

Franklin County Domestic Mediation Services

And

Contingent Mediation Tactics

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In *Contingent Mediator Behavior and Its Effectiveness* by Carnivale, Lim and McLaughlin,¹ mediator tactics are identified. Kressel and Pruitt (1985) identified three basic types of tactics used by mediators to gain the necessary information and to move the mediation process forward to aide the parties in coming to resolution of their disputes. The tactics they identified are reflexive, substantive and contextual.² Reflexive tactics refer to those that help the mediator gain basic information on what brought the parties to mediation and to get a basis to move forward with the process.³ For example, in the first few questions that a mediator asks one party then the other, he or she is gaining valuable information in order to create a foundation for the mediation to take place. The mediator is avoiding the appearance of any bias and tries to speak the language of the parties to gain their trust.⁴ Substantive tactics are those that deal with the issues themselves: identifying the issues and suggesting a settlement or trying to change their expectations.⁵ This might be organizing the issues for the parties then helping them tackle them one at a time, as well. Finally, contextual tactics are those that the mediator uses to facilitate

¹ Peter J.D. Carnivale, Rodney G. Lim and Mary E. McLaughlin, *Contingent Mediator Behavior and Its Effectiveness*

² K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

³ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

⁴ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

⁵ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

resolution in a way that helps the parties come to that resolution on their own.⁶ Using questions to prompt a response, such as, “How do you see this working moving forward,” would be an example of a contextual tactic. The use of reflexive tactics naturally falls in the early stages of the mediation and substantive tactics naturally fall later.⁷

A second tier, or dimension of tactics identifies those at the affective end of the spectrum, or emotive tactics, and those at the cognitive end of the spectrum, or more agenda driven tactics.⁸ Emotive tactics would include using humor to change the attitude in the mediation or expressing pleasure at the progress in the session. Cognitive tactics would include simplifying the agenda or prioritizing the issues to be resolved.⁹

The Program

Franklin County (Ohio) Domestic Mediation Services is staffed with four full-time persons, one who is an attorney and is the director of the department. All operate as mediators when necessary. A list of contract mediators is used primarily to facilitate the number of mediations that come through the department each day.

⁶ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

⁷ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

⁸ Mary E. McLaughlin, Peter J.D. Carnivale & Rodney G. Lim, *Professional Mediators’ Perceptions of Tactics: A Multidimensional Scaling and Clustering Analysis* (1988) (unpublished manuscript, Department of Psychology, University of Illinois, Urbana-Champaign).

⁹ Mary E. McLaughlin, Peter J.D. Carnivale & Rodney G. Lim, *Professional Mediators’ Perceptions of Tactics: A Multidimensional Scaling and Clustering Analysis* (1988) (unpublished manuscript, Department of Psychology, University of Illinois, Urbana-Champaign).

The mediation programs that are offered through the department are Access/Visitation (shared parenting with never-married fathers and mothers), Companionship (members of the child's family wanting designated time with the child (grandmother, aunt), Shared Parenting (previously married persons or those soon to be divorced), Domestic Violence, Juvenile/Victim Offender, and Mediation of Abuse, Neglect or Dependency.

I observed and co-mediated cases over the summer of 2006. It gave me the opportunity, not only to learn a great deal about the types of cases that come through the court system in Franklin County, but to learn from and analyze the mediator's tactics. The following is an account of the cases in which I participated, the parties who were present, the outcome of the mediation and tactics used. My comments regarding my personal "evaluation" of the mediator are included, as well. Those comments serve as a record of my educational experience in the mediation, not as a critique of any one mediator or style.¹⁰

¹⁰ What did become clear to me over the course of my observations was that not all mediators are good at what they do. And, they may be better at one type of case than another. Additionally, higher education does not guarantee a better mediator. Not all mediations that reach resolution are successful: some of the best mediators that I observed did not leave the table with a resolution and some of the worst mediators that I observed did leave the table with resolution.

