TEN TIPS FOR THE ADVOCATE MEDIATING FAMILY DISPUTES (ESTATE, TRUST AND DIVORCE)

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Gale Allison, JD, LLM

Gale Allison, JD, LLM TAX
Dispute Resolution Consultants
Mobile: (918) 605-2889
gale.allison@galeallisonmediator.com

Meet the Author:

Gale Graham Allison, JD, LLM is a nationally certified eldercare and litigation mediator through the Strauss Institute at Pepperdine University. She is also certified in divorce mediation through the Stovall Institute. She has been mediating disputes since 2015. She retired from practicing law after forty-five years of handling estates, trusts, taxes and the litigation related to such issues to focus solely on mediation and serving as an expert witness. Prior to private practice she was a litigator with the federal government and an estate lawyer with the IRS. She blogs and speaks nationwide for lawyer, CPA, and financial professionals' continuing education, as well as for business groups and general public education on estate planning. She serves on the mediator panel of Dispute Resolution Consultants and can be reached at gale.allison@galeallisonmediator.com and by text or voice, **918-605-2889.**

TEN TIPS FOR THE ADVOCATE MEDIATION FAMILY DISPUTES (ESTATE, TRUST, AND DIVORCE)

By Gale Graham Allison

"The notion that most people want black-robed judges, well dressed lawyers and fine-paneled courtrooms as the setting to resolve their disputes is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible." [1]

Abraham Lincoln once wrote, "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time."[2]

TIP # 1. HIRE A MEDIATOR WITH EXPERTISE AND TRAINING.

Mediation is well suited to resolve highly emotional and contentious conflicts which are the bedrock of trust and estate disputes. While it is not a requirement for the mediator to know anything about the law of the dispute, in trust and estate conflicts it is inefficient to use a mediator not skilled in the area, because a mediator fluent in the terminology and principles surrounding the dispute is better positioned to resolve the conflict. As in other areas, a mediator with expertise in

[1] Address by Chief Justice Warren E. Burger, National Conference on Minor Dispute Resolution (1977).

[2] David Gage & John Gromala, *Mediation in Estate Planning: A Strategy for Everyone's Benefit*, 4 Elder's Advisor (2012).

the dispute at hand can more easily evaluate the parties' positions and encourage agreement among parties. It is a growing trend to use mediators who focus in a specific type of dispute.

TIP #2. START EARLY.

The pliable nature of mediation makes it probably the most effective method for helping parties resolve disputes in all issues regarding an inheritance. A plethora of benefits exist for engaging in mediation and, significantly, these benefits are not solely available for use by parties already involved in litigation. Since litigators are not required for mediation, seizing the opportunity to mediate situations prior to filing in court can settle disputes with speed unavailable when the courts are involved. However, litigators are trained to protect their clients and can make the process more successful as well. Having litigators poised to litigate, but mediating the dispute first, works well where discovery is not an issue.

Trust and estate conflicts are especially amenable to the mediation process early on, because the affected parties are generally more motivated to, if not save the relationships entirely, at least prevent a total breakdown of the family. Mediators often uncover "latent conflicts" or discover hidden information that prevents a dispute from becoming solvable.[3] The root of many estate and trust problems is long-term family conflict that may never be presented in court documents.

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[3] Gary D. Williams, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 Ohio State J.D.R. 819 (2001).

Estate, Trust, and Inheritance Disputes

Although attorneys must zealously represent their clients, an adversarial atmosphere can irreparably damage relationships. Litigation is a stressful time for everyone, and often brings on anxiety: "a psychological stressor which causes physical and emotional harm."[4] The data from a study conducted in 2007 suggest those previously involved in a courtroom trial have higher perceived anxiety that those previously involved in an alternative dispute resolution.[5] Additionally, the practice of hashing out personal disagreements in court exposes families' financial situations and dirty laundry to the public record. In contrast, mediators are under a duty of confidentiality: All exchanges with a mediator remain private, unless the communicating party consents to a disclosure.[6]

The rate of litigation regarding estate cases will undoubtedly increase due to the expanding elderly population, the surge of inheritance transfers, a more litigation-oriented society, and the proliferation of new estate and trust laws.[7] But even as long ago as 1992, estimates from The National Center for State Courts found that, of the 19.6 million civil cases filed in state courts, domestic relations, small claims, and estate cases made up over half of the total.[8] Mediation in America was in its infancy in the early '90s, with the largest use of it early on in domestic cases.

