



## Family law mediation: Where all voices are heard

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In family law litigation, the loudest voice is often the only one that is heard. Parties clamor to be heard both in the written and spoken word. In a courtroom setting, the challenge is to ensure that all voices are heard - not just the loudest voice. This can be difficult given the time and resource constraints on our courts. When parties are arguing over each other to be heard, there is a danger that the more resourced party can use the resources of the system to the exclusion of the less resourced party. A family law judicial officer presides over a busy courtroom and must devote significant time and effort to hearing all voices. Family law mediation is an option that allows all voices to be heard.

### THE KEY COMPONENTS OF SUCCESSFUL FAMILY LAW MEDIATION

Family law mediation provides an opportunity for family law litigants to hear and to be heard. For a family law mediation to be successful, three things must be present:

1. Parties must have a willingness to consider other viewpoints.
2. All parties' viewpoints must be heard.
3. Parties must have confidence in the mediator to neutrally facilitate the exchange of viewpoints such that all can be heard.

A family law mediation cannot be successful if the sole purpose of one or both parties is to attempt to force the other party to adopt a particular viewpoint. Both parties must be open to considering different viewpoints. Each party must enter mediation with an open mind to the idea that two reasonable people can get to the same conclusion in different ways or that there is more than one reasonable solution to a particular challenge.

### THE ROLE OF ATTORNEYS IN MEDIATION PREPARATION

Myopia has no place in mediation. Attorneys play a crucial role in how parties are prepared for mediation. If an attorney prepares their client in a manner that allows them to be able to consider a different viewpoint

or at least be open to having a discussion, the chances of the mediation succeeding are better. If, however, an attorney prepares their client in such a manner that they are unable to see anything other than their own viewpoint and will attempt to convince the mediator and the opposing party of the righteousness of that viewpoint, then the chances of the mediation succeeding are not particularly good.

All human beings have a need to be heard. However, the need to be heard is more than someone having listened to a viewpoint. Being truly heard creates a feeling of being understood. Parties entering mediation should want to be heard, not merely convince the other party that they are wrong. Parties who enter a mediation wanting to be heard will have prepared for it. A party will want to connect with the mediator so that the mediator develops a visceral understanding of why an issue is important to them and why they would want it resolved in a certain manner.

### THE MEDIATOR'S ROLE IN MAINTAINING INTEGRITY

A mediator is responsible for making sure that the integrity of the mediation is preserved. This means that the mediator must earn the trust of all who are participating in the mediation. The mediator must be adept at asking questions and listening. Facilitating the exchange of information in a neutral, thoughtful manner is critical in moving the parties forward to resolution. These are not just words -



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for the mediator, they are a way of life. Not everything needs to be said, but everything said needs to be heard.

### **THE ROLE OF ATTORNEYS IN EFFECTIVE MEDIATION**

Attorneys who are successful at family law mediation intuitively understand the importance of being able to communicate a client's position and being able to articulate, understand and empathize with the other party's point of view. This is true even if an attorney does not believe an opposing position is well founded in either law or fact. What matters is that the attorney models the same behavior that is most helpful for the parties - the ability to be open to alternate viewpoints, respectfully challenging opposing viewpoints and really hearing what is being said by the participants and the mediator. Sometimes, the nonverbal cues conveyed by a party are more

powerful than the words they say.

Stress has been defined as the bridge between expectation and reality. This is especially true in the context of family law mediation. A party who is properly prepared for family law mediation and has an open mind, a need to be heard and a willingness to hear a different point of view will find the mediation process to be far less stressful than a party who enters the mediation with the goal of convincing the other party and the mediator of the righteousness of their position. A party who is unable to hear and appreciate the other party's viewpoint, even where there is disagreement, is often the party who will have the louder voice. The mediator must give the viewpoints expressed by the louder voice and softer voice the same consideration in order for the parties to be able

to move forward to resolution.

As all of us in the family law world know, family law mediations are fraught with legal and factual challenges that must be resolved. Even the most well-prepared, balanced parties can be reactive when presented with differing viewpoints. It is imperative that family law professionals do not become part of the problem or become embroiled in the conflict. A family law mediator must redirect parties and attorneys toward the goal of resolving the problem rather than becoming part of the problem.

### **PREPARING CLIENTS FOR MEDIATION**

When preparing a client for mediation, it is helpful to focus on three areas:

1. Assist the client in understanding the difference between reality and expectation, and help them to work toward becoming

reality-focused.

2. Guide the client to understand potential outcomes that might result from mediation, including concessions they might have to make.

3. Emphasize the importance of the client's viewpoint being heard as well as listening to and hearing the other party's viewpoint.

A successful family law mediation, with the professionals modeling good behavior, can help a family to resolve a conflict, move forward and begin the process of healing. The process of family law mediation starts and ends with all voices being heard.

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