The Cases

Reason for Mediation: Access/Visitation: Never married father wanting to establish shared parenting schedule

Parties: Mother and father

Outcome: Full agreement

Since this was the first mediation I observed, I had nothing with which to make a comparison. The session lasted about 2.5 hours and the issues of shared parenting were resolved. The mediator was a full-time, salaried employee in the department. The mediation appeared to be routine for the mediator, as her tactics were more cognitive: prioritizing issues and simplifying those issues. She used substantive tactics, such as making suggestions for settlement, early in the session.

While those substantive tactics did aide the parties in going through the process, her tone of voice and body language did not appear to be helpful, but more disdainful. Rather than allowing the parties to use her knowledge of the process to help them, she pointed out what they had forgotten to work out. In actuality, they had not forgotten, they simply were not aware of all the details that needed to be spelled out in the agreement. A more gentle and helpful way of moving the parties forward might have been to let them know that because she was a professional mediator, she would be happy to let them know some of the issues that she had seen other parents work out so that they needed to have very little interaction in the future.

In accordance with the findings of Lim and Carnevale (Lim and Carnevale, 1988), the use of substantive pressure, which is how I would categorize this mediator's predominant tactic, was negatively associated with improvement in the relationship of the parties.¹¹ While improving their relationship might not have been a prioritized goal, it should always be considered when mediating parents who will have to have a working relationship for many years.

Comments

In observing this first mediation I became aware that part of the job of the mediator is to educate the parties as to what issues might need to be addressed in the agreement: the parties are not the experts in domestic mediation and may not be aware of all the issues that need to be covered. While in the perfect world the parties would be able to sit down at the table with a list of issues and would be able to walk away with a list of solutions, mediation does not often work that way. Most people in domestic mediation have not been there before and need guidance through the process. The mediator has the ability to help the parties actually leave with a better agreement than they might have come to on their own. Being neutral does not mean keeping the knowledge of the process a secret.

¹¹ Rodney G. Lim & Peter J.D. Carnevale, contingencies in the Mediation of Disputes (1988) (unpublished manuscript, Department of Psychology, University of Illinois, Urbana-Champaign).

Reason for Mediation: Access/Visitation: father wanted to establish a shared parenting schedule

Parties: Father in the room, mother on the telephone

Outcome: Partial agreement during the initial session with agreement to continue in a second session, which was cancelled by the mother, therefore no agreement was reached

The mediator was a full-time, salaried mediator in the department (not the same mediator as in the previous case). Having one party on the telephone and the other in the room presented its own issues. The tactics used were all cognitive: the mediator controlled the agenda and simplified the issues for resolution. She did use substantive tactics in making suggestions for settlement on transportation issues regarding the child, because the mother and child lived out of town. The disadvantages to the mother were many: the mediator could see no body language with the mother, but all the body language with the father: he rolled his eyes or looked to the mediator for agreement or help. This definitely created bias on the part of the mediator: it was very difficult for the mediator to build a rapport with the mother, but she did build a rapport with the father. I believe this all worked against the mother. It was clear that in very little time, the natural tendency of the mediator was to become more favorable to the father because they were developing a relationship that the mother was not able to attain with the mediator. At the end of the session, some agreement had been reached but another telephone session was arranged. However, the mother then refused to mediate any further. It appeared that the mother had issues that the mediator was not able to identify, possibly due to the lack of visual contact. If the two parties had both been in the room, the mediator, early in the

session, could have used more reflexive tactics such as speaking the mother's language and avoiding taking sides on important issues.¹²

In addition, it appears that sometimes the parties want to please the mediator with their progress, as well. With the mother on the telephone, she had no allegiance or loyalty to the mediator. Without face-to-face interaction between the mediator and the mother in this case, the contextual tactic of developing trust between the parties was unattainable, but was attainable with the father.¹³

The telephone mediation was a view into how a neutral third party can become a non-neutral third party very quickly. The simple fact that the mother was not in the room created an unintentional bond between the mediator and the father.