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[4] Nicole M. Zapzalka, *The Psychological Impact of Civil Litigation: A Comparison of Perceived Anxiety Levels in Civil Litigation as Viewed by Trial and Alternative Dispute Resolution Litigants*, Capella University, ProQuest Dissertations Publishing, 3246080 (2007).

[5] Nicole M. Zapzalka, *The Psychological Impact of Civil Litigation: A Comparison of Perceived Anxiety Levels in Civil Litigation as Viewed by Trial and Alternative Dispute Resolution Litigants*, Capella University, ProQuest Dissertations Publishing, 3246080 (2007).

[6] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[7] Will Sleeth, 4 *Estate Litigation Predictions.for 2018, Private Wealth* (Feb. 14, 2018), https://www.famag.com/news/4-estate-litigation-predictions-for-2018-3 7 I 74.html.

[8] See Nat'l Ctr. for State Courts, supra note 44.

Mediation for inheritance disputes provides the best alternative to litigation due to the lower emotional cost, in addition to the obvious financial savings. The price of mediation is a fraction of the cost of litigation.[9] A prime advantage of mediation in all cases, but particularly in trusts and estates, is that it empowers disputants to employ creative solutions to the disputes that are not available in court.[10] Courts typically provide litigants with fairly limited remedies, lacking in creativity and flexibility.[11] The solutions of mediation are limited only by "the parties' imaginations and individual interests."[12]

Wills, trusts, and estates are complex legal undertakings; will contests, renunciation of a will by a surviving spouse, or conflicting interpretations of a will are complicated and difficult to litigate. Disputes in estate law are common, produced by a labyrinth of technical and emotional issues. These disputes most often occur between family members, sometimes with devastating long-term consequences. The scripted and adversarial nature of litigation promotes hostility and encourages parties to play the blame game. Litigation of estate and trust issues is a lengthy, expensive, and volatile process. Courts create winners and losers, a dichotomy that has no place in familial relationships or mediation.

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9 Gary D. Williams, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 Ohio State J.D.R. 819 (2001).

10 See Robert A. Patterson, Comment, *Reviving the Civil Jwy Trial: Implementing Short, Summary, and Expedited Trial Programs*, 2014 B.Y.U.L. Rev. 951, 953 (examining the history of civil trials and its decline, advantages and disadvantages of civil trials, and the proposition for a short, summary, and expedited "SSE" jury trial program.

11 David Gage & John Gromala, *Mediation in Estate Planning: A Strategy for Everyone's Benefit*, 4 Elder's Advisor (2012).

12 Gary D. Williams, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 Ohio State J.D.R. 819 (2001).

TIP #3. START EARLIER STILL --AT THE BEGINNING.

Mediation in the Estate Planning Process

Mediation during the estate planning process is a relatively novel application of its many benefits.[13] Although estate planning disputes are nothing new, the use of mediation during the estate planning process "is in its infancy."[14] Mediation clearly generates unique solutions, improves client satisfaction, and in the estate planning area can function as a preemptive measure, to prevent (or resolve) conflict in its tracks. Obviously, instead of encouraging intuitive solutions, litigation serves as a "battleground upon which parties fight against each other."[15] So to use mediation to solve the conflict in the beginning rather than after the dispute is engraved in the granite of an estate plan is an extremely useful approach, both financially and emotionally.

Not only is mediation in estate disputes preferable to litigation, but estate planners can reduce the likelihood of conflict by including a mediator in the planning process as well.[16] Mediation is particularly useful when family owned businesses comprise part of the family wealth, because the business of succession planning is often rife with family conflict. Emotional issues in a closely held business are a breeding ground for litigation, both during and after the lifetime of

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[13] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[14] David Gage & John Gromala, *Mediation in Estate Planning: A Strategy for Everyone's Benefit*, 4 Elder's Advisor (2012).

[15] David Gage & John Gromala, *Mediation in Estate Planning: A Strategy for Everyone's Benefit*, 4 Elder's Advisor (2012).

[16] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

the owner or partner.[17] Unaddressed issues, tend to grow in size and complexity with each passing year.

