

Mediation Missteps: How to Prevent Common Pitfalls in Family Law Cases

Article

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Mediation is a confidential process where parties in family law matters, such as divorce, paternity, modification, or enforcement actions, work towards resolving their issues. It involves the parties, along with their attorneys if represented, collaborating with a mediator—often an experienced family law attorney or retired judge—to settle their case’s issues. Mediation is frequently a required step before any court hearings, whether temporary or final.

Mediation places the power to resolve matters in the hands of those most affected, allowing them to think creatively on how best to reach agreements that suit everyone involved. While highly efficient for dispute resolution, mediation is not without its challenges. Here are common reasons family law mediations “go wrong” and ways to avoid them.

Incomplete Information

In most family law cases, parties must exchange a financial affidavit and certain mandatory disclosures, such as tax returns, paystubs, account statements and more. These initial disclosures may offer crucial information to evaluate a case, but sometimes additional discovery is necessary to fully understand particular assets or sources of income, such as a party-owned business.

Incomplete disclosures can hinder mediation, preventing parties from fully resolving their case. Therefore, *before* mediation, it’s vital for both parties to consider all the necessary information for key decisions. Receiving requests for discovery may seem bothersome, requiring you to gather documents or answer the other party’s questions. However, providing relevant documents and information helps move the case forward. Transparency in financial and relevant matters ensures everyone is working from the same complete and accurate information to reach a resolution. Without it, valuable mediation time may be wasted on questions and filling gaps, rather than building resolution options.

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Unrealistic Expectations

Most people have preconceived notions about what is “fair” or what they are “entitled to” in a family law case. However, these perceptions may not always align with legal realities or specific facts in their case. Influences from friends or family advice, or rumors about others’ settlements, can lead to unrealistic expectations, potentially derailing a mediation before it begins. It’s important for both parties to understand what the law provides, as well as the “strengths and weaknesses” of their case.

Entering mediation requires a realistic mindset, with both parties understanding that neither will walk away with everything they want. A mediated settlement almost always involves both parties making compromises to reach a reasonable resolution based on their unique circumstances. This includes weighing the limitations and risks of litigating the issues in court, where they will no longer possess the power to make the decisions.

Breach of Confidentiality

A hallmark of mediation is its confidentiality. Much like Las Vegas, “what happens in mediation, stays in mediation.” This intentional approach encourages open negotiation without fear that such discussions may be “used against them” later on. It is pivotal for both parties to respect and abide by the confidential nature of mediation, refraining from sharing details with family, friends or anyone else.

There may be cases where involving a non-party could benefit the mediation process. If a participant wishes to bring in a third party, they should disclose this in advance. If the other party agrees, the non-party can agree to maintain confidentiality by signing an acknowledgment to that effect.

Lack of Communication

Family law matters are emotionally charged and often revolve around financial insecurity or a minor child’s wellbeing. Adding to the challenge, parties are often at odds, with feelings of distrust or dislike (to say the least) toward one another, impacting their decision-making. Thoughtfully navigating highly difficult and sensitive issues – and feelings – is one of the most important factors to having a successful mediation.

When communication breaks down, whether between parties or in general, it can hinder the mediation process. Allowing parties to express their concerns, whether it’s fear of the future or feelings of powerlessness and hurt, can make a significant difference. This not only results in parties feeling heard but surprisingly helps them find common ground and understanding. This collaborative, amicable mindset is essential for successful settlement negotiations and moving forward positively.

Conclusion

Family law mediations offer a valuable alternative to court litigation, but their success depends on addressing the challenges that can arise. Effective communication, realistic expectations, transparency, and respect for the process, and even one another, are crucial elements that must be carefully navigated in mediation.

To learn more about the mediation process and explore your options in family law matters, please contact Lowndes attorney Crystal Buit. As a Florida Supreme Court Family Law Certified Mediator, she can provide valuable information and guidance tailored to your specific situation.