Comments

The venue in which mediation takes place is not always ideal. A good mediator needs to be able to remain objective and neutral in any setting, or try to create a setting in which he or she can do so. I do not know how a mediator can remain unbiased when in the room with one parent and on the phone with another: through no fault on the part of the professional. In watching this session, I thought it might be helpful if the mediator could go into another room: so the local party was not able to communicate through body language with the mediator: it might make the process less favorable to one party. Otherwise, it would be nearly impossible to remain impartial in this type of mediation.

¹² K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

¹³ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

Reason for Mediation: Access/Visitation: father wanted to establish a shared parenting schedule

Parties: Mother and father

Outcome: Full agreement

As previously stated, many contract mediators are used in Franklin County Domestic Mediation Services and this was my first time to observe a contract mediator. Mother was not allowing the father any parenting time with the child.

Mother was holding firm to her position of not allowing any parenting time for the father. With the use of a dry erase board, the mediator began using the cognitive tactic of getting simple issues resolved first. The dry erase board was instrumental in helping the parties see just what issues needed to be resolved.

When it became clear that the mother was not moving off her position of no parenting time for the father, the mediator divided the parties into caucus. This substantive tactic allowed both parties to speak to the mediator while still saving face with the other parent.¹⁴ Another substantive tactic used by the mediator was to try to change the mother's expectations: she was unrealistic about the amount of time she would allow the father to have with the child. The mediator let the mother know what could most likely happen with a magistrate, at the very least, so that she knew her options (the mother did have an attorney, although, not present, and was already aware of the most likely minimum amount of time that would come from the magistrate). The mediator wanted

¹⁴ Peter J.D. Carnevale, *Strategic Choice in Mediation*, 2 *Negotiation Journal*, 41-56 (1986)

her to know that she had some control over the future events in mediation, but might not have that control in court.¹⁵

By then using substantive tactics such as making suggestions to both parties for resolution, the parties were able to agree upon a resolution. The father did get parenting time with their child, but the child would not spend the night with the father, making the mother more comfortable. Both parties came off their positions to facilitate resolution.

Comments

Being able to move a party off a position is invaluable in moving forward from impasse. This mediator asked many questions of the mother until he got to the point at which he felt safe in discussing what would most likely happen with a magistrate, without practicing law, in setting a shared parenting plan for the father. It took some time for the mother to realize that she was not being reasonable in her expectations, without making her feel hopeless and bullied into a settlement. By allowing the father to have time with his child, without overnight stays, gave each party what was most important on their agendas.

¹⁵ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

Reason for Mediation: Access/Visitation: never married father wanted to establish a shared parenting schedule

Parties: Mother and father

Outcome: Partial agreement

A contract mediator facilitated this mediation. She was an attorney and primarily worked as a business arbitrator. Her demeanor was abrupt and directive, as one would expect an arbitrator to be. Early in the mediation she stated that any suggestions would be welcomed, but later made it clear that she would rather maintain control over the session. Her tactics were all at the cognitive end of the spectrum of tactics.

As time began to run short she hurried the parties to come to full agreement on all issues. She was covering the basic holidays in the scheduling, but she was leaving out many other dates that would have created a problem in very little time: birthdays, Mother's Day, Father's Day, etc. Her goal was clearly to finish the mediation and get it off the docket for the court, rather than help the parties work out an agreement that would hold up over time.

The mother and father did schedule another session to finish the agreement, however, this mediation raised some questions in my mind. Had this mediator not been observed and interrupted and made to face some additional issues, would she have scheduled another session, or would she have sent the parties off with an inadequate agreement?

Did this mediator care about the future of the agreement that she had facilitated or was she just there to get more than one agreement taken care of in a day? Who is responsible for an incomplete agreement: the parties or the mediator? The answer is that all parties at

the table are responsible for doing the best job they can using the knowledge that they have in resolving the conflict completely.

Just as it has become clear that all mediators are not great mediators, it has become clear to me that all attorneys do not make better mediators than non-attorneys. Additionally, it appears that not all mediators have their clients' best interests top of mind.