Closely held businesses often fail in the wake of a faulty succession plan. After the first generation passes, seventy-five percent of such businesses fail. Eighty-five percent of the remaining businesses fail after the second generation passes, and ninety-five percent of those surviving businesses fail after the third generation passes.[18] *If you start with one thousand family businesses and apply those statistics, fewer than two make it to the fourth generation!*

Succession planning experts found that more than sixty percent of all failures within a family business involve a lack of trust and inability to communicate within the family.[19] This dysfunction abates when a well-trained mediator is involved. When a child is not having to confront the parent with feelings that can be translated into disrespect for the parent's views, but can in private express the issues with the mediator, many of the problems reaching viable solutions can disappear. Mediation streamlines communication between professionals and parties, while eliminating the need for "foot dragging" by a family member who cannot live with a proposal but does not want to be viewed as difficult or selfish.[20]

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[17] Gary D. Williams, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 Ohio State J.D.R. 819 (2001).

[18] Brad Franc, *Why Business Succession Plans Fail and How to Beat the Odds*, https://www.ypo.org/2019/04/why-business-succession-plans-fail-and-how-to-beat-the-odds/ (2019).

[19] Brad Franc, *Why Business Succession Plans Fail and How to Beat the Odds*, https://www.ypo.org/2019/04/why-business-succession-plans-fail-and-how-to-beat-the-odds/ (2019).

[20] Nicole M. Zapzalka, *The Psychological Impact of Civil Litigation: A Comparison of Perceived Anxiety Levels in Civil Litigation as Viewed by Trial and Alternative Dispute Resolution Litigants*, Capella University, ProQuest Dissertations Publishing, 3246080 (2007).

While traditional estate planning may dredge up old family rifts and new anxieties, skilled mediators become attuned to the family dynamics involved in the planning and preparation of wills and trusts and may uncover and resolve disputes before they come to fruition.[21] Facilitating agreement during the planning process through mediation reduces the odds of conflict when the terms of the estate plan are put in place.

Since mediators function independently, do not advise either party, do not make decisions, and have no loyalty to either party, mediators are naturally empowered to improve the process of estate planning and execution to benefit attorneys and clients alike.[22] The presence of a mediator in the estate planning process is advisable for parties wishing to avoid conflict while proactively identifying and resolving hidden issues.[23] Even the most experienced estate planning attorneys can lose clients during the planning process; proactive mediation lessens this attrition, and often the estate planner's relationships with all the generations can even be strengthened. It is not uncommon for children to blame the estate planning attorney for the plan their parents chose. With mediation of estate planning issues at the outset, the attorney can help to forge a bond that would have been impossible without the process of mediation.

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[21] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[22] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[23] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

A well-documented story about a family with an eight-figure estate and many adult children illustrates the efficacy of mediation in this context.[24] After laboring through two years of estate planning, the entire family was on the brink of warfare, with siblings pitted against siblings, children not wishing to upset their elderly parents, suspicions running amuck, and tempers flaring high. Finally, a mediator entered the trenches.[25] After careful review of the proposed plans, the mediator quickly recognized the technical merit regarding "tax minimization," but also identified that a complete breakdown in communication had occurred within the family.[26] Each child, sibling, and parent had separate counsel, all with different views. Through mediation, a son who was unhappy with the prospect of running the family business could express his concerns in confidence and without fear of disappointing his father.[27] The mediator could then confer with the father, who expressed that he did not care for the family business to survive him, and this unexpected revelation allowed for the formulation of a plan to work for everyone.[28] A child who cannot tell a parent that he wants nothing to do with the family business cannot negotiate with a parent who cannot express to the child how little he values the continuation of the business (erroneously believing the child loves it). They can express those feelings to the mediator,

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[24] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[25] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[26] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[27] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

[28] John Gromala, *The Use of Mediation in Estate Planning: A Preemptive Strike Against Potential Litigation*, www.mediate.com/articles/estate.cfm (1999).

however. A mediator is in a unique position to use this discovery to diffuse the situation and craft a plan that everyone can support.

TIP #4. IT IS NEVER TOO LATE.

