

RE:solution

Iowa Association of Mediators

Volume 14, Issue 2, Summer 2008

IAM
Founded 1994

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IAM President
George Elliott

Recently, from a couple of legal directions I have come across some interesting comments and inquires. These thoughts may also be afoot among potential members from the areas of social work, clergy, therapists or educators. People looking at some form of retirement or scaling back have been checking out mediation as a possible avenue. During booth duty at the Iowa Bar's recent annual gathering (IAM & IMS share a booth at this event) I fielded inquiries from their members surveying the mediation landscape for future possibilities. An online service I still get through the Illinois Bar has been promoting seminars for Boomers assessing their futures. In the wide variety matters outlined for presentation, mediation was a very front and center alternative for this group to appraise.

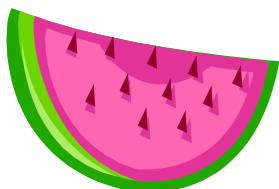
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Is Significant Value Being Left "On The Table" of Settled Family Cases?

Is it possible that even the best of Iowa family attorneys are leaving significant value for clients "on the table" when settling family law cases? Are there missed opportunities for long term resolution of conflict, better lives for the children, less stress for everyone, higher satisfaction? Could these elements be missing even in what looks like a good settlement? Are we at risk as professionals when benefits are overlooked for our clients?

Some answers are found in the words of both the Iowa Legislature and the Iowa Supreme Court. The Legislature says that:

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Certification information at www.iamediators.org

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This certainly provides possibilities for a trend that would provide our profession with new challenges and new opportunities. Education and training would certainly benefit, but new opportunities to exercise and deliver our talents as mediators seem to be a necessary part of any expansion equation. IAM's mandatory mediation efforts to be made this next legislative year still look very timely, having not been able to finalize things last year. If others in the membership have encountered like sentiments, the president or board members would welcome your thoughts.

A revision on remarks in this column in the last issue is also in order. Chatting with the Iowa Judicial Branch Online booth at the annual meeting, they said that the online service is not going to be removed from your individual computer. While some detailed and personal items will be removed or available only at a courthouse location, general availability will not be curtailed. I hope this is good news for many of us who find this source an aid to our endeavors.

Good news about the 2009 Heartland Regional Conference of Mediators on April 23-24, 2009 Bernie Mayer will be the featured speaker on Thursday and Ken Cloke will be featured on Friday. Both have been well received in the past by Iowa mediators. The conference will be held in Omaha. (The 2011 conference is scheduled for Des Moines.).

The summer board meeting was held July 24, 2008 and as always was open to all. It was hosted by IMS

at their West Des Moines office. Some attended by Conference call.

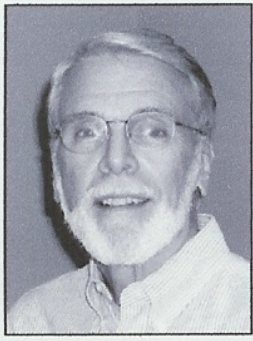
MARK YOUR CALENDAR NOW

Natalie Fleury, a law professor at Marquette Univ., will be IAM's fall conference resource person. She is graduate of the Univ. of Wisconsin's law school and also is a principal in Conflict Management Concepts, LLC. CMC consults and trains in mediation, arbitration, and conflict management programs. She is coordinator of Marquette's Dispute Resolution Program and teaches in that area. She works with Milwaukee Public Schools in conflict management endeavors and is a member of the Wisconsin Association of Mediators (WAM). She also a past chair of the Wisconsin Bar's ADR board.

IAM's conference will be held on Nov. 6th, a Thursday, from 8:30 AM to 4:30 PM. Location and cost will be determined soon, but the membership can put this date on the calendar. The conference committee is working with Ms. Fleury on the specific program, but certainly, CLE's and CEU's will be offered including ethics.

Just a bit of news...

