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A LIMITED LIABILITY LAW PARTNERSHIP, LLP

EXCELLENCE IN FAMILY LAW

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Legal Insights

By Steven L. Hartley

Successful mediation requires concessions by both parties. Without compromises between the parties during the mediation process, a final resolution is impossible. In order to make compromises, both parties must know and understand what the other party's true wants and underlying interests are. This is where a skilled mediator can often be of the most assistance. Once the parties' respective wants and underlying interests are determined, it is much easier to negotiate the concessions needed to resolve the issues.

The number and timing of concessions will depend on the particular facts and circumstances in the case. However, in order to be successful, the process must be one of "give and take" between the parties. If only one party is willing to make concessions and continues to do so without any compromises from the other party, a successful negotiation is impossible. As most experts will tell you, never bargain against yourself!

Whatever the issues and dynamics of your case, before attempting mediation, you must first find a qualified and experienced mediator. Before beginning the mediation, make sure you have prepared a list of your wants and needs in the case. You can then work with the mediator to determine where your concessions might come from. If the other party does the same, you will have a good chance of reaching a successful resolution.

If you have any questions regarding mediation, you can check these resources:
Dispute Prevention and Resolution –
www.dprhawaii.com
Mediation Center of the Pacific-
www.mediatehawaii.org
Hawaii Directory of Divorce Mediation and
Mediators – divorcemediation.us/states/hawaii

IN A NUTSHELL: MEDIATION

Traditional divorce litigation is an adversarial process in which each party fights for what they want in court. This process often leads to animosity between the parties and those involved in the divorce. A contested divorce can also negatively affect the children involved in these family conflicts.

Mediation is an alternative to divorce litigation. The aim of mediation is to work with the parties towards a mutual agreement and to resolve the issues without going to court. With the help of the mediator, the parties work towards formulating their own resolution.

Mediation should be considered in cases where the parties, because of children or otherwise, wish to maintain a working relationship in the future. Mediation may also be a good option in cases where strong emotions are involved or if time or money is at issue. A mediator can serve as an objective third party to help the parties sort out their feelings and focus on the issues of the case and each parties' needs. Mediation may be beneficial if both parties want to quickly and amicably resolve the case while keeping their costs within reason. Mediation is generally not appropriate if there is physical abuse between the parties involved in the case.

The mediation process is voluntary. If either party feels that mediation is not helpful or is not progressing, he or she can stop it at any time in the process. In the event mediation is unsuccessful and the parties proceed to trial, neither party can be held to any offers or concessions discussed in mediation. If the parties reach a mutual agreement, it will usually take the form of a Settlement Agreement or Stipulation which will be signed by the parties then submitted to the Court for review and approval. The parties are not bound to their agreement until they have read, understood, agreed to and signed the document reflecting their agreement. In addition, mediation is a confidential process. Only the written agreements of the parties approved by the court will become a part of the parties' case record.

Although the cost of mediation varies, services are usually based on the mediator's hourly rate, and in nearly all instances, the cost is far less than the cost of trial - both financially and emotionally.