

Mediate, mediate: dance to the music

Not all conflicts are best resolved by lawyers and judges. A perfect example is family disputes where the disputants have a long relationship and will likely be involved with each other at some level for years to come. Those who wish to avoid the financial and emotional cost of litigation should consider facilitative mediation.

Facilitative mediation is a relatively inexpensive and effective way to resolve disputes. Disputants can avoid the cost and emotional trauma of litigation if they agree to enlist the services of a neutral mediator trained in such matters. Referral to mediation is usually by the court but the parties can voluntarily agree to mediate their dispute without court involvement.

Mediation is one of the "alternate

Conflicts between family members are emotionally loaded. Bumps and bruises from past dealings are stored deep in the participants' collective psyche. Poor communication clouded by old hurts and suspicions can quickly lead to open conflict. Once communication has broken down aggrieved family members naturally seek legal recourse.

Lawyers are trained to think in a "war" mode. Our ethical code requires that we "zealously" advocate on behalf of our clients. Nothing in our Canons of Ethics addresses the emotional fallout of our advocacy. Once a legal action is commenced, a permanent wedge is often driven between the disputing parties. Once the parties "lawyer up," communication between

money or how many feet of property they are going to get or who caused the accident; it is about the apology and the recognition of fault and error in a society where we are not allowed to say, "It is my fault and I am sorry."

Courts are limited in the relief they can grant. In most disputes all the court can do is award the winning party a financial settlement. But not all disputes can be resolved with money. With such a disconnect between what is the disputants desire (vindication, exoneration, to be heard) and what is awarded (money), it is not surprising that both sides of most legal disputes are generally dissatisfied with the result.

By contrast, the parties in facilitative mediation retain their voice. A



Mark Accettura

tive when started early in the process, before relationships are damaged and the parties become locked in their positions. Facilitative mediation typically occurs after a suit has been filed, but can be used independent of a court action. Mediation can be useful in a number of personal and business disputes including Will and trust matters, landlord-tenant, guardianship, medical care decisions, real estate, and consumer issues to name a few.

Facilitative mediation is entirely voluntary and non-binding. The parties must pay the mediator a pre-agreed and often pre-paid fee. The cost of mediation through Michigan's Community Dispute Resolution Centers (1-800-8RESOLV) is extremely low, ranging from zero to two hundred dollars. The parties typically sign an agreement (sometimes called "consent to mediate") which addresses the general ground rules of the mediation including the fact that the proceedings are confidential. Statements made during mediation may not be used in later legal proceedings.

If the parties come to an agreement they may choose to have the mediator document their agreement in a memorandum of understanding. Then, representing attorneys may use the memorandum to draft a formal contract or court filing.

It is Professor Miller's hope that many more disputants will utilize facilitative mediation. In her view that those that do will enjoy greater satisfaction with the process and will be more accepting of the outcome.

The parties in facilitative mediation retain their voice. A neutral mediator, who may be an attorney, retired judge, or a layperson trained in mediation, facilitates communication between the parties in the hope that they can work out their own solution. Although the parties are frequently accompanied by their attorneys, facilitative mediation allows the participants to speak their mind in a structured environment.

dispute resolution" or "ADR" tools employed by modern courts to ameliorate court backlogs and to minimize the uncertainty and emotionally gut-wrenching process of litigation. The high settlement rate and satisfaction of disputants who participate in ADR makes for happy judges, clients, and attorneys.

I recently had an opportunity to sit in on Professor Sharon S. Miller's Legal Issues of Aging class at Madonna University in Livonia. She is the former director of the Wayne Mediation Center and has interesting insight into family conflict and the mediation process. The Wayne Mediation Center is part of a statewide network of Community Dispute Resolution Centers operating under Michigan's Community Dispute Resolution Act.

the parties generally takes place only through their lawyers. The long-term effect of playing the lawsuit card is that the parties never get a chance to work out their differences and consequently may never speak to one another again.

Some families are irrevocably broken by the time they seek legal counsel. For them all that remains are their legal remedies. Others, though strained to the breaking point, are salvageable and every attempt should be made by counsel to craft a resolution that preserves their life-long relationships.

Many in the legal community recognize the limitations of the traditional legal system. One judge recently said, "The bottom line of every case I've ever settled is one or both participants' perception that they have been dishonored or disrespected." Another jurist said, "In many cases it isn't about the

neutral mediator, who may be an attorney, retired judge, or a layperson trained in mediation, facilitates communication between the parties in the hope that they can work out their own solution. Although the parties are frequently accompanied by their attorneys, facilitative mediation allows the participants to speak their mind in a structured environment.

Mediators are not judges and do not render a decision. Although the style of individual mediators differs, facilitative mediators simply facilitate resolution of a dispute. They do not give legal advice; do not opine as to the relative merits of either party's case; and do not predict the possible outcome of the dispute should the parties fail to reach a mediated settlement and proceed to litigation or arbitration.

Facilitative mediation is most effec-