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Attorneys Fees in Family Law Cases

Mediation Dealbreakers

by Andy Flink

At the start of every mediation I'm always thinking (and of course hoping) that we'll walk out of the room with a full agreement. While this doesn't always happen and partial agreements are the next best option, there are reasons why we may end up with no agreement at all.

Some mediations reach impasse in the first 15 minutes, others in the last 15 minutes after 10 hours of negotiating. Sometimes it's obvious as to why there is no agreement, other times it isn't so clear. What causes all of our hard work to unravel? Why did a done deal all of a sudden fall apart? There are many reasons why cases don't settle, but here are the ones I see the most often that typically send mediations into a tailspin:



- **Bad timing:** The mediation is scheduled but discovery isn't completed (or even begun), there has been little communication between Attorneys or the parties simply aren't ready. Fortunately when this happens it's usually detected early in the mediation before the parties spend countless hours and dollars.
- **Lack of respect:** While it's always a good idea to listen, not everyone does. Conceding some amount of respect to the other side and hearing their argument only helps the negotiations. Allowing them an opportunity to explain their position without interruption, then pausing before reacting, goes a long way in showing consideration and value in their claim (even if you think it's unreasonable).
- **I'm the better parent:** If the parties cannot agree on who the custodial parent should be rarely do any other issues get settled. Even if this is put aside to work on financial items the parties are reluctant since neither can address or consider the topic of child support.
- **Secret keeping:** We've reached agreement but one side didn't declare an item that is now a "must

have." This "11th hour insult" can carry a huge cost in dollars and ego. Something not revealed earlier now becomes an issue mentioned too late.

- **Impractical expectations:** Clients are anchored in their position and believe they are entitled to get everything they want. They are finished negotiating as they've already given in on way too many points, even though they've barely moved at all.
- **The financial house is out of order:** Parties don't realize the financial impact of having to support two separate households. There is an unwillingness to face the harsh reality of the cost of two homes and it's simply easier not to deal with it. The numbers do not and will not work.
- **Manipulation:** One side seeks to control the mediation taking any authority and power away from the other side as well as from the mediator.
- **Draft breakdown:** While writing the agreement the other side continues to request too many small, insignificant, and meaningless changes. This causes multiple versions of virtually the same document to be drafted over and over again resulting in needless additional expense to your client.
- **Attorney fees:** Depending on *when* this issue is raised, fees not addressed at the right time almost always have a significant effect on whether or not the deal will get done.
- **Cold feet:** The deal is done, everyone is ready to sign, and at the last moment one of the parties decides that they need to "think about it."

Avoiding these issues will help parties find a smoother path towards reaching their goal of a full and comprehensive agreement. It is always important to consider when and how items should be raised in mediation, and eliminating as many of the obstacles as possible increases the possibility of a successful outcome. *FLR*



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