A. M. Fink was invited to give his workshop on envy free property division to the fall 2007 Heartland Conference in Kansas City. Hank Ostwald remarked that the retired judges in the back row liked what was given and said they wished they had known some of these things while they were sitting judges. Because the workshop got good reviews, A. M. was asked to repeat this workshop to the Missouri conference of mediators held at Columbia Missouri in April of 2008. Judge Askren (retired) attended that session and recommended that this workshop be repeated in April of 2009 to the Missouri Association of Probate and Associate Circuit Judges



Steve Sovern - IAM Legislative Liaison

"Mediation should be used to the greatest extent possible in the resolution of domestic disputes." See 2000 Iowa Acts ch. 1159, § 1.

The Iowa Supreme Court goes a significant step further in their Report on Mediation in Family Law Cases pursuant to 2000 Iowa Acts chapter 1159, section 2.

"Family law mediation will (emphasis added) provide a direct benefit for litigants and children involved in family disputes and provide an indirect benefit for all Iowans." "The program will reduce parental conflict for the overall benefit of children, and plant the seeds for reduced conflict in non-family disputes."

But wait a minute. Members of the Iowa Family Bar have always been very effective at settling cases. How else can you explain the commonly accepted statistic that says less than 5% of Iowa family cases end up in trial? Clients in Iowa experience the benefits of collaborative law without having to enter a

collaborative agreement to stay out of court. Iowa family law attorneys are simply working together to settle cases. How could we possibly do more? Yet, neither the Legislature nor the Court refers to settling cases. They do speak about significant added benefits for Iowans.

Results of a study in the Iowa Sixth Judicial District may provide another answer. The study reveals that something much more enduring can be accomplished for divorcing couples, their children and Iowa courts than just settling cases.

The study of 150 dissolution cases was conducted by Mediation Services of Eastern Iowa in cooperation with Sixth District Court Administration. It found that 38% of cases that were settled by stipulation, but without the benefit of mediation, filed subsequent modification actions within 3 years of the original decree. During that same period, in settled cases where clients had been to mediation, only 22% filed subsequent modification actions.

However, most telling is the finding that 42% of the modifications in non-mediated cases required court intervention to settle the action. At the same time, only 10% of modifications in previously mediated cases required subsequent court intervention. This result is consistent with national research finding that re-litigation rates are much lower in cases that initially experience the mediation process. (A Decade of Divorce Mediation Research, Joan Kelly, 1996)

Why is there a significant reduction in re-litigation when mediation is employed? Some of the answers are simply intuitive. Others have come from mediating over 3000 family and custody mediation sessions over a period of 13 years. Moreover, research by the Institute for the Study of Conflict Transformation tells us, among other things, what makes mediation most successful for the parties.

Here is added value that mediation brings to participants and to the process that intuitively contributes to reduced relitigation:

1. Clients who craft their own settlement "buy-in" to the result and develop a sense of ownership.
2. Working together in mediation during divorce fosters working together for the benefit of children after divorce.
3. By its very nature, a mediated resolution cannot be lopsided and, more likely, results in enduring fairness. (This presumes, of course, proper screening of clients for capacity and domestic violence issues.)

Here is some of what I have observed in my mediation practice.

1. Parties who come to mediation in latter stages of litigation spend their initial time peeling away the layers of misunderstanding that are often generated by the litigation process itself through the mere filing of the typical "positional bargaining" kinds of petitions and answers or the writing of pot-stirring demand letters. Parties often return to pre-litigation, mutual understandings wondering

