

After 10 years of mediating divorce cases, which followed 20 years of litigating them, I can easily say the change has been the most delightful of my entire career. It is a joy to encounter people who behave as most people who select mediation do.

Twice, in fact, I have witnessed “arguments” in which the payor insisted on exceeding the child support guideline because the figure would not allow the payee and the children to get by as they should.

I have also, of course, seen people who had much more difficulty considering the needs of anyone other than themselves. Nothing, however, had prepared me for the *Smiths* who came into my office in the middle of January. During the next four sessions, we spent 8¼ hours together before finally inking an agreement less than 24 hours before their next scheduled court appearance.

It quickly became apparent in our sessions that this case would be particularly unusual, not because it involved people desperate to settle after having been to court twice and paid a lot of money to lawyers in the process. In fact, I have seen that happen on a number of occasions, and have found the parties in those mediation cases quite motivated.

No, the foremost difference I noticed was how amazingly little the Smiths had accomplished in their trips to court, which totaled 11 hours. The couple had been married 13 years and had children ages 5 and 7. The husband worked in civil service earning about \$63,000 a year, in addition to at least one side job in a business, all of the income from which might well not have made its way onto the tax returns. The wife had just picked up a part-time job and might well have had her own part-time business, all the funds of which might well have not been onto the tax return either. The debt of the parties exceeded \$100,000 in credit cards, and the mortgages totaled about \$350,000; obviously significantly more than the parties were able to handle.

They were desperate for an agreement, but it was striking how completely unable they were to forego massive verbal assaults on one another.

Because the parties were so different from the norm, I decided to take an approach different from my norm. Rather than aiming for a resolution acceptable to the court, I thought that I might only help these parties make some progress toward that goal.

I was relieved to see that in most matters pertaining to the children the parties were fairly able to reach agreement. The exception, of course, was child support, since there was not enough money to go around. The parties had been alternating staying in the house with the children, exchanging places every three or four days. This seemed to work, and the wife had planned to move out in the near future into subsidized housing. An agreement was reached early on for joint physical custody.

The most significant issue was the extreme bitterness the parties demonstrated toward each other. While I was able during most of the first two-hour session to control this behavior, it seemed that the closer we got to an agreement in succeeding sessions, the less able the parties were to move past their animosity to reach accord.

I am not at all used to this behavior, and have always required, when necessary, that (a) there be no yelling, and (b) that the parties direct their communications to me, but the Smiths seemed virtually unable to control themselves. The matter became so out of hand in the second session that I closed the file and informed them that I so abhor wasting my time and their money that I'd found it necessary to terminate the session. I asked them to leave, but they were as able to ignore me as they were to ignore each other, and carried on undeterred.

Emboldened by their attitudes, I decided to show some attitude as well and became somewhat more vocal in exerting control. I am embarrassed to report that, during the third session, I raised my voice and informed *Mr. Smith* that he was indeed a "jerk" and would he

please be quiet (though my language was not that polite). Neither party changed their behavior much, though I think *Mr. Smith* was taken aback a little bit.

Although I learned long ago that sometimes, some parties need to vent, and I have trained myself to allow that in a somewhat controlled manner, the venting in this case was Olympic. By the last session, however, I had discovered their pattern for it:

Each time I would raise an issue, the parties would immediately begin to hurl wild and nasty accusations at each other until the phase ran its course, regardless of my attempts to intervene. After 5 or 10 minutes of it, they would be able, upon my insistence, to address the issue as adults.

When I finally did recognize their pattern, I chose to “show them” and maybe even take advantage of it. After raising an issue, I would turn my attention to my computer, completely ignoring the parties, and tend to other business. I did this 7 or 8 times, and not once did either party even notice, never mind complain. The first time, I thought I might get their attention and help them to focus. But they never realized what was happening until they were fairly spent, and then they were able to work constructively with my strong direction. To my amazement, it worked the same way every time.

The agreement we reached might not pass muster with the judge, I thought, for a couple of reasons that I explained to the parties. It may be that they return to work those out, assuming they are not able to do so with the Family Service Officer at the court. I am not sure whether, in different circumstances, I would have allowed the agreement to proceed. But as I said, I felt it was necessary to help the parties make progress, as they certainly could not afford to continue with the lawyers as they had been.

Twenty-four hours after signing, they were divorced.