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Resolve conflicts through mediation

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“I don’t want to be here,” she said. “I really hate his guts and can’t even stand being in the same room as him.”

“Then why are you here,” the mediator said.

“Because my priest said I had to come and besides,” she continued, “I really do care about my children and somehow I hope this process can help.”

Thus begins the first session with a divorce mediator. This conversation, or one similar to it, has taken place at the beginning of many divorce mediations where the focus shifts from warring parties who are too angry or upset to deal with each other, to cooperative parties whose fears for the future must be dealt with effectively.

A mediator is a trained problem solver whose goal is to help make an agreement possible by guiding the parties through the difficult process of reaching an overall agreement that works for both of them, now and in the future. Not only does the mediator have the knowledge of substantive issues to help parties but in the areas of dispute resolution, particularly at times when the disputants can not see clear to resolve things themselves.

Mediation is a process that is used to help resolve conflicts between parties — an alternative process to traditional litigation. It is an effective, cost-saving and time-saving device. Yet what people find most important may not be the thousands of dollars or thousands of hours that are saved, but the reduction in the interpersonal costs.

When all is said and done, and all the shouting is over, most parties to litigations still have to deal with each other. Particularly in family cases, the parties will have to interact and even work together in parenting and in par-

ticipating in the lives of their children. Mediation often focuses on making these on-going relationships work.

Over 90 percent of all cases filed within our legal system are settled. In family cases, the number is over 98 percent. They are settled, however, in a system that is designed to be adversarial. The parties often remark that they are forced to fight with each other even when they do not want to fight, and eventually they are forced to accept a settlement because “its what is going to happen anyway.” The mediation system is designed specifically for parties to settle. It opens lines of communication, gives individuals control over decision making, and reduces stress.

Perhaps the most common known use of mediation is in family and divorce matters. The divorcing couple meets with the mediator, who help them gather all the necessary information, distinguish all the issues which need to be resolved, identify potential solutions, and negotiate a full settlement. All of these steps are taken in an informal, confidential setting. No agreements are signed until the parties come to a complete and comprehensive settlement. This means that no party will ever be forced to follow a settlement which was not reached voluntarily by both parties. In most cases, statistics show that parties to mediated settlements tend to voluntarily comply with these settlements. Cases resolved through the court system, return to the court system, in a rather short period of time, at a staggering pace. Most people who resolve their matters through mediation are able to resolve any future disagreements on their own, or at the most with the aid of a mediator in the future.

During the course of the mediation,

the mediators’ job includes helping the parties talk about all issues, including major issues like parenting, distribution of property, and support. The conversations also include issues such as medical insurance, life insurance, college, pensions, costs and fees. The mediator will also make sure that both parties understand all of the information, and all of the decisions they are making, as well as the impact these decisions will have on the future. This is particularly important in dealing with parenting. As the children grow up, their needs and desires change, the relative geography of the parents alters, and new parties are introduced to the family system. These will all require continual contact between the parties, may require more negotiations, and changes in the agreement. Mediation focuses on this future, and how to have it go smoothly.

How long does divorce mediation take and how much it costs will depend upon the individual case. The more complicated the case, the longer it may take. Mediation is usually done strictly on an hourly basis, with no up front retainer. Traditional mediation with full issues of distribution, support and parenting, can take six to 12 sessions.

Lawyers are not eliminated completely from the process. As the mediator is a neutral party, and a facilitator, the mediator does not give legal advice. Most people find it helpful to have their own lawyer be available as their own advisor. Whether litigation has already started, or just being contemplated, mediation is a viable means for completing your dispute resolution. Problem solving is seldom painless, but the mediation process can make it easier, and more effective.

By Carl B. Viniar

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