

# Dear Divorce Mediators: Does It Matter Who Files First?

Written by Michael Aurit, JD, MDR and Karen Aurit, MA

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**DEAR DIVORCE MEDIATORS:** I think I need to file for divorce because my Husband will *never* file first. I don't want to cause a huge blow, and feel bad about filing, but I don't see any other way. I just know I can't stay married any longer.

Do I need to "serve" him with divorce papers? Is there any way he won't see this as an attack? – FILE-SHY IN PHOENIX

**DEAR FILE-SHY:** Filing for divorce can be emotional, even when both spouses understand that it is time for the marriage to end. Arizona is a "no-fault divorce" state. This means that when one spouse decides to move forward with divorce, the process begins and will end in divorce. However, spouses have a choice about whether to go through divorce litigation *or divorce mediation*—and filing in each process is a very different experience.

FYI, divorce mediation is a process in which an impartial mediator helps spouses reach agreements and finalize all the issues of their divorce, so that spouses never enter a courtroom.

## Filing by surprise vs. Filing together

In divorce litigation, one spouse usually files a *Petition For Divorce* unilaterally. Often times, the other spouse is caught by surprise. This can be perceived as an attack and cause unnecessary conflict.

Instead, spouses in divorce mediation can decide to begin the divorce process by filing the initial divorce paperwork together with their neutral mediator. This allows full transparency and greatly lowers conflict.

In any divorce Petition, one spouse will be listed as the "Petitioner" (the person who files) and the other spouse will be the "Respondent." In Arizona, there are no legal consequences or advantages for whom is listed as the "Petitioner" and who is listed as "Respondent."

## Specific, extreme demands vs. Specific terms to be decided in mediation

In the litigation-court process, the Petition is likely to list numerous specific divorce demands regarding address property, debts, and financial support. Too often, these initial demands can be considered "extreme" and this only fuels conflict. When children are involved, the Petition includes specific requests regarding decision making, parenting time, and child support. Most often, the other parent is not consulted.

In mediation, rather than specific demands, your Petition will simply request that the parties should decide all assets and debt division and support issues fairly by mutual agreement, and parenting issues should be decided mutually and in the best interests of the children. The Petition will state that spouses will agree on specific terms in private mediation. The mediation approach greatly reduces the conflict by beginning the divorce process together—without unilateral demands.

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## Formally "served" vs. No one gets "served"

In litigation the Petition is formally "served" on the Respondent by a process server or sheriff deputy, which can be stressful, emotional and cause additional conflict.

In mediation, no one gets "served." Instead, the mediator will have the other spouses sign "Acceptance of Service," which waives formal service and usually occurs during a mediation session with both spouses present.

## Peaceful beginnings and endings

What a Petition says, when a Petition is filed, and how a Petition is served will set the tone for the rest of your divorce. The impact of this first divorce move should not be underestimated.

A Petition that takes extreme positions that is formally served by total surprise is often perceived as the first shots in a divorce war. Spouses should be mindful about how they begin their divorce process – especially when they have minor children.

The decision of when and how to receive divorce papers should be decided together when possible. An experienced divorce mediator can ensure that the Petition and Service are low-conflict and make the process easier to bear. By approaching these parts of the divorce in a way

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that removes fear and potential misunderstandings, your divorce can remain respectful, and your terms can be personalized and benefit both spouses. Yes—a peaceful beginning and end to your divorce is very possible.

*Want your question answered and published? Submit your “Dear Divorce Mediators” question to [michael@auritmediation.com](mailto:michael@auritmediation.com)*

[Schedule a Free 1-Hour Divorce Mediation Consultation at AuritMediation.com](#)

**Michael Aurit, J.D., M.D.R., and Karen Aurit, M.A.,** help spouses avoid a harmful divorce war. They guide couples through a healthier, more peaceful divorce so that spouses never set foot in a courtroom. As co-founders of [The Aurit Center For Divorce Mediation](#), in Phoenix, Arizona, the team provides a confidential, affordable, and low stress process that reduces conflict. Spouses stay in control of their own personalized divorce terms and reach mutual agreements on all issues. The Aurit Center handles the entire divorce from beginning to end. Most importantly, divorce mediation protects the health and emotional well-being of children.