This mediator was non-reflexive, meaning she did not make any attempt to learn anything about the dispute itself or how it had come to this point.¹⁶ She was non-emotive, not caring about the parties' feelings or psychological needs.¹⁷

Comments

Being a mediator in business disputes is very different from being a mediator in family disputes. I think a mediator has to know his or her own strengths and weaknesses in style and personality to be able to give parties the best platform for resolution. This mediator is most likely a strong business arbitrator and mediator, but not strong and helpful in family mediation. Again, she did not offer expertise in domestic issues in order to help the parties get the best agreement possible. It let me know that I need to know what my own strengths and weaknesses are in mediation and be mindful of those when scheduling cases.

¹⁶ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

¹⁷ Mary E. McLaughlin, Peter J.D. Carnevale & Rodney G. Lim, *Professional Mediators' Perceptions of Tactics: A Multidimensional Scaling and Clustering Analysis* (1988) (unpublished manuscript, Department of Psychology, University of Illinois, Urbana-Champaign).

Reason for Mediation: Formerly married parents wanted to establish a shared parenting schedule

Parties: Mother and father

Outcome: Full agreement

Having observed this mediator before, some good techniques were observed again. The use of a dry erase board was even more effective this time. The mediator had the parties identify the issues and he then wrote them on the board. He had them agree on the issues to be covered before they went up on the board. That way he was able to organize them so that the parties could view them as an agenda that they set.

He also put himself closer to the parties physically, alternating from one side to the other. He would write an issue on the board and when sitting back down, would sit on the other side. It gave him physical closeness to each party at one time or another during the session.

“What are we here to discuss?” was a very effective way to start the process. It was simple and to the point and both parties could answer the question if they had something to add.

Through his cognitive tactics, simplifying the issues and using his dry erase board to create a framework for the agenda,¹⁸ the mediator then allowed the parties themselves to express their emotions and vent, then he built trust with both parties.¹⁹

Comments

The use of the dry erase board or a chalk board as an organizational tool can help the mediator lead the parties in a direction that will facilitate a resolution, allowing him to

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control the agenda. The mediator can prioritize the issues however he or she likes and tackle them with the parties in the order that will work best for the particular case (simple issues first, financial issues first, shared parenting issues first, etc.).

With the question as to what we are here to discuss, the mediator can put as much or as little on the board as he thinks the parties need to visualize for resolution.

Reason for Mediation: Domestic Violence/Juvenile

Parties: Mother and son

Outcome: Continued pending psychological testing of the child

This case involved a single mother and her 11 year-old son, who struck his sister during an argument and the police were then called to the home. As soon as the parties sat in the room it was clear that the contract mediator would have a difficult time communicating with the boy. He was easily distracted and very vocal. He had a hard time remaining in his seat. The mediator tried to ease his anxious behavior with crayons and paper but it worked for just a few minutes before he was up again.

This was a case that was not going to be appropriate for mediation. The juvenile was not competent to come to an agreement. The mediator caucused with the mother and tried unsuccessfully to caucus with the boy, when he decided that the family might be better off with some testing for the boy prior to mediation or a court date. The mediator put the mother in touch with the proper agency who could be of assistance to the family. The court date was moved back pending investigation by that agency. So, the case, while not proper for mediation, was left open until testing results were complete.

Certainly emotive tactics had to be used in this case with the boy and his mother, who was clearly at a loss as to what direction to go. The mediator was able to gain the trust of both parties through those emotive tactics, and made the decision not to mediate.

In this case, mediation was not the right venue for the dispute because it was not just a dispute, but a serious behavior issue and needed further investigation.

Comments

It was clear early in the session that the child was not going to be a suitable candidate for a mediated agreement. However, the mediator did stick with trying to attain information from the child for longer than I would have: he gave the process every chance to work for the mother and her son until he had exhausted the possibility of resolution through mediation. The child definitely needed more intervention than mediation alone could provide the family.

Reason for Mediation: Formerly married father wanted to change parenting agreement

Parties: Mother and her husband and the father

Outcome: No agreement necessary

The contract mediator on this case was a psychologist and mediator. The father was worried that if anything happened to his former wife, that he could lose his daughter to her current husband. Prior to this time, the formerly married parents had worked extremely well together on their parenting schedule for their daughter.

