

Mediation: Reaching Its Potential In Family Law Cases

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Family law case mediation is a form of alternative dispute resolution in a private forum before a case is filed in court or a court-annexed one that is discussed in this article whereby an impartial person, a professional, or a judge in a two-court system helps parties define issues and have a plan to deal with them. A family case mediator sits down with people to discuss options and develop proposals to resolve a dispute. The mediator does not take sides. Every party attends the process and they make all the decision. Mediation sessions are confidential.

When issues are resolved, a case is no longer heard in court as family mediation results in a compromise agreement or consent order. But if mediation fails, the case goes to trial before a regular judge who decides its merits usually without information as to the matters taken up during mediation.

It is the experience of family mediation professionals that the program works best when court-based or court-supervised. And when newly adopted, a mediation mechanism that has a strong court and widespread multidisciplinary support forestalls initial opposition and dithering. While mediation can be voluntary, once ordered by the court, it may become mandatory. Common instances when family mediation is held are: when parties are separating or when parties are already separated but desire to negotiate own terms of meeting their needs and interests. The parties thus decide what is best for them. However, in legal separation cases where the marital bond is not severed, counseling, not mediation is appropriate.

Among the matters referred for family mediation are custody of minor children and visitation or access; support as well as matters relating to properties of the parties. The law, however, does not allow a compromise on status, future support, ground for legal separation, legitime, jurisdiction, domestic violence and other crimes.

The parties in family mediation are the following: husband and wife in declaration of nullity or annulment of marriage or in legal separation cases; common law partners; former spouses when tackling change in custody and visitation of minor children or amount of support; new partners; parents; grandparents; and age-appropriate children as to questions affecting them to promote their best interests. While children over 7 years of age may choose their custodial parent, discernment on their part is required.

A family mediator has 40 hours of specialized training and 2 months practicum. He or she has child and gender perspective, and whose compensation scheme is determined upon accreditation. Lawyers, former judges, law professors, psychologists, psychiatrists, religious leaders, or social workers make good family mediators. A family mediator is usually assigned to a particular case but may be replaced once trust of the parties is lost.

In attendance during family mediation are the parties; mediator or co-mediator; lawyers to assist parties as to legalities or to draft a compromise agreement (lawyer participation is encouraged as to property division or amount of support but need not be present as regards parenting issues); child development experts; assigned case worker, service providers for children and families; accountants; property evaluators; and interpreters. For moral support, the persons allowed in mediation proceedings are parents; guardians; other relatives with legal standing to the case; friends, colleagues; counselors; and other support persons.

In family mediation, a male-female co-mediation team where one is a skilled therapist is quite popular because gender issues are inherent and the participants are many. Co-mediation is a more creative and productive technique in conflict resolution where the parties have a sense of balance and feel less intimidated by their facilitators. This quality of mediation registers a higher rate of success.

Among the attributes of a family mediator are knowledge of child development; battering cycle; power imbalance among parties; substance abuse; psychopathology (nature, cause and symptoms of mental and behavioral conditions); established legal principles and must not be current employees of protective services for the requisite objectivity. As one might expect, the issues that come at play during family mediation are varied-substantive (entitlements); procedural (case studies); relational (marriage and paternity); psychological (affecting legal capacity as spouse or domestic violence); and in proper cases, jurisdictional (facts of the case for as long as parties have legal representation).

Mediations are usually held at mediators offices, courthouse mediation units or centers, lawyers offices, in a forum generally seen as a sufficiently neutral ground, or any other place agreed upon by the parties where people feel comfortable.

Parties may be mediated before they separate or after; before conclusion of an agreement or after; before litigation; before pre-trial conference; during litigation; and after litigation particularly to deal with changed situations or to clarify court orders. Parties may as well choose mediation when they are ready, are interdependent and can rely on mutual cooperation. Mediation is effective when there is no other appropriate or accepted structured venue where dialogue can take place or when parties are not comfortable in confronting each other without the presence of a neutral person; or when there is a

disagreement over data. When parties are interested in change for the future than about punishment, revenge or being publicly vindicated, mediation works.

Formal court and rights-based strategies are often less viable options than mediation for parties to resolve intra-familial concerns for the latter focuses on interests rather than positions. While mediation is a cost-effective way to clear up family problems, it does not mean less revenue performance of lawyers. Mediation, in all forms, is practical for legal practitioners as they have higher chance of receiving fees than in protracted court trials when parties have exhausted their finances. Mediation, too, is the way to global legal practice.

Family mediations may be by single session set up where parties expect to meet and work out a settlement in one session, usually half or full day segment when legal counsels assist the parties. There can also be sequential negotiations or series of shorter meetings lasting 2-4 hours duration as arranged by the parties. The sessions are often followed by the mediators summary of the minutes of the mediation. By and large, mediation usually takes between 2 and 6 sessions.

The expected outcome of family mediation is a written document outlining the details of the parties agreement, with the mediator finalizing it assisted by the lawyers, the formal deal signed by the parties and thereafter submitted to the court for approval.

For partial or on-going mediation, the mediator sets out agreements so far made and the issues that are still open for negotiation. Parties then continue to get together until a full agreement is reached or mediation itself is terminated.

How to mediate emotion-packed family law cases is always a challenge to the mediator. In bitter disputes, emotions are important to people than talk. The family mediator has to be familiar with all emotions- his or hers and those of the parties. Remember that each party is concerned with own survival. The mediator thus acknowledges the emotions as rightful, allowing each side to let off steam, listening and not interrupting until the last word is spoken and not reacting but managing emotional outbursts. It may prove beneficial to lay down some rules such as only one party can get angry at one point in time.

Other useful tools recommended in family mediation are the use of symbolic gestures such as handshake, notes of apology or sympathy, flowers, and gift to children. Family mediation is dealing with people first, and the problem may be the people themselves. People put in issue complex matters of relationships, feelings, trust, comfort, acceptance and rejection. Contending parties often press on each others duties, responsibilities and obligations; compute costs, expenses, and balances; and then fix schedules and deadlines to meet. When confronted with the dilemma of whether to still mediate if the

parties are so awful, mediators should, of course, and the question would just be on how to mediate.

Realizing that mediators are also human beings who react, get angry and become disappointed, good practices may include having an open mind- that couples with problems are not as of the moment perfectly rational. In relation to this, a family mediator has to clear communication lines. He or she may not assume that things are or are not; avoids stereotyping or victim-blaming; and respects values, gender, levels of education, financial ability, age, culture, religion and even mood. The use of necessary skills by the family mediator in dealing with the above factors may yield positive results.

In family mediation, there may be aspects that are not sorted out or there can only be partial adjudication that is still good given the outcomes. For things that the mediator cannot attain, it is best, they say, to have a micro-BATNA (best alternative to a negotiated agreement) which is ones safeguard against a losing proposition or a poor choice made.

By all accounts, plans and options have to become binders and commitments. And this is achieved by starting things right, which means that at the beginning the mediator already has an idea what and how the agreement will look like. Then there is closure on the issues and problems with the parties satisfied, feeling fairly-treated, healed, and ready to move forward and even build ties (perhaps for future mediation).

Lastly, when an agreement occurs as a result of family mediation, it is one that is not contrary to law, morals, and public policy so that the court approves the same and orders all parties to comply with the terms and conditions under pain of writ of execution. And then the parties, without having to go through formal, rigid and adversarial court battle (actually among equals), have with them the best decision yet made in their lives.