

ADVANCED CUSTODY MEDIATION TRAINING

Presented by: Marta J. Papa

Day 1

1. Choosing the Right Mediation Style/Approach
 - a) Regardless of your mediation style, you MUST be AUTHENTIC
 - b) Different Mediation Styles:
 - Facilitative
 - Transformational
 - Result-Only Focused
 - Narrative
 - Guerilla Mediation
 - c) Which method does the case call for?
 - Do the parties need a lot of rules to control unproductive behavior or do they need more freedom and encouragement to explore options?
 - Are the parties mediating voluntarily or was mediation ordered by the court?
 - Does either party have an *anger management* issue?
 - d) Video (The case of Willie)

2. Conflict Resolution Techniques for Child Custody Cases
 - a) Interrupt
 - b) Bring them back to the task at hand
 - c) Distract them to a different topic
 - d) Set ground rules
 - e) Do NOT try to persuade one side they are wrong
 - f) Brainstorm more options
 - g) Re-frame issues into neutral statements
 - h) Focus on interests, NOT positions
 - i) “No Conflict Before It’s Time”
 - j) Ask questions, do not make statements
 - k) Ignore the conflict
 - l) Acknowledge the conflict with reflective listening
 - m) Caucus

Break

3. Anger Management Techniques
 - a) The “taser”
 - b) Check to see if their anger brings their “real issue” (instead of their “position) to the forefront
 - c) Ask if this is how they communicated during their marriage and whether that worked well for them. Then get their commitment to try something new.

- d) Point out the other party's response to their:
 - i) Comments
 - ii) Complaints
 - iii) Accusations
 - iv) Tactics (Staples Red Button)
 - v) Blaming
 - vi) Shaming

Lunch

- 4. Dealing with Overzealous Counsel
 - a) Talk to the mediation couple about the 4 different options to choose from in order to get divorced
 - b) Ask which option the couple would like to use
 - c) If they choose mediation, explain how they have to be assertive with their overzealous attorney regarding their wish to use the mediation process
 - d) Remind them that the attorney works for them, they don't work for the attorney
 - e) Remind them that the attorney is only offering advice, they don't have to take it

- 5. Dealing with High-Conflict Clients who want to Co-Parent
 - a) Explain that they don't have to agree on everything, just the "big stuff"
 - b) Define what the "big stuff" is
 - c) Discuss their inability to control what happens at the other parent's house
 - d) Explain the impact their conflict has on their children and determine whether or not they will agree to attend Parent Counseling together
 - e) Offer the option of using a Parent Coordinator
 - f) Use the website www.uptoparents.org

Break

- 6. When Only One Parent Wants to Mediate
 - a) Ask them who they want deciding their parenting issues (if not them)
 - b) Discuss the "courthouse process"
 - c) Explore their "WATNA" and "BATNA" (terms from the Harvard Negotiation Project by Fisher & Ury)

Day 2

7. When Their Attorneys Have Already Told Them “Mediation Won’t Work for You”
 - a) Do NOT try to convince them of the advantages of mediation
 - b) Focus on their common goals for the children
 - c) Explain the emotional impact of divorce on children (Use the research conclusions)
 - d) Draw their focus to the long-term plan of day-to-day parenting
 - e) Use this opportunity to EDUCATE THEM about the impact of their conflict on their children
 - f) Use the website www.uptoparents.org to reinforce the parents’ need to cooperate regarding parenting issues

Break

8. How to get out of an Impasse
 - a) The “ultimate” impasse question:
 - Under what circumstances would you allow your spouse to have what they are requesting AND what would you want in return?
 - OR
 - What would you be willing to give your spouse if they let you have what you are requesting?
 - b) Discuss “WATNA” and “BATNA”
 - c) Close your books and tell them that the mediation is over
 - d) Put the problem back in their laps and ask for each of them to come up with two options
 - e) “Dick’s Drop Dead Questions”

Lunch

9. Different Types of Domestic Violence: Can you ever successfully mediate if there has ever been abuse?*
- Presented by Susannah Altesman, from ALIVE
Crisis Intervention Specialist/Court Advocate*
- a) Coercive Controlling Violence
 - i) Definition: Pattern of Power and Control Imbedded in the Relationship
 - ii) Examples:
 - Intimidation
 - Emotional Abuse
 - Isolation
 - Minimizing
 - Denying

- Blaming
 - Using the children
 - Economic Abuse
 - Coercion & Threats
 - Physical Violence (only necessary if the above tactics don't work)
- iii) Conclusion: Unsafe to mediate with this group because the abused will be afraid to state their goals or concerns about the children
- b) Violent Resistance
- i) Definition: Resisting Coercive Controlling Violence by Using Violence Yourself (Self-Defense)
- ii) Examples:
- Fight back when attacked
 - Use violence to protect children from an abuser
- iii) Conclusion: Unsafe to mediate with this group because there is violence occurring which provokes the violent resistance. So by definition, fear still exists.
- c) Situational Couple Violence
- i) Definition: Not a more minor version of Coercive Controlling Violence; rather it is a different type of intimate partner violence with different causes and consequences. It is NOT imbedded in a relationship-wide pattern of power, coercion and control.
- ii) Examples:
- An argument between partners escalates on an occasion into physical violence
 - One or both parties have trouble controlling their anger
 - Usually involves the more minor forms of violence (pushing, shoving, grabbing) and not lethal violence.
 - "Fear" is not a characteristic (for women or men)
 - No chronic pattern of controlling, intimidating, stalking behavior
 - Provoked by a single incident and less likely to escalate over time
- iii) Conclusion: May be safe to mediate if there is no current fear of violence by either party. Mediator should be experienced, parties already living separately, and safety measures in place.
- d) Separation Instigated Violence
- i) Definition: Violence was instigated by the separation with NO prior history of violence. Unexpected, uncharacteristic acts of violence perpetrated by a partner with a history of "civilized and contained" behavior. No intimidation; no fear; no controlling behavior.
- ii) Examples
- Violence triggered by coming home to a house that is empty, children have been taken, with no evidence of where they can be found

- Violence triggered by public humiliation of being served by a process server, or discovering a lover in the partner's bed. The violence represents an atypical and serious loss of psychological control and is typically limited to one or two episodes at the beginning of a separation period. Protection Orders result in compliance

iii) Conclusion: As long as they are living separately, the shock is over and there is a safety plan then mediation may be successful.

Break

10. Building on Success

- a) If you can reach agreements in some areas, use those agreements to move into more difficult areas
- b) As the couple comes to more and more agreements, it is harder for them to abandon the process if they get "stuck"
- c) Once the couple reaches agreements on almost all issues, it sometimes becomes more clear what to do in the places where they are "stuck"
- d) Be aware of the "last issue syndrome" ("weed-whacker syndrome")