The mediator's style was very elementary: while it was entirely appropriate, it was highly unnecessary. All parties seemed to have a strong grasp on mediation and appeared

to want to move forward faster than the mediator. It was a case of the mediator not paying attention to the parties and their needs, by using his model regardless of how well it was working.

The session lasted two hours, which was way too long for what needed to be resolved. The mediator suggested that the father might want to contact his attorney because he had questions as to what his rights would be in hypothetical cases. His questions were legal: not appropriate for mediation. However, the mediator had them schedule another session after the father attained legal counsel.

All parties were unhappy at the prospect of having to return to mediation. They did not think it was necessary, and they were correct. They did, however, return for a brief session to let the mediator know that they had resolved their issues.

The mediator used many reflexive tactics: he created a foundation for future encounters between the parents and became well oriented to the dispute.²⁰ Contextual tactics were not necessary because the parties had complete trust in each other. Neither party was committed to a position so a substantive tactic was unnecessary, as well.

Comments

No other mediation that I observed and mediated taught me a lesson so clearly as this case did: listen to the parties rather than plowing through the process. The mediator could have ended this session in a half hour by listening to the parties. He went into the process for way too long with parties who seemed to grasp the concept immediately.

After hearing the father's concerns he could have suggested legal counsel as the way for

²⁰ K. Kressel & D.G. Pruitt, *Themes in the Mediation of Social Conflict*, 41, *Journal of Social Issues* 179-198 (1985)

the father to find answers for his concerns. Then, if the parties felt that they needed to return to mediation they could call to re-schedule. In the end I can't say that the parties in this case didn't feel that they had wasted time and energy through mediation.

Reason for Mediation: Custodial change

Parties: 2 Guardian Ad Litem,²¹ paternal grandmother, mother and father

Outcome: Full agreement

The paternal grandmother of the child at issue had been the custodial adult for most of the 11 year-old child's life. The father lived with his mother and his child. The mother had never had custody of her daughter, but now had other children living with her. The mother and the father were never married. The guardian ad litem were in the session representing the child at issue and the mother's other children. I observed.

The grandmother wanted her son to attain custody of his daughter because she was in her seventies and not in good health and did not want the legal responsibility any longer. Her son had been actively taking care of his daughter since he lived with both, but just did not have legal custody.

The mediator did have to use reflexive tactics since the history was not at issue and it did not appear that any resistance was coming from the mother over custody: the issue was easily resolved and a shared parenting schedule was put together without resistance. Emotive tactics did come into play in the mediator's treatment of the mother. She was extremely concerned about making sure that she got time with her daughter. She seemed

²¹ guardian ad litem. (n.d.). *Merriam-Webster's Dictionary of Law*. Retrieved November 25, 2006, from Dictionary.com website: [http://dictionary.reference.com/browse/guardian ad litem](http://dictionary.reference.com/browse/guardian_ad_litem)

fearful of losing her rights with her daughter. There had clearly been more serious issues in the mother's past than in the father's, although both had been serious enough to have given custody of the girl to her grandmother. The mother seemed especially frightened of her past being at issue in mediation.

While it was not necessary for the mediator to become non-neutral for the mother, the mediator did have to gain the mother's trust in putting together a parenting plan. The father then made concessions in the driving of the child to the mother's house for visitation due to the mother's lack of financial means.

Comments

Mediation was definitely the best process for this custody case to be resolved. It appeared that the mother had been involved with the court system many times and was fearful of what would happen with her daughter's custody. She was afraid of losing visitation with her daughter. Mediation allowed her to vent her fears and have them addressed while making the father the custodial parent. Legal issues were resolved without going before a magistrate, which I believe would have unnerved the mother needlessly.

The mediator did a good job of keeping the proceeding simple and to the point while delicately putting together a shared parenting schedule that met the mother's emotional needs as well as financial needs. The mediator balanced the issues very fairly without bias while aiding the mother in verbalizing her own issues.

