

ANY CASE CAN BE SETTLED

The Lawyer's Role in Mediation

By K. Dean Kantaras

THERE IS NO DIVORCE CASE that can't be settled. What's required is the undivided attention of the parties (It's their life, after all), the lawyers and an experienced and knowledgeable mediator.

Virtually all divorce cases in the Tampa Bay area go to mediation and some go to several mediations. Local judges are requiring mediation before hearings on financial (and some other) issues will be allowed to be scheduled on their calendars.

There is considerable logic behind this requirement. Judges calendars are crowded. If every case that is attempted to be scheduled for a hearing was actually set on the judges' calendars, the backlog would be unthinkable. As bad as it is now, judges know that a significant percentage of issues will be worked out, or settled, at mediation. If only half of the issues are resolved at mediation, the beneficial effect on the courts' schedules would be dramatic. Fortunately, more than half of the issues are resolved at mediation.

Mediation is not just for the final, ultimate issues of the case. Mediation can be successful in resolving such issues as temporary alimony and child support, temporary use and possession of a home or car, and time sharing (the old visitation) with the children. More than half of all the cases filed are settled completely at mediation, including children's issues, such as parental responsibility, time sharing between the parents, responsibility for day-to-day decisions involving the children and, of course, child support.

A successful mediation requires several things. Primarily, the clients must be open and forthright with their lawyers. No matter how detrimental a fact may be, it must be disclosed to the lawyer. Whether those facts ultimately are disclosed to the other side at mediation is both a strategy and technique. It is one which must be made by the lawyer in consultation with their client.



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The second ingredient to a successful mediation is that the parties are motivated to putting the issues behind them and moving on with their lives. That does not mean they should be prepared to "give up the farm." That's not a settlement. But, a settlement does require some give and take. If one of the parties thinks he or she is going to get everything they want, then mediation will be a waste of time and money. A good barometer of a successful mediation is when both parties are somewhat unhappy. That usually means each has given up something they had hoped to achieve in return for something the other party had hoped to achieve.

Next, but by no means less important than the above, is the preparation by the lawyers. This requires the client being open and forthright with their lawyer, so that the lawyer can be fully prepared to participate in the mediation. The

lawyer must know the issues, know what the positive and negative factors are regarding each issue, know the law and be prepared to advise the client regarding the chances for ultimate success at trial on each of the issues. They must be prepared to work positively with the mediator to achieve a successful outcome.

The remaining requirement is the selection of the mediator. This is not always a controllable issue. If, for example, you qualify for court provided mediation, you have no choice who the mediator will be. Those mediators are assigned based on a list of some, but not all, mediators in your county or circuit. If you choose private mediation, the expense will be somewhat greater, but the selection of the mediator is in your control.

So if you're about to go to mediation, take the responsibility to be sure your lawyer knows all the facts and has all documents needed to properly evaluate your case, including hiring experts such as CPA's and mental health professionals.

As I said before, this is your life; take responsibility for it. ■■■

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