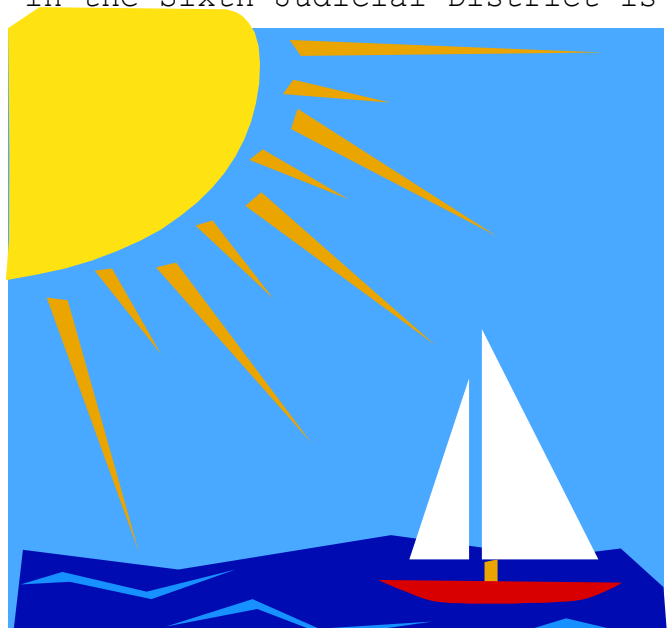
what may have happened to them in the interim?

2. Participants discover and resolve underlying core issues of conflict that often drive the presenting issues of divorce but are rarely dealt with in a stipulated agreement.

3. The real differences of the dispute are often not the legal issues but those below the tip of their particular iceberg; the hurt, the anger, the mistrust, the misunderstanding.

4. Parents come to realize that they are hearing very different stories from the very same children.

5. The only true experts with regard to issues of fairness and equity in a relationship are those that have experienced it. Therefore, it is only through the facilitated interaction of these participants that lasting fairness can be achieved. (This presumes, of course, a client's clear understanding of the legal alternatives to a mediated agreement that can only be obtained from competent counsel.) It is important to point out here that the research offered by Joan Kelly and in the Sixth Judicial District is



Mediator's Tip

By Steve Schodde

Will the words spoken at the opening session of a mediation make settlement easier or harder? The mediator can, of course, set the tone as he/she lays out the rules and the idea of mediation as a process. The mediator can emphasize the fact that they are not an arbitrator or judge so that should a party find a comment or assertion inflammatory, they need not worry that the remark will influence the mediator against them.

What else might a mediator do? While it is sometimes possible to convince attorneys, in a precession meeting, to focus on generating alternative solutions to conflict problems and avoid pushing emotional buttons, the parties themselves may *(Continued on page 6)*

~~not be so inclined~~
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based upon the model of mediation that is almost exclusively used across the nation in family law cases. It is where the parties themselves communicate directly with one another with the help of the mediator. Lawyers, if present at all, are there as sources of support and information for their clients and rarely involved in mediation conversations nor do they act as advocates for their clients in the session itself.

In these studies, the mediation model in use focuses on party communication and the kind of mutual understanding that fosters a more complete conflict resolution, not just an end to the conflict. This is considerably different than the "settlement conference" or caucus model of mediation that is used in many other civil mediation contexts. There, the focus is on attorney communication, legal issues and case settlement. Again, we know that, in Iowa, case settlement is

going to occur in 95% of cases one way or another. The settlement conference approach may well expedite closing the case but here is one among a number of questions that remain. Does settlement itself help divorcing parents work together as parents in the future?

Consider, also, the result of a study by the Institute for the Study of Conflict Transformation. The goal of the study was to find out what about mediation contributed most to their satisfaction with the mediation. Here are the top three:

1. I was able to deal with issues I felt were important.
2. I had an opportunity to express my views fully.
3. I had a sense of being heard and was helped to better understand the other's point of view. Notice that settlement of the case is not among the top three. Clearly, settlement is a desirable goal. In fact, it is the outcome of most all models of mediation as well as to a mediationless litigation process that settles cases. However, mediation can take clients beyond settlement and into, what the Iowa Supreme Court refers to as, "direct benefit for litigants and children.....and indirect benefit for all Iowans." It will, "reduce parental conflict for the overall benefit of children." As important, the model of mediation where the parties themselves are the communicators and the problem solvers is the model shown to produce these results.

