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Dividing Goodwill After *Miller v. Miller*

Mediation: Is there a Downside?

by Andy Flink

Recently, I asked several family law attorneys and judges in the Atlanta area their thoughts on both the positive and negative aspects of mediation. The answers I received were interesting and decidedly positive. Mediation was considered to be the *best* alternative in divorce cases, especially when there are minor children involved.

Mediation was, however, deemed to be a negative in those rare cases where either one side conducted themselves in an unreasonable and unnecessary manner or when one side appeared at a session completely unprepared. In these instances, the majority of attorneys I spoke with still believed there was some small measure of progress, even if it was acquiring the knowledge that settling was going to be more problematic. Judges that I spoke with also promoted mediation. They would prefer the family make the life-altering decisions amongst themselves rather than be put in the position to make them for people they knew very little about.

significant if the case settled sooner – as one attorney told his client in a case where I was the mediator: “If you settle now you’ll be able to send your kids to college, if you want to drag this on, we certainly can, but you’ll end up sending my kids to college.”

In mediation I have one goal in mind: to settle, perhaps with a full settlement, or sometimes with a partial or temporary one. Regardless of what the parties or counsel say to me about how difficult or impossible the case is, or how meeting will be a “significant waste of time,” I’ll consistently look for and hopefully find the “wrinkle” that gets the parties moving forward. This is especially satisfying when at the end of a session we’ve reached agreement and counsel explains that they “never thought this case would settle.” I am always glad if it did – but even if it didn’t, I believe it’s always worth an attempt. I may feel that the session wasn’t productive but, like most of you who I work with, my consensus is the same: there is very little downside to what can result in a potentially worthwhile outcome for everyone involved. *FLR*



These illustrations do not include cases where abuse, violence or significant power imbalances are present, which are considered to be cases that are inappropriate for mediation. As well, there will certainly be cases that present themselves as those that will never settle in mediation and will require litigation.

Many of you also believed that a positive and productive reason to mediate was to simply create the scenario where everyone *had* to be in the same place at the same time. Trying to schedule five or more people to meet together was daunting in itself; being forced to meet was actually a good thing: This initial mediation session might be the first time attorneys meet each other in person. Everyone also agreed that by settling the case sooner through mediation the parties, especially those with children, could move past the conflict and concentrate on parenting. The financial benefits to the parties were also



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