

Family

Preparing for mediation of parenting issues

By **AJ Jakubowska**

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(October 6, 2021, 2:21 PM EDT) -- When it comes to preparing for parenting mediation, gardening comes to mind as an apt analogy. The likelihood of success in gardening, the prospect of lush greenery and lasting blooms, increases with the amount of work spent by the gardener in preparation for the growing season — for example, in the careful selection of plants, in the level of attention paid to the composition of the soil and its suitability for the chosen plants.

Similar principles apply to mediating parenting issues. In my experience, chances that parents' work with a mediator will result in a negotiated settlement increase proportionately with the amount of time and effort counsel and their clients devote to preparing for the actual dialogue.

When I mediate, I view counsel as part of a team — we share the goal of optimizing conditions in which settlement is possible. Counsel can, and in my view should, work with their clients in advance of the actual mediation session(s), to lay the groundwork for productive, time and cost-efficient discussions and increase chances they will bloom into long-lasting settlement. The following are basic suggestions on how to do that:

1. You should wing neither gardening nor parenting mediation — The more detailed your discussion with your client about the various elements of parenting and his or her positions on them, in advance of the mediation, the better. If you are mediating with a court proceeding as a backdrop, you will already have turned your mind to at least decision-making responsibility, parenting time and a plan of care, but we all know there is much more to parenting than that.

Most of us family law lawyers use a Parenting Plan precedent, maybe one we crafted for our own practice over the years. Whether you use your own or perhaps the AFCC-O Parenting Plan Guide and Template, it can serve as a valuable checklist for issues you might consider with your client in advance of the mediation. Go through the plan item by item. Cross out sections that are not relevant and spend time on those that are, making notes for your client's further consideration as you identify positions and interests. This exercise will help focus both you and your client. It will alert him or her to parenting subject areas they need to consider for the purposes of the mediation dialogue.

During an intact relationship, parents do not assign headings or categories to the everyday triumphs and challenges of raising children. Your client may not realize issue A or B is one they now need to think about and for which they need to select an approach. Gardeners need lists before the growing season starts and so do you and your client. Use a draft Parenting Plan as a checklist.

2. Identify your challenges in advance — Gardening is often about taking risks, including in selecting plants that may present a challenge and require extra care and attention. A successful gardener benefits from knowing which plants will test their skill and from preparing for the challenge. You and your client will benefit from knowing in advance which parenting issues will be contentious and are likely to require active dialogue with the help of the mediator.

One way to find out, which as a mediator I highly recommend, is to actually prepare and provide to the other side a comprehensive draft Parenting Plan, as far in advance of the mediation as possible. Parents and their counsel might even be able to exchange a couple of tracked versions before the Mediation Briefs are due. The latest version of the tracked plan, once provided to the mediator, will serve as a useful window for him or her into the status of the negotiations, and what issues are likely to be the most challenging.

Again, the shared goal is time and cost-efficiency and, importantly, using the mediator's skills to optimize chances of discussions resulting in settlement. The mediator should not be learning of the parents' positions on various issues for the first time during the actual mediation session. The prospect of settlement is greater if everyone is able to hit the ground running as the mediation begins. This, in turn, is more likely if the mediator is able to prepare an agenda ahead of time and strategize about the order in which the issues will be tackled.

3. Make inking settlement a more attractive and more likely prospect — It is often important to sign a binding settlement agreement before the parties leave the negotiating table, virtual or physical. The availability of a draft Parenting Plan, provided to the mediator in advance in editable format, will enhance the likelihood that parents will walk away with a binding settlement. Mediation participants often want to have something in their hand at the end of their active dialogue with the mediator, to have something to "show for it," so to speak.

The alternative is that as parents move closer toward consensus, either the mediator or counsel must create the document to be signed, sometimes from scratch. Fatigue sets in as the session progresses: here, editing an already drafted Parenting Plan is preferable to building a document detailing the settlement from scratch.

Parenting mediation offers an invaluable opportunity for participant-crafted agreements — for parents to make decisions about their children, together and through dialogue. We can all have a hand in boosting the prospect of that dialogue blooming into long-lasting settlement.

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