

There is Always Value to Mediation, Regardless of the Outcome

By Andy Flink, Founder of Flink Consulting, LLC

With every domestic case that is mediated there is always room for progress, regardless of when in the timeline of the case the session occurs. Cases may not be ready to settle (lack of information, discovery is not complete), but that doesn't mean that the end result is always impasse. Perhaps this is the initial opportunity everyone has been given to talk about the subject matter of the case – putting everyone together in the same place can be a great first step.

Since most of the time I am not briefed prior to the session and may not know the dynamics and facts pertaining to the case, it would be foolish for me to place an expectation on the outcome. My first job is to assure the parties (and counsel) that I am there to listen and assist in “bridging the gap,” usually related to either a lack of information or a misinterpretation of fact. I'm not there to discuss who has a greater advantage or more leverage. I am there to help the parties move through the very difficult process known as divorce.

I have never encountered anyone in a domestic mediation, whether it is an initial action, modification or contempt, who was happy to be there. Since the climate of at least one of the rooms is typically “difficult,” creating a calm and empathetic environment is critical. Your mediator needs to stay focused 100% of the time to maintain this. We not only want to get people talking...we want to keep them talking. Whether the conversation is conducted in back and forth caucus or in joint session, the objective is always to keep thinking of ways to be creative. Have a difficult issue that you can't seem to make any progress on? Put it aside for the moment and focus on smaller issues that you can get everyone to agree on. Good mediators know the difference between the right time and wrong time to focus on a specific “hot button” issue.

The process of mediation and the session itself should always be viewed as an opportunity for progress. Maybe this session was the catalyst that got the case moving in the right direction allowing for settlement to occur shortly thereafter. There is always value to meeting, discussing and talking. I can't count the amount of times, at the beginning of the mediation session, when one or both attorneys will convey to me that there is “no way” that we will reach settlement....only to ultimately come to a full agreement.

Often times I will meet with the parties alone – a strategy utilized to help move the session forward. This is where I make every attempt to reality test each party to help them understand what it means to reach an agreement, and even more importantly, what it means if they do not. Other times I will meet alone with the attorneys, which can be an ideal time to work together (and not against each other) to brainstorm beneficial and creative ways to help their clients. Mediations are not linear and do not follow any particular order. They are simply an opportunity; to talk, to gather information and to think about the case, in a calm setting, what Andy Flink is a trainer mediator and roster member of 17 area Superior Court ADR programs including Fulton,

DeKalb, Forsyth and Cherokee County. 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. Andy is the founder of Flink Consulting, LLC, a full service organization specializing in business and domestic mediation and consulting. Andy mediates both private and court connected cases and has specific expertise in family-owned businesses. He is a registered mediator with the state of Georgia for both civil and domestic matters. We all need to do to move two individuals and perhaps their children too, out of an emotional firestorm and into safer territory.

Have you noticed that even where the court requires parties and counsel to appear at mediation, it is rare that any of those present will immediately terminate the mediation? If merely appearing satisfies your obligation and the remainder of the session is voluntary, why do most people stay long after they realize that an agreement may not be reached? It is because they want to gather as much information as possible to help them understand the other side's position. I encourage parties to continually ask questions, to redefine their position, and remember to evaluate slight alterations in their position that can lead to consensus. Mediation always has value; the opportunity to simply talk to each other is truly the only way that we can settle a dispute on terms we can live with. Court will resolve disputes too, but not without risk. Help your clients understand that attending and participating has great value regardless of the final outcome.



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