Mediation in Eldercare

Eldercare disputes are particularly suited to mediation, avoiding adversarial posturing or litigation. The lengthy and costly process of discovery is often not necessary, and families are motivated to solve the problem expeditiously.

"When hearts, lungs and kidneys failed in the past, death came swiftly and without discussion. Today, failing organs mobilize a sophisticated arsenal of medical technology designed to keep death at bay."[29] But in today's not-so-brave new world, planning for dementia, diapers and 'round-the-clock care makes planning for death appear quite simplistic by comparison. As we are all aware, unfortunately many Americans have no better written plan for their long-term disability than they have put in place to address the event of their death.

When the Social Security program began in 1935, men on average lived to the age of 59.9 and women to 63.9.[30] (It makes you wonder how they arrived at the magic of retirement age being 65!) Fast forward to the modern day: in 2016, the US Centers for Disease Control declared the average life expectancy for females to be 81.2 years and for males, 76.4 years.[31] Today life insurance companies write their products for a life expectancy of 122 years!

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[29] Ellen Waldman, *Bioethics Mediation at the End of Life: Opportunities and Limitations*, https://cardozojcr.com/wp-content/uploads/2014/02/Waldman.pdf (2014).

[30] Gale Allison, *AGING MAY NOT BE FOR SISSIES – BUT YOU'RE NO SISSY: TOOLKIT FOR ELDER CARE* (2018).

[31] Table 15. *Life expectancy at birth, at age 65, and at age 75, by sex, race, and Hispanic origin: United States, selected years 1900–2016* https://www.cdc.gov/nchs/hus/contents2017.htm#015.

This stark contrast in life expectancy illustrates why planning for end of life care has taken center stage, surpassing even planning for the postmortem, in recent years. In 2018, 42% of people over the age of 85 needed long-term care services.[32] Our doctors have figured out how to keep us alive, but not without a phalanx of medical help that provides little in the way of quality of life.

Medical advances provide tools that are both miraculous and problematic.[33] Sometimes, sick, elderly patients can be healed and resume dignified lives; however, oftentimes machines can extend an individual's "corporeal existence beyond sentience or awareness."[34] Planning for end of life care requires the inclusion of many voices.[35] Patients sign advance directives, while clinicians speak from an objective medical perspective, which often leaves family members confused and frustrated.

With advances in medicine, doctors become better able to sustain our fragile shell. As the human body survives years past its traditional "shelf life," the brain tends to begin its inevitable process of decay. Disputes during the estate planning process often involve emotional issues. The people-oriented mindset of mediation is ideal for eldercare issues, such as guardianship, because mediation takes place between people (not "parties," "disputants," or "litigants") – real people who are flawed and imperfect in their own unique, human ways. An elderly person who "faces a

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[32] Christine Benz**,** *Must-Know Statistics About Long-Term Care: 2019 Edition*, *https://www.morningstar.com/articles/957487/must-know-statistics-about-long-term-care-2019-edition* (2019).

[33] Ellen Waldman, *Bioethics Mediation at the End of Life: Opportunities and Limitations*, https://cardozojcr.com/wp-content/uploads/2014/02/Waldman.pdf (2014).

[34] Ellen Waldman, *Bioethics Mediation at the End of Life: Opportunities and Limitations*, https://cardozojcr.com/wp-content/uploads/2014/02/Waldman.pdf (2014).

[35] Ellen Waldman, *Bioethics Mediation at the End of Life: Opportunities and Limitations*, https://cardozojcr.com/wp-content/uploads/2014/02/Waldman.pdf (2014).

potential loss of dignity, as well as the loss of legal and civil rights," deserves to be heard, and to feel that his or her thoughts and opinions matter.[36] Mediators are equipped to address these emotional issues that courts ignore. Instead of feeling angry, bitter, or confused, mediation gives the elderly "a voice."[37]

Eldercare issues specifically benefit from mediation. Although this is comparatively new in America, many other countries have been mediating these family disputes for many decades. The long slide into the abyss causes more trouble than the disappearing act of death ever could. The maker of a will does not have to endure the ugliness that accompanies a poorly planned estate, but the declining senior becomes the star of the show during a sometimes protracted and painful collapse into oblivion.