Reason for Mediation: Domestic Violence/Juvenile

Parties: Mother, former husband (father) and son

Outcome: Failed to come to agreement

I observed this mediation for a case in which the 17 year-old son pushed his mother into a wall. The mother's boyfriend was present during the incident, but was not in the mediation. The father was part of the session.

After having gained the information necessary to understand what brought the dispute to mediation, the mediator used the dry erase board to prioritize the issues, including safety and the ways in which the young man could manage his anger if he felt out of control again. The mother was looking for ways that the son could take more responsibility around the house while his mother was at work, therefore eliminating some tension between the two.

A partial agreement was written for the family to follow over the next few weeks and another session was scheduled to look at what was working and what was not. However, when the three parties returned, none of the points listed in the partial agreement were being followed. It was clear that the young man did not take the mediation seriously and that the father was not taking the plan seriously.

The mediator tried to impress on all parties that this was a serious matter: that if no agreement could be reached, the young man would, in fact, go to court. It did not appear that the father or the son believed that court would really be a result of no agreement.

The mediator made the decision to caucus and spoke with the mother first. She was highly frustrated and felt helpless against her son who seemed to have the backing of his father. The mediator spoke with the father in caucus next and impressed on him the fact

that this would take a very serious turn if his son was not able to comply with an agreement reached in mediation. We then brought in the mother and son, and made another partial agreement, which included the juvenile seeing a counselor before the final session.

The parties did not return for their last scheduled session and chose to go to court. No final agreement was reached.

Comments

The father in this case had been a Columbus Police Officer at one time and made that clear early in the first session. He let us know that his son was not going to have a record, however, he did not seem to be able to support the mediation process. The father was angry that the mother had dialed 911 which automatically sent a police cruiser. While the mother may have been sorry she called the police as well, the family did have to deal with the issues now that they were in the court system. Father and son did not appear to be concerned about the fact that without successful mediation the young man would be in front of the magistrate.

The mediator did try every tactic and strategy I think he could have used to aid the parties in resolution, but it was a case in which all parties involved were not ready to come to agreement. Without all parties wanting to resolve the dispute through mediation, or at least wanting to try the resolutions that mediation can help the parties produce, an agreement is unlikely to occur. There is no doubt that when the parties went to court they realized how simple mediation could have been for their case. With some behavior and attitude changes on the part of the boy and of his father they easily could have avoided the proceeding.

Reason for Mediation: Access/Visitation shared parenting schedule for never married parents

Parties: Mother and father

Outcome: Full agreement for a short-term solution

I co-mediated this case with a contract mediator. In this mediation between a mother and father of a six week-old baby, the mother was living with another man now who had older children in the home. The father of the baby was concerned about the baby's safety with the children and wanted to be the full-time parent. The mother's new partner, and the father and the mother were all good friends, but safety was the issue with the father.

Substantive tactics were necessary in the session. Because the baby was so young, my co-mediator and I had to make many suggestions as to a parenting schedule because the parents were so young as well and they simply had no experience from which to draw. We also suggested that the mother work on the safety areas that the father was concerned about and suggested that they adapt their schedule as the baby became older to accommodate her needs. They were in full agreement and we wrote an agreement reflecting what we had discussed.

Comments

In this case, the mediator did a good job in helping the father and mother through the process. Because they were so young and their baby was so young they really needed some guidance. I could see that the mediator was able to guide them through some of the process without becoming biased or telling them what they should do.

His suggestion was to try some of the ideas that they had discussed and see if they worked, then make necessary changes, either through mediation services or just between themselves. Just because parents come to mediation for help in dispute resolution does not necessarily mean that they can't work out other disputes in the future. However, this process did show them how they could resolve issues in a reasonable manner without going to court.

Reason for Mediation: Shared parenting schedule

Parties: Father and mother

Outcome: Mediation terminated

In this highly emotional case the father brought the action to the court in order to create shared parenting time for the mother and their children. The children were living with the father and he wanted them to spend some time with their mother. The parents had been married and the mother left the marriage and had seen little of the children since. The father was concerned about the fact that the children did not spend any time with their mother.

