

ADVANCED CUSTODY MEDIATION TRAINING

Presented by: Marta J. Papa

Day 1

Time Period

1. Choosing the Right Mediation Style/Approach 9:00 – 10:00 am
 - 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 10:00 – 10:45 am
 - 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 10:45 – 11:00 am

3. Anger Management Techniques 11:00 – 12:00 pm
 - 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

12:00 – 1:00 pm

- 4. Dealing with Overzealous Counsel 1:00 – 2:00 pm
 - 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 2:00 – 2:45 pm
 - 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

2:45 – 3:00 pm

- 6. When Only One Parent Wants to Mediate 3:00 – 4:30 pm
 - 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

9:00 – 11:00 am

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

11:00 – 11:15 am

8. How to get out of an Impasse 11:15 – 12:00 pm
- 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

12:00 – 1:00 pm

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

3:00 – 3:15 pm

10. Building on Success

3:15 – 4:30 pm

- 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”)