

Keeping It Real: Mediation's Power In Spousal Maintenance Cases

By Lawrence F. King, J.D., Attorney-Mediator

Determining spousal support arrangements ("alimony" in federal tax jargon and "spousal maintenance" in Colorado divorce law) is widely perceived as one of the most challenging of issues in divorce. Many people underestimate mediation's power in such cases, because of the mistaken belief that a collaborative approach will be ineffective in resolving what may be a complex issue.



In fact, however, mediation offers powerful opportunities to design workable spousal support arrangements for divorcing couples. Why? Mediation allows participants to arrive at common assumptions, consider consistent data, and then focus their problem solving on the real issue of each party's available after-divorce cash flow.

Litigation's Abstract Bartering

Litigation of spousal support requires attorneys to manage and prove much information, including post-divorce income and expenses of both parties, and — when they have minor children, the details of their parenting plan. Tax law ordinarily complicates these tasks because spousal support payments are usually deductible by the payor spouse and must be reported as income by the recipient spouse. Especially given its adversarial nature, litigation often allows little time to reach agreements as to basic assumptions of the parties' after divorce living circumstances. Without common assumptions, a mutually beneficial arrangement including consideration of taxes cannot be explored.

As a result, in litigation, divorcing parties often negotiate with the hollow exchange of payment proposals ("\$1,000 month!" or "no, \$400 month!"). In this "payment auction" and bartering, neither party really understands the impact of a given level of spousal maintenance (and child support) on their own household's after-tax cash flow, or on the other party's cash flow.

Mediation's Ability to Provide Consistent Data

In contrast, an accomplished mediator, or single neutral expert used in mediation, employs a cooperative approach with consistent approaches and common assumptions — to reach an understanding of the parties' likely after-divorce financial circumstances. **For example, in our office, and with both parties participating, standardized software or a neutral expert's materials are used to estimate the impact of support payments on after divorce taxes.** Our clients then consider the resulting cash flow, often in several

different payment scenarios with their underlying assumptions (again, assumptions the parties have collaboratively agreed to consider).

Mediation's Focus On the Real Issue of Available Cash Flow

With agreed common assumptions, and with the benefit of consistently created data, mediation focuses the participants squarely on what is a **fair allocation of net available cash flow**, i.e.: how much available cash should each party have, to meet his or her real world budget needs — after divorce, after maintenance and child support, and after taxes.

With an understanding of their after-divorce available cash flow, divorcing parties in mediation are freed of their “fear of the unknown.” **Maintenance planning discussions then shift from “abstract bartering” to an informed discussion of what cash flow appears fair for each of them, given their often different household circumstances.**

Conclusion

Fundamentally, the work of professionals in divorce maintenance cases is to assist their clients to develop a reasonable economic plan for their separate family's futures. Managed well, the mediation process makes it substantially easier — not more difficult — for parties to discuss and resolve spousal maintenance issues in a durable, equitable fashion.

Ultimately, mediation's power in resolving spousal maintenance cases issues lies in its ability to keep the discussion real: with the focus on the bottom line of each party's available after-divorce cash flow.

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For more information about spousal maintenance and mediation, see the author's website at:
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