End of life planning with elderly clients involves difficult decisions and requires the cooperation of an entire family and many care givers. Disputes commonly arise regarding medical treatment, care decisions, and more serious issues, such as Do Not Resuscitate orders (DNRs) or removal of life support. These more serious disputes involve not only patients and their family members, but physicians and health care staff members as well.[38] Issues like diminished patient capacity or family disputes over the appropriate care for an elderly relative complicate these disputes. Mediators, if possible, meet privately with the disabled person and learn about his or her concerns, outside the earshot of their well-intentioned but possibly misguided family members.

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[36] Gary D. Williams, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 Ohio State J.D.R. 819 (2001).

[37] Gary D. Williams, *Weighing the Costs and Benefits of Mediating Estate Planning Issues Before Disputes Between Family Members Arise: The Scale Tips in Favor of Mediation*, 16 Ohio State J.D.R. 819 (2001).

[38] Ellen Waldman, *Bioethics Mediation at the End of Life: Opportunities and Limitations*, https://cardozojcr.com/wp-content/uploads/2014/02/Waldman.pdf (2014).

Mediators also speak with each of the family members and caregivers alone, giving them an opportunity to explain their participation and thoughts without interruption. This can be a laborious process, but it brings lasting results, and if not always harmony, at least cooperation.

TIP #5. CONSIDER ENGAGING OR BECOMING AN INDEPENDENT RESOURCE.

The Independent Resource

In recent years, mediation has benefited from the inclusion of the independent resource in the process. An independent resource is an individual with specialized knowledge, who can aid the mediation process by informing disputants about options that are available and how they might work. This person can be a specialist in any matter germane to the dispute at hand. The resource is neutral and assists in informational needs.

Disputing parties most often have their advocates who are trained to press their own best interests, but with the independent resource, both sides to a conflict can be provided with unbiased information about any topic specific to the dispute at hand. For example, in eldercare disputes a specialist might be called in to discuss the application of guardianship laws, tax, medicine, financial planning and more. Advocates by their very nature are biased on behalf of their clients, but the independent resource provides a new dimension to settling the dispute, advising all parties on the technical aspects of their positions.

In eldercare mediation, a medical professional may serve as an independent resource, providing insight into an elderly patient's mental condition and level of competence or impairment. An independent specialist can assist the parties in fully understanding the care that their elderly

relative requires moving forward, and foster agreement among the parties through a mutual understanding of the circumstances surrounding their loved one's end of life care.

Many times, a non-litigation lawyer or other family advisor is presented with family problems. That advisor can serve as an independent resource for the family, to explain things like the court-supervised disability proceeding or its financial and personal aspects, and can assist during the mediation on a neutral basis, resolving the family strife. This enables the advisor to be part of the solution rather than one who must choose a "side". This also enables the lawyer to foster goodwill and expand on the services that can be provided.

In the context of estate planning, an independent resource may be a specialist in estate planning and/or tax law. While each party may retain his or her own attorney, an independent resource does not represent either side, but instead, serves as a knowledgeable resource for both parties. At the very least, both sides may rely on the independent resource to provide an accurate evaluation of potential solutions and the tax ramifications.

Financial planners now have special certifications for "transition planning," which makes them ideally suited to be a financial planning independent resource. Addressing the financial aspects of many planning disputes is critical and is often used in divorce disputes.

A mediator cannot provide legal advice and generally the advocate for the disputing party will serve in at least part of this capacity. But an independent legal resource with special qualifications in a particular area can serve as an independent source of information on anything from how guardianship laws work to providing to assisting in the drafting of trust solutions.

TIP #6. CARE ABOUT THE LOCATION AND CONSIDER ZOOM.

Mediation in a Pandemic

In the midst of a pandemic, we stopped having conference rooms packed with multiple parties, attorneys, experts, mediators, and independent resources worried as we were about super-spreader events. However, mediation is particularly well suited for online solutions. Technology from Zoom allows participants to remain in separate "rooms" while the mediator can "move" between the "rooms" with ease and confidentiality. This approach was perfect for the socially distant COVID reality, and now adds a very convenient and inexpensive option.

While courts struggled to operate at their best during that trying time, mediators quickly adapted with the help of online streaming platforms like Zoom. Mediation via online platforms reduced the cost of meditation and removed the time and financial burden of traveling to a common location. Many mediation panels got rid of their bricks and mortar presence.

