

THE VALUE OF MEDIATION IN GUARDIANSHIP AND ELDER CARE DECISIONS

There isn't a person who has not personally experienced (or heard of) battles among siblings over the care of their parents. The stories are heartbreaking because they so frequently shatter the family relationship. In the middle of it all, the parent everyone is trying to protect is terribly damaged. The scenarios below are meant to demonstrate the differences between resolving elder issues by going to court or taking the alternative route and mediating the dispute.

Take, for example, a hypothetical family. Carlos Lopez is concerned that his sister, Myra White, a single working mother, is not giving her mother Mary Lopez, the care she needs and is wasting her assets. Mary Lopez has lived in Myra's home for a year.

Scenario 1 -- Without mediation, Myra and Carlos have become embattled and mistrustful of each other. Every attempt at discussing the situation ends in hurt, anger, accusation and more distrust. Mary Lopez becomes very upset hearing her adult children yelling at each other and trying to make decisions about her life which she feels she can make herself. The arguing has also made her feel like she is a burden. She is unhappy about her now unsettled life and about her future living situation. She becomes withdrawn and quiet, not wanting to express her feelings about the situation because she feels it will cause more fighting between her children. Due to her physical condition, she knows that she cannot live alone and she fears that if her children go to court, the court will force her into a care home. The matter finally escalates into litigation where a judge appoints a third party as a guardian.

Scenario 2 -- With mediation or shared decision making, the parties meet with a mediator who helps them identify each person's concerns and needs. They all recognize that the best place for Mary is with her daughter where she can be close to her grandchildren. Since she is lonely during the day when her daughter is at work, they arrange for her to attend senior daycare several hours each day during the week. They acknowledge that Mary is confused and worried about her finances and Carlos is willing and able to help. They agree that Carlos will help Mary with her bills and they will have family meetings for any major financial decision. At the end of the day, the parties not only end up understanding and respecting each other's concerns but they part with a hug, looking forward to the next family gathering. They agree to meet with the mediator again in three months to review the situation.

Mediation of elder care issues can be as general or as detailed as the parties desire. It can include decisions about living wills, healthcare power of attorneys, emergency contacts, living arrangements and financial decisions like reimbursement for services rendered to the elder.

Mediators like Ms. Tweedy are impartial. Mediators can keep the people in the room

calm, reduce stress, direct conversation in a positive and meaningful direction and assist the parties in coming to an agreement that all can live with and have control over.

Mediators are professionals who charge for their services. A day with Ms. Tweedy is far less than a protracted legal battle.

Mediators can also help elders who live in skilled nursing, independent living or assisted living facilities. Quite often, family members and facility personnel have a difficult time communicating with one another over the appropriate care of a resident or patient. A vulnerable elder caught in the middle of one of these disputes can be damaged by the discord. Often, the mediator can bring the elder into the conversation so she is an active participant in her destiny. The mediator can facilitate a conversation among family members and facility staff where the family members and staff, together, create a plan that works to the maximum benefit of the elder considering the resources available. Ms. Tweedy has had the privilege of handling the affairs of her own beloved elders, one who lived to age 101! Both lived in assisted living facilities and both faced the challenges of declining physical strength and mental health.

If suit has been filed against a care facility on the issue of negligence, physical or mental abuse, a mediator can assist the parties in resolving the claim in a manner which provides for the comfort and safety of the elder during his lifetime.

Mediation can be particularly helpful in cases where adult children believe a parent needs assistance but are too fearful to speak directly to the elder about their concerns. Examples include parents who are wasting their assets, parents who are not keeping themselves safe, clean or healthy, parents who cannot take care of their living quarters. The list can be quite long. In mediation, the mediator can help the parties understand the capacity of the elder and, with the elder's input, work out solutions for the elder's benefit.

Boomers are aging and aging brings a unique set of problems and solutions. Mediation provides assistance in resolving problems in a financially feasible manner that benefits the elder without the stress of arguments or legal battles.