LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com
WEDNESDAY, SEPTEMBER 10, 2025

10 ways lawyers can maximize family law mediation outcomes

Mediation isn't always successful in family law, but attorneys can significantly improve the odds with the right approach -- these 10 practices have consistently made the difference.

By Dianna Gould-Saltman

Shutterstock

Imagine a couple - we'll call them Jane and Pete - who have been married 25 years and have two teenagers. Jane has a thriving consulting business; Pete is a physician in a medical group with three partners. Jane and Pete have a house, many investments and quite a bit of debt. They've been unhappy in their marriage for some time and have now decided to divorce. Neither wants the process to be acrimonious or for the divorce to drag on. Their attorneys have spoken with each of them about mediation as a way to resolve their differences, and they're seriously considering it.

But there is never a guarantee that a family law case will settle in mediation. For any number of reasons, the parties may be unable to resolve their issues through negotiation. There are, however, certain things their attorneys can do to improve the chances of success.

Here are 10 practices that - over my years as an attorney, a judge and a mediator - I have seen result in either a complete agreement at mediation or substantial agreement on key issues during mediation with settlement soon thereafter.

Communication

Speak with opposing counsel early and often. This is not the same as exchanging letters. Letters can be posturing. Actual conversation between attorneys fosters and develops relationships between opposing sides, and this always benefits the clients.

If Jane and Pete are able to see that their respective counsel do not have to be "enemies" in order to best represent their interests, they will also come to understand that by working together, their attorneys are actually saving them money, time and frustration. When animosity and one-upmanship are taken out of the equation, both sides are better able to "cut to the chase."

Experts

Get experts onboard early in the process. Even when they don't have complete information, experts can help keep things on course and keep the clients' expectations within reason. At the earliest opportunity, make sure the experts will be able to attend the mediation or will be reachable during the mediation.

The experts for both sides should communicate with each other early and often. When they have preliminary assessments (marital standard of living analysis, business valuations, community property balance sheets, post-separation accountings), ask them to do a side-by-side. Make sure the experts on both sides have the same documents.

It might seem that delaying the retention of experts will save money, but actually the opposite is true. The earlier experts are lined up, the less costly the process will end up being. When a client or a paralegal is asked to do things that experts should be doing, things may end up having to be walked back once the real experts have reviewed the data.

In Jane and Pete's case, it can be tempting to use in-house accountants to do the analysis of each business. These professionals surely know the businesses better than outsiders would, and there is less likelihood that inside financial information might go outside the business.

But the inside accountants have a vested interest in the outcome; they are not neutral. They are also not forensic. Instead, it makes sense for outside forensic accountants to work with the in-house accountants to understand the businesses and their books. This will allow each professional to work within their own areas of competence.

"Trial" preparation

Even though mediation is a far different process than trial, prepare for each mediation as if it is a trial. It pays to be trial-ready, even though information and organization that is not available at mediation will

still be needed for trial. Never look at mediation as a "trial run" for the "real trial."

Jane's and Pete's attorneys, seeing that their clients want to try to resolve things without acrimony, recognize that they are good candidates for mediation. They have children, and they will likely attend graduations, weddings and family gatherings together. They will likely continue to have some kind of ongoing relationship with each other, even if their relationship is now changing. When all the cards are on the table and the parties feel comfortable that they have sufficient information to make good decisions, they will feel prepared to settle.

Client preparation

Prepare clients for mediation. Explain to them the process, the inevitable waiting and the likely compromises both sides will need to make. Reassure them that all of their communications during the mediation are considered confidential, but remind them that the more they are able to share and the more open they are to listening to one another, the better the final outcome is likely to be.

If their attorneys have done their jobs well, Jane and Pete will each understand the strengths and weaknesses of their opening positions. They will come into the mediation with more realistic expectations as to the range within which their case should ultimately settle.

Mediation brief

Each side should submit a short mediation brief, containing only the necessary attachments. These mediation briefs are only intended to be used for mediation; they should not be intended for conversion into trial briefs if the parties are unable to finalize agreement at the mediation.

Mediation briefs should never contain arguments; they should simply identify the key issues and the clients' positions on those issues. If offers have been exchanged between the parties, those should be included with the brief. Both sides should enter the mediation understanding what the other side's starting position is on all of the important issues, so the serious work can get started immediately.