Final mediation agreements can be signed electronically, via Docusign or another similar provider. Many mediation panels have already made a permanent switch to online mediation due to the ease of operation and less expensive cost, but most offer both the in person and Zoom type of mediations.

TIP #7. PREPARE, PREPARE, PREPARE AND USE THE MEDIATION STATEMENT EFFECTIVELY.

The Effective Mediator

Effective mediators treat all parties with dignity and respect, insure the parties understand the proceeding and its rules, maintain confidentiality, and seek nothing of value besides reasonable

compensation.[39] Mediators must be good listeners during the process and display strong communication skills, a strong personality, flexibility, neutrality, and composure from start to finish.[40]

Neither the mediators nor the participants should walk into the mediation unprepared. It is amazing how many litigators will prepare for months for a trial, but assume no preparations is necessary for the mediation.

TIP #8. MAKE SURE ALL PARTIES PARTICIPATE.

It is vital that mediators have a thorough understanding of the facts involved in a dispute to provide each party with a competent evaluation of their position, and the earlier the better. Pre-mediation preparation is most efficient when the mediator requires all interested parties to consult with counsel, prepare mediation statements, and provide this valuable information to the mediator well in advance of the mediation. These statements represent each party's summation of their goals and grievances and applicable law. While pre-mediation investigation or contact is not standard practice in mediating civil claims or community disputes, it is crucially important in the mediation process, especially in the eldercare arena.[41] In fact, Straus Institute at Pepperdine University (one of the top mediation training schools in the world) emphasizes pre-mediation preparation, contact with the lawyers and, in eldercare cases, contact with each of the interested participants.

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[39] Marlene Moses & Manuel Russ, *Ethics in Family Law Mediation,* 55 Tenn. Bar Ass'n J. No. 1 (2019).

[40] David Gage & John Gromala, *Mediation in Estate Planning: A Strategy for Everyone's Benefit*, 4 Elder's Advisor (2012).

[41] Ellen Waldman, *Bioethics Mediation at the End of Life: Opportunities and Limitations*, https://cardozojcr.com/wp-content/uploads/2014/02/Waldman.pdf (2014).

TIP #9. STAY TIL THE END

There are some types of mediation that are easily concluded in two to four hours. Insured personal injury is a good example where a disinterested insurance representative is only interested in the numbers. But any mediation involving a family is not one of those. It is often important to deal with the complicated emotional baggage before any economic progress can be made. Everyone should be committed to continuing the mediation as long as progress is being made and let the mediator be the judge of the progress. Walking out before the mediator has given up is a waste of time and money.

TIP #10. EXECUTE THE MEDIATION AGREEMENT AS THE CONCLUDING ACT OF THE MEDIATION AND DON'T FORGET THE TEETH.

One of the irritating things that happens to many clients is they leave the mediation with a bunch of scribbled notes. This followed by the lawyers fighting with each other over what the mediation actually settled and how it should be worded. There is no reason to end a mediation without a satisfying agreement. The mediator should require all parties to bring laptops with a mediation agreement pre-drafted with all the favorite boilerplate, etc ready to be completed and executed. At the minimum among the boilerplate should be something serious like a liquidated damage clause with serious economic cost for any breach. There should be deadlines for compliance and even a power of attorney allowing the execution of documents on behalf of another party. Language should be included to address any later changes to the agreement which, if needed, may be made by amendment with the agreement of all parties. If all of these things are addressed in advance, the agreement can come together very quickly.

Conclusion

Meditation resolves conflict in the most non-confrontational way. While a court's order often slaps a one-size-fits-all Band-Aid® on family disputes over estates or eldercare, a mediator can weave an intricate solution in a legally binding agreement. Meditation decreases stress, saves money, and can preserve family relationships. The use of a mediator throughout the estate and end of life planning process works to alleviate stress, uncover hidden motivations, and cut through unfounded suspicions to arrive at a solution that structured to stand the test of time. A mediator's effectiveness hinges largely on her ability to connect with the parties, ascertain each party's actual needs, and negotiate a truce. In any dispute, legal or not, each side wants to feel heard and understood. With mediation, each side communicates with a mediator, in confidence, which brings comfort to both sides while ensuring each party's primary objectives are represented in the final agreement.