

Divorce Recovery High Heat, and Disagreement becomes Joint Agreement and Solution

In the heat of some custody and access disputes, one-sided accounts of the situation can be convincing. Both parents have their view and are apt to present the issues more with their own interest at heart.

While the “interest” is supposedly the children, high emotions may reign and hence very personal and emotionally charged issues get confused with those of the children. Parents may talk to anyone who will listen, provide their personal account and gather allies. Lawyers may inflame the situation by taking as gospel, one-sided accounts either from their client, friends and family and even other professionals who may have been inducted first by the client’s one-sided account.

In some of these cases both parents interpret all behavior of “the other” negatively. Harmless behavior may be reframed as inappropriate or egregious or outright abusive. Allegations may intensify with highly charged language taking precedence over a determination of actual behavior. By-standers can be overcome with the intensity of a parent’s delivery of information. They line up in a high stakes tug-of-war, each convinced of the righteousness of their position.

This may be the starting point for the custody and access mediation. Even the choice of mediator may be hotly debated but finally the mediator does enter this highly charged, polarized conflict.

The task of the mediator is to step back from the position of either party as gospel. The mediation process requires the ability to look at many views with the goal of helping the parents to come to an ability to negotiate in a manner that they will both come to an ability to be pleased with custody and access recommendations. Data is gathered from both sides. The process includes a review of the legal brief; the file containing the account, court documents, exhibits and affidavits regarding the dispute. The mediator may find an “affidavit war”. In an affidavit war, both parents present with a stable of friends, family or employers each of who supports the position of the respective parent while undermining that of the other. The mediator may rely

solely upon the affidavit material or selectively interview some persons. It is sometimes the case in such mediation is that the affidavits seem to cancel each other out, rendering the content less useful than their indication of the degree of conflict and positioning they represent. Hence the utility of affidavits in custody and access mediation may be as much the indication of how far a field the dispute has run as the information they purport to provide.

Further, and in such cases, there can be a reliance on the input of various professionals, none of whom may actually have a well-rounded view of the dispute and both parties. Each parent may trot out their professional to support or undermine respective issues. Again, the role of the mediator is to take many varied views into consideration even with regard to the input of other professionals. Of concern is where a third party professional offers more than behavioral descriptions of their own observations. The third party professional may stray to offer opinion or inferences on the case in the absence of having met and assessed both parties. As such, their opinion may be disqualified as based upon a one-sided account.

Finally and in the midst of a contentious situation, the mediator searches for **areas of good will and focuses upon the child**. In some cases, this provides the basis of a joint agreement that both parties are supportive. The intent is to learn to negotiate in such a manner that both parties can come to a solution that works for both.

Matters in such highly charged cases can quickly appear personal. However, the mediator stands distanced from the fray. Without the ability to learn; to negotiate with the guidance of the mediator; the result may be to leave the family in ruins, and leave a great pity for the children.

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