

The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Spring 2013



Shared Physical Custody:
Myths and Misconceptions

Mediation Session Going South? Try Some of These Tips!

by Andy Flink

We've all experienced mediations where everything seems to be moving along smoothly and the... WHAM! We hit a major roadblock and our work is thrown into turmoil. Perhaps we realize when we walk in the room for the first time that our day is not going to be very productive. In either case, or in situations where we know a full agreement will not be reached, we need to find ways to make the session beneficial. Here are some tools I've used to avoid impasse, keeping in mind that some mediations simply are not meant to settle on any level.

The Let's Try This for Awhile (Temporary) Agreement

Implementing arrangements that parties can try for a defined period of time allow a trial run without a long term commitment. For instance, giving mom and dad time to test a proposed schedule might provide better answers for them in determining a more reasonable and realistic permanent arrangement. This is valuable when parties are hesitant to agree based on their fear of the unknown. Turning perceptions into reality can also benefit the children by demonstrating this schedule not only affects parents, but the kids as well.

The Let's at Least Agree On a Few Things (Partial) Agreement

In sessions where there are multiple issues, solving most but not all of them can help parties narrow future items to be more easily resolved at a later date. In one recent case the parties came to the table with 14 specific issues, 13 of which I was able to reach agreement. That left only one item to resolve (albeit the major issue of child support) but their attention was then focused on that single item for another day and a different perspective. Taking the noise out of the channel is critical to helping parties get closer to reaching a full agreement - they'll make more informed and better decisions when they are not distracted by several smaller issues at the same time.

Switch Things Up

When you have been negotiating for hours and the session is starting to bog down, taking a moment to break or changing the standard setup of the session can work wonders. One step I always take when parties become stagnant is to either meet alone with the attorneys or, in less frequent cases, alone with the parties. Mediators and attorneys need to know when to change the dynamics in order to shift the focus of where we have been to where we need to go. I am constantly surprised at how much I can learn in these breakout sessions. Fortunately if you have to

take this step there is truly no downside – you'll either start to make progress or stay right where you were.

Focus on the Good

Even the most combative parties have something they agree on. In contested custody cases I always try to get the parents to acknowledge that each of them, disagreements aside, both love and care deeply about their children. Shifting the battle from me against you to us against the issues and making it about what is truly in the children's best interests can alter a session. Can't find anything the parents can agree on about their kids? In joint session ask each of them to show you pictures or videos of their children. This always changes the tone of the room.

Food

Providing something for parties to eat and drink as a mediation session wears on can be of monumental benefit to everyone. This is especially true in cases that occur in courthouses where food options are at a minimum. Bringing snacks, ordering in, doing whatever you need to in order to keep your brain and everyone else's functioning at the highest level possible is paramount to making informed decisions. Cases that settle because everyone is hungry, fed up and tired typically won't stand the test of time.

Using different techniques that we have in our mediation arsenal are critical to assisting parties in a session move in a positive direction. While the case may not reach a full agreement, helping them achieve some level of progress is ultimately what makes mediation such an important step in their dispute. There are some days where nothing seems to work, but implementing these and other ideas mean we've given it our all, which in the end, is why we do what we do.....and why we love what we do. **FLR**



Andy Flink is a trained mediator and arbitrator. He is familiar with the aspects of divorce from both a personal and professional perspective, and is experienced in business and divorce cases. He has an understanding of cases with and without attorneys. Flink is founder of Flink Consulting, LLC, a full service organization specializing in business and domestic mediation, arbitration and consulting.

At One Mediation, he serves as a mediator and arbitrator who specializes in divorce and separation matters and has a specific expertise in family-owned businesses. He is a registered mediator with the state of Georgia in both civil and domestic matters and a registered arbitrator.