As I observed the mediator, he did not have a chance to use any tactics before the mother told us that she wanted to “emancipate” her children: that she wanted to be permanently removed from their lives. The father, after hearing this, said that he wanted to take legal action and the mediator decided to terminate the mediation.

Comments

In such a serious situation, I thought it absolutely appropriate to terminate the mediation. It is not that mediation is inappropriate for very serious matters, but that the

mediator did not think the parties were at all ready for such a huge step. The mother appeared to be depressed by the series of events and the father appeared to be in disbelief. It would have been moving forward way too fast to go ahead with a mediation, not even taking into account the legal issues that would have had to be resolved.

While it is not the job of the mediator to decide what is right and what is wrong, it is the duty of the mediator to “read” the parties and make a call as to whether or not the situation is ready for mediation, and this clearly was not. It seemed like a knee-jerk response to being called into mediation on the part of the mother.

I felt totally confident in the decision of the mediator in terminating the session. While they may have come back to mediation at a later date, they were not ready for such action at that time.

Reason for Mediation: Access/Visitation shared parenting schedule

Parties: Mother and father

Outcome: Partial agreement

Throughout this co-mediation, my contract mediator and I had to keep the parties negotiating at the table,²² and control the agenda.²³ The parties were both very animated and hostile toward each other. It was clear that we would not get to the bottom of the issues unless we caucused, so we did.

²² Carnevale and Peggnetter*****

²³ Carnevale and Peggnetter*****

In talking with the mother first, she said that she just wanted civility between she and her former husband in front of the children. We allowed her to blow off steam²⁴ and tell us everything she wanted us to know in order help her communicate with her former husband. The underlying issue, however, was that the mother wanted to maintain a relationship with the father. We then brought in the father and let him do the same. Then, we brought them back together. The parties were still hostile toward each other.

After 2.5 hours, we suggested a third party for the transfer of the boys at a neutral location, and put together a shared parenting agreement. It appeared unlikely that the agreement would remain in place, so we set a second appointment in one month.

When it came time for the mother and father to return to mediation, the mother gave my co-mediator a call to tell her that she and the father were together again and further action was not necessary.

Comments

I learned a valuable lesson in this volatile mediation: through listening to the parties the mediator may be able to learn what the parties want, even if it isn't what they say they want.

My intuition told me that the mother wanted to still be married to the father in this case and even though she didn't tell us that, I knew that mediating the level of civility between the parents was not going to resolve the issues between the parents because the issues didn't have anything to do with the children. When we helped the parties put

²⁴ Mary E. McLaughlin, Peter J.D. Carnevale & Rodney G. Lim, Professional Mediators' Perceptions of Tactics: A Multidimensional Scaling and Clustering Analysis (1988) (unpublished manuscript, Department of Psychology, University of Illinois, Urbana-Champaign).

together an agreement for exchanging the children through a third party, I knew that it wasn't going to alleviate the larger issue. My prediction was that we would not see them again in mediation either because they just became more volatile or because the process brought them closer together.

Reason for Mediation: Companionship

Parties: Maternal grandmother and the mother

Outcome: Mediation terminated

As the lead in this co-mediation I began by letting the grandmother explain to us why she had brought the action to the court. She told us that her daughter would not allow her to spend time with her granddaughter, even though they were neighbors. Much time was spent using reflexive tactics to learn more about the relationship between all parties involved. We soon decided to caucus because the stories between the mother and grandmother were so disparate. We suspected that the grandmother might have some mental health issues. We talked with the mother first.

She was very emotional when discussing the difficulty she had been having with her mother. It was clear that the case was not suitable for mediation because of the grandmother's psychological issues. We allowed the mother to leave while we caucused with the grandmother. That way the mother could leave the parking garage without the possibility of being harassed by her mother.

From that point forward it was our job to listen to the grandmother, let her vent her frustrations about the issues, act as a diversion for about 15 minutes until the mother

could leave the area, and let the grandmother know that the case was not suitable for mediation. We wanted to be respectful to the grandmother, while letting her know that mediation just would not work in this case. It is common practice at Franklin County Domestic Mediation Services to hold one party for about 15 minutes in order for the other party to get some distance while leaving.

