

Al Hidayah Centre

Process for Marital Mediation Ulama Course Part 2

Disclaimer: This is a basic course intended to be used as a guide only.

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Audio Visual Course

1. These notes are supplementary to the audio visual presentation which can be found here: <http://alhidayah.co.za/marital-mediation-course-2/>
 2. Access part one here: <http://alhidayah.co.za/marital-mediation-course-1/>
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General Points

1. Both parties must be willing to save the Nikah when they come to the counsellor. It is unfair to any process if they come to the first meeting wanting to break the Nikah. They should not be coming for help to break anything, unless the matter is deemed so serious, that to then consider dissolving the Nikah, is actually meritorious.
2. After having heard both parties, advise them as to where you think they are going wrong.

Begin by:

- a. Pointing out any Shari infringements and offering the correct interpretation.
- b. Highlighting any extreme behavioral patterns committed by either party and offering sound advice as to how to assist with eradicating the problem.
- c. In extreme cases, advise them to seek professional help as well.

As a rule, always advise the couple on things to try out that will help better their situation, with a timeframe. Give each the chance to prove themselves. This can be done with the discretion of the councilor.

3. Never give them the option to just get out of the Nikah.
4. In an abusive situation, enforce a separation period, give the offending party a timeframe to pull themselves straight.

5. Moulana Yunus Patel rahimahullah used to advise that when its serious cases like abuse, then don't tell the parties to have patience because it could blow up with disastrous consequences.
6. Look at preventative measures. Give the wife/husband some sense of security. Abuse cannot be allowed. The husband/wife needs to understand that there are ramifications. Yes, abuse can come from both parties.
7. In allegations of sexual abuse, determine if true or not.
8. Don't rush through any mediation process. It has been observed that giving a 30-day cycle between sessions helps for emotions to subside and a better solution to be achieved. Apply the concept of the hadith "Hastening to conclude matters is from Shaitaan."

Fasakh Process

This is a sample process that can be implemented to achieve a uniform and professional system

1. The lady must state all issues in writing.
2. Husband must be interviewed and quizzed about the allegations.
3. If he denies any allegations, then call both together to ascertain the truth.
4. A minimum period to conclude a Fasakh can take up to 3 months, in a case where it's deemed serious or the marriage had broken down irreparably and the husband keeps the wife in the Nikah out of spite. It can take up to a year or more, when there's complications to the technicalities of the process, keeping in mind the implications of the Shariah.
5. Fasakh applications must be heard by minimum 2 Ulama, with a Senior Aalim (preferably a Mufti) to review the field workers' case notes.
6. After the Ulama have gone through the process of firstly trying reconciliation between the couple, or adopting different angles to try to save the marriage and they have then determined that this nikah will not work, they will then proceed to consult the Senior Aalim/Mufti to review the merits of the case. The senior Aalim, after having reviewed the merits, can at any point affirm or reaffirm by restarting the process to interview the couple, to do a thorough check as to whether there is no infringement on the rights of the husband or wife, as the Shariah has prescribed.
7. The Fasakh will only be concluded after all 3 Ulama are in agreement and a document is signed by all 3, denoting the conclusion to the case.

NB: *Kindly note that the process above or below is not a cut and dry procedure. It is merely a guide, so as to cover all angles, giving consideration to the laws of Shariah being preserved at all costs.*