Here are some remaining questions we should ask ourselves as Iowa family lawyers. Can I provide benefits to my

clients that go beyond the settlement of their case? Do we owe our clients the opportunity for a more complete and satisfying resolution of their family matters? Moreover, do I have an obligation to at least provide an understanding of these potential benefits so that my clients can make informed choices? Or, am I at risk of leaving something of value to my client "on the table."

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You might wish to try this idea. As you, the mediator, proceed with describing the mediation process and your role in it, ask the parties if they believe they are very familiar with the issues and the arguments pro and con that might be presented in a court room. If they say yes, then their attorneys may well be prepared to move on to issue identification. If they say no, then it still could be a plus for the process because since the attorneys will almost certainly want to make an opening statement, the mediator could frame the situation as sort of a preview as to what a court room scenario might look like!

Thus the mediator, at one stroke reduces the impact of potentially explosive statements that could tend to lock in positions and be visual imagery allow the parties to imagine the consequences of not reaching a negotiated settlement in the here and now of the mediator's coffee pot.

Iowa Association of Mediators (IAM) Committees for 2008-09

If you would be willing to serve on a committee for IAM, choose from the list below and add the committee(s) to your registration form on page 8 of this newsletter. Remember this is your organization and it will only be as strong as the IAM membership makes it.

Membership

Newsletter

Standards/Best Practices

Legislative Liaison

Planning

Agenda

Mock Mediation

Conference Bookstore

Grants

International Conflict

Resolution

Divorce/Community Mediation

Restorative Justice

School Mediation

Other

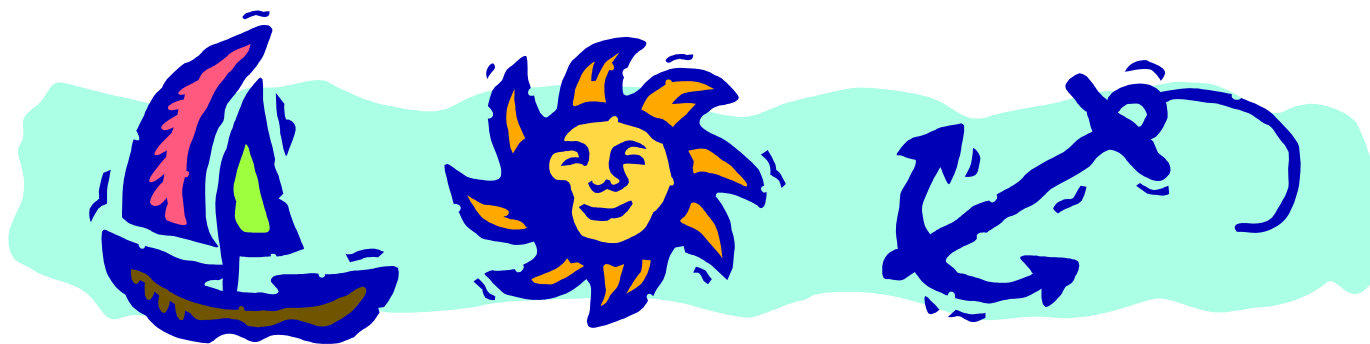
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Any opinion expressed in this publication is that of the individual writer and does not necessarily represent the official position of IADR, unless otherwise noted.

IAM Membership Form

Please Print

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Name _____

Organization _____

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City _____ State ____ Zip _____

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Fax: _____ E-mail: _____

I am a: Volunteer Professional

Area of Practice (Please circle):

Family/Divorce * Community * Schools * Farmer/Creditor

Organizational * Public Policy * Labor * Workplace

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* An organizational membership is considered a sponsorship and carries no voting rights.

Annual membership fees are due each April and are not prorated. Dues support the annual conference, publication of the newsletter and operating expenses. Dues are not used to support any political party or candidate.

If you are interested in serving on an IADR committee, please indicate which one below after viewing the list of standing and ad-hoc committees on page 6.

Committee: _____

Please submit this form, along with your dues, to IADR. c/o A.M. Fink
Treasurer, 222 S. Russell, Ames, IA 50010

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Iowa Association of Mediators

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Founded 1994

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