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Q & A: What Is Elder/Probate Mediation?

I've Heard of Mediation Before, But Not Elder or Probate Mediation – What Is It?

Mediation is a process of dispute resolution where an independent third party neutral makes it possible for disputing persons to talk to each other and helps them work on coming to an agreement or other acceptable settlement of their dispute. The disputing persons might include family members, caregivers, and others who may be parties to litigation or interested persons in a protective proceeding in probate court. Mediation has been used for decades in other contexts of our legal and dispute resolution system, but it is relatively new in the elder and probate setting. It is sometimes called intergenerational mediation because it often involves at least two generations of a family.

What is the Value of Mediation over More Traditional Methods of Settling Disputes?

In the elder and probate contexts, many disputes revolve around or are closely linked to relationship issues. These can be complicated and may involve long-standing conflicts that feed the dispute, like perceptions of being a favored (or disfavored) child, family secrets, unresolved disagreements that have been allowed to fester, or difficulties meeting the challenges of providing the care for an aged and infirm adult family member. In some cases these emotional matters stemming from a reversal in the parent/child relationship and other relationship difficulties become magnified when they become part of litigation to resolve a dispute or to appoint a guardian or conservator for a person who is unable to manage his or her affairs independently. A court proceeding focuses on matters relevant to the particular type of proceeding and involves a decision by a judicial officer. By contrast, a facilitated mediation allows the participants a chance to work together to fashion their own outcome that meets their unique legal, financial and interpersonal needs and goals. In addition to being flexible to meet the participants' needs, mediation is also confidential. Confidentiality allows the mediation process to include the elder adult's voice, participation, and interests in a way that is often not possible in the courtroom setting.

My Siblings and I Are Having Some Arguments About How Best to Take Care of Mom, But I Don't See How Mediation Could Help ...

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Many of us have put plans in place take care of things in the event we become incapacitated. When there are no plans or arrangements made for someone to be able to step in and assist, there is often conflict if more than one person is involved. From time to time, the plans that have been put in place do not work out as planned. Common sources of conflict around an elder with challenges to independence include:

- decisions about care planning
- identifying who will provide assistance
- determining what assistance is necessary and appropriate
- driving and personal safety concerns
- housing placement
- dealing with incapacity issues

Mediation is not just a last-resort alternative to litigation. It is a voluntary process that can be used at a time the parties deem appropriate, and it may include attorneys representing a disputing party(ies), and can be framed to address limited issues or may include the broad range of disputes. A conversation with a well-qualified and experienced elder/probate mediator can help you explore a range of conflict management and conflict resolution services that might be beneficial.

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