

From a War of the Roses to a Meeting of the Minds

By Barri Payne

Your family law clients might not be ready to draw a line through the center of the house as Michael Douglas and Kathleen Turner did in “The War of the Roses,” but their divorces may be just as contentious.

Whether contentious or not, family law matters can be skillfully resolved with the help of a mediator extensively experienced in family law. Even cases where the spouses cannot seem to agree on anything – the bank balance when they separated or the date they separated, for that matter – can be resolved through a meeting of the minds in mediation.

Mediation in family law matters continues to grow in popularity. The wealth of information on the Internet has helped clients become savvy and educated as to the benefits of mediation. As our court dockets have become crowded and the litigation process lengthier, alternative dispute resolution methods are welcome alternatives.

Navigating the emotional rollercoaster associated with high-conflict clients in divorce cases can be challenging. As a family lawyer for the last 17 years, I have seen clients react and interact in nearly every way possible.

- The custody case where the parties were in agreement on equal custody, only if they never had to speak to each other again. Their separation agreement included restrictions regarding travel into each other’s neighborhoods and attendance at common social events.
- A custody case so amicable that the parents rented an apartment to rotate their residences when not with their children, allowing the children’s lives and routines to remain as unaltered as possible in the marital home.
- The divorce where the parties had no children but could not agree on how to divide the pots and pans, the frequent flyer miles or the option to purchase season basketball tickets; where personal and separate belongings were held hostage as leverage in the overall division of assets.

Each of these cases was or could have been resolved through mediation. Mediators who are experienced family litigators can draw on their experiences from court and prior mediations to craft creative and successful solutions. Key ingredients to a successful family mediation include:

No. 1 – Preparing and advising parties to participate open-mindedly, encour-

aging them to speak frankly with the mediator about private aspects of their lives (children, marital and separate assets, income and expenses). Formulating goals for best possible outcomes and identifying areas where room for exploring other options may exist.

No. 2 – Attorney preparation should include analysis of the parties’ financial documents and existing allegations to determine litigation outcome probabilities. Attorneys should honestly and directly explain the range of these outcomes and prepare their client for a court’s probable ruling. Attorneys should be prepared to identify potential weaknesses, evidentiary and legal difficulties of their client’s case and be open about these with the client and the mediator.

No. 3 – Attorneys should help their clients understand how the mediation process works, the time involved, and the patience requisite to success. Frustration with the process can ensue if the parties are surprised by the technical aspects of the conference.

No. 4 – Ensuring the parties and attorneys have what they need (beverages, snacks, WiFi, environmental comfort) creates opportunity for an efficient and effective experience. Unsuitable settings can lead to irritability, causing everyone to be less amenable to facilitated progression toward resolution. Atmosphere is an important factor to crafting successful resolutions and in ensuring the parties’ satisfaction with the mediation process and its outcomes. The result is more willing compliance with mediated solutions and happier clients in the long run.

No. 5 – An experienced mediator who is also a family law attorney, or who has extensive experience mediating family law cases, is of paramount importance. Though not required, choosing a mediator certified by the North Carolina Dispute Resolution Commission will provide added assurance of the mediator’s training, specifically in family financial mediation, that the rules of the NCDRC are being followed, and that continuing education obligations for certification are being met.

Litigation has many costs beyond just the financial. Successful mediation can bring closure and restore stability for your clients and their children. Often, mediation stops financial bleed and depletion of the parties’ resources, thereby helping to preserve civility and cooperation necessary for the parties to move forward.



As family lawyers, our greatest work is to help clients gain perspective, obtain their financial and emotional foundations, and move toward a future brighter than the recent past. Mediation accomplishes that without a War of the Roses.

Barri Payne is a N.C. State Bar board certified specialist in family law and is certified as a family financial mediator through the North Carolina Dispute Resolution Commission. She holds degrees from the University of North Carolina at Charlotte where she majored in religious studies and sociology, and the UNC School of Law. Barri has practiced family law for over 17 years in the Triangle area. Barri represents family law clients and conducts mediation from her office in Durham. Find Barri on the Web at DurhamFamilyMediator.com or call her at (919) 808-2826.