Reason for Mediation: Companionship

Parties: Mother and paternal grandmother

Outcome: Mediation terminated

The similarities between the only two cases that I mediated between grandmothers and mothers were striking. In this co-mediation, the paternal grandmother wanted time with her son's daughter. The mother, who had never married the father, had married since and had another child with her husband. The father of the child at issue was incarcerated.

The mother was adamant that the grandmother and her home were not safe. We caucused early in the session and began by talking with the mother.

She was terrified that the grandmother would bring up the mother's past drug use to gain access to her granddaughter in court. We decided that the case was not appropriate for mediation and suggested that she contact an attorney. While she said she could not afford one, she could see that it would be necessary. We let her leave and brought the grandmother in to caucus.

We talked with the grandmother, letting her know that the case was not suitable for mediation and that the mother had left the building. She said that she would plan to take

the case to court. We thought it possible that the grandmother had mental health and substance abuse issues.

Comments

In both of the mediations involving grandmothers and mothers I realized that a mediator must not jump to any conclusions about one party or the other until hearing from both parties about the dispute. I was surprised in both cases that the grandmothers were not balanced people and most likely did pose some safety threat to the children, either emotionally or physically.

Again, in both cases the one common thread between the mothers was the fear that they had about the safety of their children with the grandmothers: both mothers were visibly shaken by the possibility of having to turn their children over to their grandmothers. The mothers felt that they had no control over the situation and felt that the grandmothers would gain the support of the magistrates in court.

Both mothers felt some relief that the mediators could see through much of what the grandmothers were saying, but felt helpless in the fact that the grandmothers did have some rights when it came to spending time with their grandchildren. There was not much we could do to reassure them except to say that they should probably seek legal counsel.

Further, when we told each grandmother that the case was not suitable for mediation, each thought we were saying that the mothers were not cooperating in order to mediate. Neither gave it a thought that we were not mediating because of their issues.

Conclusion

The experience of observing other mediators in real cases was the most valuable part of my education in the field. Observing experienced mediators gave me the opportunity to learn skills that it would have taken me years to learn through my own trial and error process. Equally important was the educational impact of watching mediators use tactics that were not effective. And, it was not that the tactics were not effective or that the mediator was not skilled, but that the very tactics used by that very mediator with those exact parties trying to resolve those specific issues at that time were not working. Simply stated, however the combination of elements in mediation come together and make it work are the right elements: and while there is a science to predicting outcome, I find it more subjective than scientific.

In almost every case that I would consider successful, I saw one strategy, rather than tactic, that was a common thread. That was the strategy or the mindset of being able to adapt, being able to change the course of the tactics being used, to try to achieve resolution.

In mediations that I would consider ineffective, whether they came to agreement or not, I saw a lack of the ability, on the part of the mediator, to realize that the tactics were not working in the best interests of the parties in dispute: that it might be a good idea to try something new.

For example, in the case of the 17 year-old boy who pushed his mother into a wall, I watched the mediator change course several times during the sessions. Every time it appeared that there was an impasse with the juvenile, the mediator tried a new technique.

I don't think I would classify it as a new tactic: I would consider it the same tactic presented to the parties with a new spin. And, if that angle did not produce movement by the parties, the mediator tried another angle. So, at the end of the mediation, whether agreement is reached or not, the mediator can analyze the case and know that he or she tried everything imaginable to come to a viable resolution.

The best mediators that I observed, and that I hope I can be, were those who could analyze the dispute through listening to the parties, internally formulate a plan for a course of action and implement that plan. Then, if the plan did not work to help the parties resolve the dispute, the mediator would take internal inventory of the process as it existed, re-formulate another plan and attack the issues in another way. It might take several tries before the tactics that will work with specific parties come into the plan, but the action of adapting the mediation plan repeatedly in one dispute resolution, in my opinion, is the key to being not just an adequate mediator, but a highly successful and skilled one.