first, do no harm."

Marital mediation, like divorce mediation before it, will likely become a mainstream tool for couples interested in a practical method of conflict resolution.