

## **Using Creative Strategies to Resolve Family Law Issues**

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Last September, the Minnesota Court of Appeals began a pilot mediation program that required those with family law issues on appeal to attend mandatory mediation before submitting the case to the appellate court. While some attorneys had doubts about how well the program would do, a year later the program has been heralded as a success with 38 of 72 cases resolved through mediation. The court has extended the pilot past its initial one year run and is taking steps to make the family law appellate mediation program permanent.

### **What Makes Mediation Successful?**

One of the reasons mediation produces such good results is because it takes the decision-making authority out of the court's hands and places it in the hands of the people it matters to the most. It also creates a non-confrontational environment where the parties can work together to resolve their issues and come to a respectful, negotiated agreement. This is particularly important in the area of family law where the legal issues are deeply personal and emotional.

Another reason the appellate mediation program has been so successful is because the parties have been given a chance to see how the litigation process works. After having been through the process once, many parties would rather use mediation to negotiate an agreement than face the courts again. Mediation often results in much quicker results, especially for cases on appeal which can take months before they are resolved. It also is a more affordable option than traditional litigation.

A case does not have to be on appeal before mediation can be used. Parties can agree to use mediation before a case ever goes to trial. During mediation, the parties agree to submit their issues to a neutral, third-party mediator, who is often a retired judge or attorney. The parties will exchange information and necessary documents with one another and then meet 2-3 times with the mediator to try to resolve the dispute.

If the parties cannot resolve their issues or only come to a mediated agreement on some of the issues, they can submit their case to the court and use the traditional judicial process to resolve any remaining matters. But even a partial agreement can help save time and money by allowing the parties to efficiently dispose of the issues they can agree on.

### **Cooperative Law: Another Alternative to Litigation**

There are other alternatives to the traditional court process besides mediation that can be used to resolve family law issues. One of these alternatives is the cooperative law process. Much like mediation, the cooperative process requires the parties to agree to act

in good faith and work together in a collaborative, respectful manner to resolve their issues. The parties also must agree to full and voluntary disclosure of any information necessary to resolve the dispute, including financial records.

The parties and their attorneys memorialize these promises in a signed agreement, referred to as the "participation agreement," which basically sets out the rules the parties agree to follow. The parties then will engage in a series of 4-party meetings to negotiate a settlement. One of the main differences between the cooperative law process and mediation is that cooperative law does not involve a mediator. Rather, the parties and their attorneys work together to come to an agreement.

Just like mediation, the parties may be able to resolve only some of their issues or, in some cases, none of their issues, through the cooperative law process. In situations where this happens, the parties may submit the remaining issues to the court for final resolution. The participation agreement can set out additional terms for ending negotiations and can require the parties to submit to a 20-day cooling off period before moving the case to court.

Some of the issues that may be resolved through mediation and cooperative law include:

- Adoption issues
- Contact agreements
- Parental rights
- Parenting time
- Paternity
- Custody issues in connection with a divorce
- Support issues in connection with a divorce

## **Conclusion**

Litigation can be very stressful in any case, but can be even more so in family law cases when so much is at stake. Taking families out of this stressful environment and giving them the power to dictate the terms of their own settlement can be so much more rewarding for everyone involved.

Mediation and cooperative law processes may not be the best way to resolve every family law dispute. For example, it is not appropriate in cases of spousal or child abuse. Also, mediation and cooperative law will not work if the parties are overtly hostile to one another or there is so much animosity between them that they cannot reasonably work together. In these cases, litigation is the best way to resolve the legal issues.

For more information on mediation, cooperative law or other alternatives to litigation, contact an experienced family law attorney.