Chicago Daily Law Bulletin®

Volume 162, No. 24 Serving Chicago's legal community for 161 years

Psychology adds hidden benefits, eases the mediation process

As we know, a mediator works to help parties understand and articulate their needs and interests. For a mediation to be successful, both parties must learn how to listen to one another's needs and recognize these needs as legitimate.

Mediators with psychology backgrounds work to integrate beneficial psychological techniques into the mediation process. These techniques work in mediation for the same reason they work in therapy — they address parties' innate needs and bring the emotion into the room in a healthy way. Mediators with various backgrounds can benefit from familiarizing themselves with these techniques and understanding the psychological drive behind them.

Structuring and promoting beneficial communication

Clinical psychologist Kerry Smith, Ph.D., uses several communication techniques carried over from her practice in working with couples — namely learning to listen and communicate needs, eliminating assumptions and encouraging use of pre-existing coping skills.

Learning to listen

Smith likes to focus parties on starting fresh. She removes any pressure from the beginning with an invitation to create ideas. She reminds parties, "We are just having a conversation, and we can have a conversation without making assumptions about how the conversation will end."

She encourages parties to stay present. She believes that beginning the session this way emphasizes the importance of communication and stresses to the parties that communication does not have to be threatening.

Learning to communicate needs, eliminating assumptions

Smith works throughout the mediation to help parties to recreate new boundaries and emphasize the positives. She asks both parties to refrain from making assumptions, often saying, "The beauty of this process is that you do not have to be in your spouse's head. ... I'll be in both of your heads for you."

She encourages parties to avoid attempting to solve each other's problems; a common tendency in both therapy and mediation is to project your own needs onto the needs of the other party. The goal of working with parties on eliminating assumptions is to help them establish new boundaries for what will be a new family unit.

One of the best scenarios is getting to a point in the mediation where the parties are giving each other the benefit of the doubt. Smith states that one tool for getting parties to this point sooner is to have them share joint goals.

More often than not, the commonality is their children. She encourages each party to acknowledge the other as a good parent. In doing so, the underlying psychological needs of acceptance and acknowledgement are met. These expressions work to set the tone for a productive conversation.

One indicator that parties are working together in the mediation is if they are telling the same narrative and same family story. "If the parties tell you similar stories about who they are and who the children are, the mediator should feel comfortable addressing the core issues immediately," Smith said.

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On the other end of the spectrum, mediators must identify when parties are not working together to problem solve.

"Conflict slows down a mediation. In high-conflict mediations, the mediator must spend more time tending to skill sets and emotions. As a result, it will take the parties longer to move through the mediation effectively," she said.

COLLABORATIVE CONCEPTS

Beth Fawver McCormack

Beth Fawver McCormack is a partner at Beermann. She practices exclusively in family law matters and is a collaborative law fellow, mediator and child representative.

Smith highlights a few simple ways to unearth unhealthy communication patterns. She alerts fellow mediators to be looking out for parties assuming everything that happened in the past will determine the future.

In therapy and mediation, she works with couples on eliminating the use of "never" and "always." She encourages parties to see that this language is not helpful during a time where it is essential to create new patterns.

For example, she worked with a couple on eliminating these problematic words and helped them to understand that there is room for new behavior with changed patterns. Smith accomplished this by helping the mother move from, "he never takes the child to church" to having an understanding that his past behavior did not clash with his newfound desire to do so.

She also alerts mediators to be on the lookout for people who are trying to control the outcome of the mediation. From her experience, a party who is accustomed to being in charge (of the marriage or in his or her career) has the tendency to take a position and work hard to prove this position.

When faced with this situation, the mediator must step in to help this individual create a space for new ideas. Sometimes it can be helpful to acknowledge the vulnerability involved in this process and establish a protocol for managing emotions. For example, Smith encourages parties to ask for breaks in the mediation process whenever emotions rise to the level of becoming unproductive.

Encouraging use of coping skills

This is perhaps one of the most challenging skills to implement into mediation. Smith encourages mediators to assess the people and the relationship. She emphasizes the importance of being able to identify anxious tendencies.

If a party acknowledges his or her own anxiety from the beginning, "ask them what they already do with their anxiety. The purpose of this is to work with their behaviors that are already effective techniques." This method allows the party to identify his or her own mechanism for addressing anxiety, which allows him or her to feel comfortable and more engaged in the process.

On the other hand, if a party displays anxiety but is unable to recognize it, the mediator should work to organize the agenda accordingly. Smith encourages mediators to start with non-anxiety provoking topics to show the parties that mediation works. She then recommends slowly integrating high-conflict topics when the parties are warmed up to the process.

Mediators need not be afraid of incorporating psychological techniques into mediations. There is a reason why people flourish and grow throughout therapy — it is space that is inviting, comfortable and intended to produce positive behavioral changes and coping skills.

Utilizing these techniques may not only prove beneficial throughout the mediation process, but may also lay the foundation for positive communication between the parties moving forward.