Encourage Early-Stage Mediation to Build Your Practice and Help Families.

This article was first published in the Oakland County Legal News

For those attorneys who thrive only when they are enmeshed in the combat of litigation, this article is not for you.

Although I have been an attorney for over 30 years, I became a full-time mediator 14 years ago to focus on settlement instead of litigation[1]. I am much happier, my clients are much happier, and the attorneys with whom I work are much happier too.

The reasons for all this joy are varied. For me, I never enjoyed the combat; it kept me up at night and frankly, made me feel I was part of the problem rather than the solution. Now, I am a peacemaker. By mediating before clients file or very early in the case, I can get them talking before any court documents exist accusing them of being bad parents or of failing to properly handle their finances or of just overall being horrible people.

Also importantly, mediation is more efficient than the litigation process. First, we are talking settlement from day one. Let's face it, most attorneys do not begin talking settlement until at least two or three months into the case, and some attorneys never talk about it until they are attending court-ordered, late-stage mediation just before the trial date. Also, because I help the parties, and the attorneys when attorneys are present, talk directly to each other in joint sessions, it eliminates the middleman, the game of operator/telegraph that is normally played. Each attorney talks with their clients about discovery needs and preferred outcomes; then the attorneys negotiate; next the attorneys relay to their clients the result of the negotiation; rinse and repeat. To clients, and the attorneys as well, it can feel like an endless, time-consuming, polarizing, and costly cycle that does not lead to fulfilling outcomes.

In early-stage mediation, we mediate the whole case, using multiple short sessions, taking one issue at a time, so clients can concentrate on each issue and create detailed, voluntary, discovery plans and settlement provisions, which address their concerns and are tailored to their situation. The parties help craft these agreements and, will therefore, be much more likely to adhere to them and much less likely to have buyer's remorse. Clients often extol the virtues of mediation, conveying that they felt heard and empowered and confident the decisions reached with their spouses will work for their families.

The number of self-represented parties and relatively new limited scope representation rules provide an opportunity for attorneys to expand their practices and experience this same joy.

"In Michigan in 2013, 48% of divorce cases were filed by self-represented plaintiffs and 68% of cases had one or more self-represented litigants. Forty-two percent of divorce cases had no attorney involvement at all," according to *Evaluation: Michigan Legal Help Evaluation Report (MLHP 2015)*.[2] These numbers are likely increasing. Parties, particularly divorcing spouses, want more control over their legal processes and of course, want to save money as well. However, they often need guidance and would benefit from having the help of an attorney for at

---

[1] The majority of my practice is mediation, but I have also participated in the Collaborative Law Process. *See* Uniform Collaborative Law Act, MCL 691.1331 et. seq., effective December 8, 2014. This article focuses on early-stage mediation but Collaborative Law offers the same advantages.

[2] The full report is available at Evaluation: Michigan Legal Help Evaluation Report: An examination of the efficacy of the Michigan Legal Help website in helping self-represented litigants successfully navigate the divorce process

least some aspects of their case. Limited scope representation (LSR) rules, which became effective January 1, 2018,[3] allow attorneys to provide a narrow scope of "unbundled" services, instead of full traditional representation[4]. These rules have enabled attorneys to participate in early-stage mediation more readily.

Some clients want the attorneys to remain on the sidelines, educating the clients between sessions, so they know what documents to request and provide (voluntary discovery) and are prepared to negotiate for themselves. Attorneys may also be tasked with reviewing and providing advice regarding draft agreements. Other clients want or need attorneys in the mediation sessions with them, helping them advocate for themselves, ensuring the client's voice is heard, providing legal advice, and acting as a calm and secure presence.

Joint filing rules, that went into effect April 1, 2019, also support pre-suit mediation, by creating a stream-lined court process when parties file with a consent judgment of divorce[5]. Attorneys now similarly can offer a streamlined and affordable court documents' preparation process to clients who otherwise would have filed on their own. This new procedure not only helps attorneys attract clients they otherwise would not have retained and allows parties access to attorney services they otherwise might have thought were financially out of their reach, but also helps the courts run more efficiently, because court documents are completed and filed correctly.

Litigating attorneys who have opened their practices to early-stage mediation have realized these benefits, as experienced family law attorney James Chryssikos attests:

> I have participated in pre-suit/early-stage mediation in divorce cases for several years. Clients appreciate the more informal, open dialogue, and lower-stress atmosphere. They also make much better decisions because they are not rushed; they have time to speak with counsel, truly hear and understand what the other party is saying and have an opportunity to consider options without the anxiety associated with a looming trial or court date.
>
> Coming from a litigation background, I was initially concerned about the use of such processes outside the parameters of litigation, and the inability to engage in formal discovery. I quickly discovered that couples seeking an alternative to traditional litigation are usually happy to trade the expensive and cumbersome formal discovery process for an informal, but thorough, voluntary disclosure. Moreover, since the advent of the mandatory Domestic Relations Verified Financial Information Form in divorce cases, I find the informal financial disclosure in pre-suit/early-stage mediation is just as thorough, if not more so than in litigated cases.
>
> Clients appreciate having greater control over the process, the ability to conduct sessions on dates that work with their schedules, the ability to choose whether and when legal representation is needed and having the ability to decide issues themselves.

---

[3] Stages of Limited Scope Representation

[4] The revised LSR rules are MCR 2.107, 2.117, and 6.001 and MRPC 1.0, 1.2, 4.2, and 4.3.

[5] MCR 3.223, and for Collaborative Law cases, MCR 3.222

> This has been a growing portion of my practice, and I anticipate that trend will continue[6].

Some attorneys do not encourage early-stage mediation because they fear a loss of revenue or loss of client control, but engaging in early-stage mediation can attract clients you otherwise would miss and can be incredibly satisfying. Although clients will assume more control than in a traditional litigated case, most will still look to you for advice, expertise, and guidance. In addition, helping them craft agreements truly tailored to their needs and helping them work with, instead of against, their spouse, particularly when they have children, is incredibly fulfilling and much less stressful for you as well as for your clients.

[6] June 16, 2022, interview by Lisa Taylor with James Chryssikos.