



Mediation and Negotiation of Difficult Family Law Cases

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The Elephant in (or not in) the Room

- ▶ Should third parties participate in mediation?
 - ▶ ADR Rule 2.7 (B): “At the discretion of the mediator, non-parties to the dispute may also be present.”
- ▶ When third parties are helpful
- ▶ When third parties are not helpful
- ▶ Options before, during and after mediation

Time after Time

- ▶ Why are family law mediations so long?
- ▶ Tips and tricks for managing time expectations
 - ▶ Mediator letters/contracts
 - ▶ Preparation communication from lawyers to parties
- ▶ Tips and tricks when time becomes an issue
 - ▶ "I HAVE to leave at 3," said by someone at 1 p.m.
 - ▶ It's 8 p.m. and everyone is tired and hungry
 - ▶ It's day 2 of mediation, but you're back at square 1

Don't Order Lunch

- ▶ An attorney or party is convinced the case will never settle
- ▶ An attorney or party is only there because mediation was ordered
- ▶ An attorney or party is acting in bad faith
- ▶ An attorney or party is impeding settlement
 - ▶ Mental health or personality disorder?
 - ▶ Misunderstanding of the law?
 - ▶ Fraud or misrepresentation?

The Woefully Unprepared

- ▶ The unprepared party
 - ▶ Emotionally not ready to settle
 - ▶ Financially not ready to settle
- ▶ The unprepared attorney
 - ▶ Much of mediation is actually discovery
 - ▶ Missing valuations
 - ▶ Missing child-related reports
- ▶ Mediator's role
 - ▶ Rule 2.7 (B): Mediators "may express an evaluation of the case to one or more of the parties or their representatives."

But the law says. . .

- ▶ Tips and tricks when a party or a lawyer appears unwilling to deviate from statute
 - ▶ Have some case citations or language noting that best interests of children, rather than hard and fast rules of law, control in family cases
 - ▶ Use language like goals and interests instead of rights and obligations
 - ▶ Speak to personality in addition to the person:
 - ▶ What does the party really need to hear?
 - ▶ What fears are underlying the line in the sand?

IPV and Disparate Bargaining

- ▶ IPV knows no gender, orientation, socio-economic, racial, religious or cultural bounds. Anyone can be an IPV victim.
- ▶ IPV is subjective, not objective
- ▶ Mediators shall screen for IPV
- ▶ Rule 2.7 addresses IPV in mediation
- ▶ IPV cases can still be mediated
- ▶ Tips, tricks and precautions when mediating IPV cases

I forgot this one little thing. . .

- ▶ The 11th hour request
- ▶ The 11th hour about-face
- ▶ Avoiding and managing surprises
 - ▶ Drafting as early as possible
 - ▶ Sharing drafts and language
 - ▶ Repeatedly asking and confirming

Seven Hours or less. . .

- ▶ Prepare, Prepare, Prepare!
 - ▶ Calls with attorneys
 - ▶ Are all the reports/valuations done? Is the matter truly ready to mediate?
 - ▶ Status of settlement discussions prior to mediation
 - ▶ Availability of helping professionals like PCs, listing agents, etc.
- ▶ Ask for payment/retainer in advance
 - ▶ Shows commitment/investment
 - ▶ Reminds attorneys/parties that mediation is right around the corner
 - ▶ Allows you to fill your day if mediation is cancelled or postponed
- ▶ Manage the expectations of all involved

The Difference between Good and Great

- ▶ Cultural Competence
 - ▶ Recognizes unique needs of parties/family
 - ▶ Uses inclusive language, meeting the parties where they are
 - ▶ Knows what he/she/they don't know and isn't afraid to ask
- ▶ Mental Health or Personality Challenges
 - ▶ Has basic understanding of common issues in family cases
 - ▶ Helpful with referrals and resources
 - ▶ Knows when to say when