Mediation Procedure

1. Application done via:
 - a. Telephone
 - b. Email (best option)
 - c. Office visit

2. Fill in Application Form.
3. Verification of information given by applicant:
 - a. ID numbers, names, contact details of both parties
 - b. Validity of Nikah
 - c. Contact Imam who solemnized Nikah, witnesses
4. **Defendant should be contacted within five working days to set up an appointment at the office.**
 - a. Interview with the defendant must preferably be done face to face, and not over the phone. In the event of the husband living out of town, he should first be asked to attend a meeting in the town that his wife resides, failing which, for whatever reason, he can be interviewed telephonically in the presence of 2 Ulama. He may also submit a written submission of his version and a defense against any allegations made against himself.
 - b. Inform defendant of applicant's allegations.
 - c. Make note of responses.
 - d. Meeting should be around an hour.
5. **Set up meeting with both parties.**
 - a. Cross question to determine the closest truth, to give an informed decision.
 - b. Find out as to what are their desired outcomes.
 - c. They may opt for any of the below:
 - 5.1 **Annulment.** If both are in agreement on this, then get the husband to sign a [Tafweedut Talaag](#) (Delegation of Divorce) document immediately. This document will help in controlling the process and preserving the rights of the wife and the Shariah if the husband intends to become nasty at any point.
 - 5.2 **Reconciliation.** If even one party wants to make it work, then initiate the reconciliation process. Always keep in mind that Allah Ta'ala is the changer of hearts. Our duty is to try for the best outcome despite the frustration of only one party wanting to comply.
 - d. **Give the husband/wife a month grace at a time**, wherein his/her behavior is monitored for signs of attempting to resolve his/her issues of non-compliance. Also remember to get the husband to sign the Tafweedhut Talaag document from the beginning if he is the perpetrator.
6. **If after a month:**
 - a. There is progress and no breaches of the rights of Nikah, then that's good. Both husband and wife should be given a process to follow, so as to not repeat the offences that led them to the problems. In a case where an offence is repeated after this time, then the office must be notified to restart the process, and apply the same separation process as per before. Remember that the idea behind this, is to build up a case against the perpetrator, in the event that the Nikah does not work out.
 - b. There is no progress. Second phase will be initiated. Husband will be given a second chance. One more month will be given to monitor compliance.
7. **If after two months:**
 - a. Husband acknowledges he cannot comply, then he will be encouraged to give one Talaag Baain, failing which the annulment will now become an option.

- b. If the councilor determines that the Husband is making a genuine effort to change, albeit not adequate, then the wife needs to recognize this and be encouraged to give him more time.
8. **If after three months the husband is not showing signs of compliance, then:**
 - a. Share the case file with the Marital Board (Senior Aalim/Mufti). If they:
 - 8.1 Give guidance on further steps needed, add another month for compliance.
 - 8.2 Give the go ahead, finalise the Fasakh at an official meeting and get Fasakh form filled.
 9. **If the husband is not responding to calls to attend the mediation:**
 - a. Send two official letters requesting his attendance, in a space of a 30-day cycle.
 - b. The third notice is to inform him of a Fasakh date and to attend Annulment Hearing (Fasakh hearing).

NB: Always ensure that the notice letters are being received by the husband. Do not at any point take this for granted.

Process Guidelines

1. All cases to be dealt with within office hours to minimize workload on case workers, and give time to this twice a week only, so as to keep a fresh perspective.
2. Extraordinary meetings can be called after hours if there's a valid need.
3. All cases to have a unique Case Number which will be reflected on all related documents.
4. Process to be clearly explained to parties to avoid unrealistic expectations.
5. Every councilor must comply in doing his own field work and not rely on the findings of any other organization. Hence in a case where a wife is hopping from one organization to the other, this must be clearly explained to her; unless a case is officially transferred by a bonafide organization, by Ulama who had followed all protocol as listed above, then the case can continue without a restart to the process.
6. Files to be kept strictly confidential.
7. The case overview must be filled in to reflect progress, and will serve as a reference point in case of enquiries.

Tafweedut Talaaq

1. **Tafweedut Talaaq:** The right of talaaq is vested in the husband only. However, it is permissible for a husband to grant his wife the liberty to exercise his right of issuing talaaq. By doing so, the wife has the right to give herself talaaq, but the husband will not lose his right of issuing talaaq. This is termed as Tafweedut Talaaq or *al amr bil yad*. (*Al Mabsoot li Al Sarakhsi* Vol:6 Pg:183/4) There are basic templates available.