

Converting Conflict to Resolution in Fractious Families

■ **By Hon. Stephanie H. Klein (ret.)**

WHEN I BECAME A MEDIATOR AND ARBITRATOR AFTER retiring from the judiciary, I decided not to do family law cases because of many years of experience with family law. Instead I decided to focus my ADR practice on employment, real estate, commercial and personal injury.

As a mediator, however, I became interested in elder and estate law cases, particularly because of disputes I experienced with my own family. I trained as an elder law mediator with Good Shepherd Mediation Program, and eagerly accepted an assignment to co-mediate an estate case with a more experienced mediator.

Why mediate instead of litigate? Dockets are crowded and may take months or even years to try. Judges may lack the time and patience to resolve hotly contested cases that may involve small amounts of money or personal property.

More importantly, obstacles to resolving estate disputes may originate in decades of conflict. When the comedian Tommy Smothers ended each comedy routine with his

brother Dickie, “Mom always liked you best,” we laughed uneasily as it touched a sensitive chord in all of us, as we all experience deep-seated conflict with siblings, parents and other loved ones. An estate dispute may reveal decades of hurt that pulls scabs off barely healed wounds, rendering communication between parties difficult or even impossible. Failure to resolve these disputes amicably may cause rancor to persist for years, even causing a schism in the next generation.

Mediation offers the possibility of a better process than litigation. It allows all parties a gentler non-adversarial process where all voices may be heard. Mediation is confidential and can be designed to fit the parties’ needs. Parties are not bound by the rules of evidence, allowing, for example, a brother to express a decades-old jealousy that his brother received the bicycle for Christmas he so ardently desired.

With a skilled mediator, communication can be re-established, allowing parties to understand the interests and concerns that underlie the rigid positions preventing resolution. Airing these feelings allows parties to narrow

the issues and interests and to work together in earnest to resolve their dispute.

Mediation of elder and estate cases may increase in the coming years as a result of a new rule issued by the Pennsylvania Supreme Court. Orphans’ Court Rule 1.6 suggests that parties may mediate by agreement, or that county Orphans’ Courts may provide opportunities for parties to mediate privately or through county-supervised programs.

Happily, our case resolved. After a great deal of work by everyone, parties started to communicate. They expressed regret about the years of communication breakdown and estrangement. When the parties were able to reach agreement, they heaved a sigh of relief, smiled and seemed to go home happy. So did my co-mediator and I – quite content to resolve these challenging issues for this family and put this matter to rest.

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