Mediator communication

If there is to be a "mediator's eyes only" communication, it should be short. This is essentially a written form of "caucusing"; it lets the mediator know about something that might be important but that is not included in the brief delivered to the other side (e.g., sensitive issues about a new partner, circumstances of the marital break-up that may affect settlement, etc.). Such information is important for the mediator to know so that he or she is not blindsided during the mediation, but it can also help attorneys when they are able to share sensitive information in confidence. It avoids setting the mediation up for failure by making the other side immediately defensive.

By way of example, if Jane had recently been convicted of a DUI and Pete had concerns about her driving with the children until she completed treatment, that information could and should be in the mediation brief. Jane presumably knows she has the conviction so it's not speculative, and the parties can talk about ways to address it in mediation. If, however, there had never been any DUI's and Pete was just concerned about the amount Jane regularly drank throughout their marriage, he might express that concern privately. It is not something his attorney would include in a brief for Jane to read.

Time management

Mediations should always be timed in a way that will meet the mutual intent of both sides. If their intent is only to resolve a temporary issue while discovery is continuing, the mediation should be scheduled early, and the parties should exchange all necessary documents.

The parties can reserve retroactivity of other issues, such as support orders, by stipulation. This avoids having to file a Request for Orders containing potentially inflammatory information that then becomes part of the public record. If the intention is to settle the entire case, ensure that both sides have enough information to meaningfully negotiate the case and intelligently waive whatever they need to waive.

There is always a risk when parties try to obtain as much information as they would have at trial. Once the time and money has been expended, parties and their attorneys might actually decide that they may as well try the case. Trial is the only guarantee of a final outcome. But there are intermediate steps available that might help the process go more smoothly.

If Jane and Pete have enough information early on to meaningfully negotiate a full settlement, they can certainly do that. But they could instead choose to narrow the mediation in preparation for trial. In mediation, they might agree upon what discovery is needed and what supporting documents can immediately be exchanged, schedule times for their accountants to talk, come up with a trial parenting schedule while the divorce is in process, and outline some temporary support arrangements or ways to cover their mutual obligations. Jane and Pete have the ability to make the mediation process their own and to get what they need from it.

Compromise

Attorneys and their clients should expect to compromise during the course of the legal process, and things will move more productively if counsel is able to have a heart-to-heart with their clients early in the process. Everyone who comes into a mediation should be prepared and willing to compromise. If any party or any attorney comes to a mediation only prepared to accept their best-case scenario, they will not be participating in good faith. The mediation will not succeed.

Be creative

There are no slam dunks. Even when cases seem very clear on the law, bench officers have been known to read the law differently or to find people not credible. There is always a cost - in both time and money - to going to trial. Good lawyers explain this to their clients, usually more than once.

The only guarantee Jane and Pete have that their divorce will settle amicably is if they can reach a workable agreement between themselves. They can create a viable plan even if it's not something a judge could order absent an agreement. Under California law, for example, parties can elect to have a Parenting Plan Coordinator appointed to assist them in resolving parenting disputes that may arise from time to time. They would otherwise be required to file Requests for Orders with the court, file responses and have a hearing. Absent such an agreement, the court would not be able to compel parties to use a Parenting Plan Coordinator, even if one would be a really good idea and in the best interests of the children.

Conclusion: Good endings

Never underestimate the value of being able to move on. Families generally don't start healing until their case is over. The longer they have to wait until resolution, the more time it will take before they can begin the healing process.

Mediation allows parties in family law cases to work through issues at their own pace and comfort level, but attorneys can significantly improve the process and the outcome by anticipating and meeting challenges, working collaboratively with clients and opposing counsel, and keeping things simple and straightforward. There is tremendous value to these simple actions, even when their dollar value isn't immediately clear.

Hon. Dianna Gould-Saltman (Ret.) *is a neutral with Signature Resolution. Appointed to the bench in 2010, she presided over family law matters including trials of high-networth parties and complex child custody cases. Prior to taking the bench, she practiced family law for 25 years. She can be reached at dgouldsaltman@signatureresolution.com.*