Benefits of Resolving Matters by Negotiation v. Litigation

1. The Parties Are the Decision-makers
   a. The Parties, not a stranger to the family, make the decisions
   b. The Parties choose the neutral person (mediator, arbitrator, master), if any is needed
   c. The Parties choose the process and degree of formality to be followed in the process
   d. The neutral can provide education, equality and empowerment to the parties
   e. Each adult and their desires are treated with dignity and respect, rather than arbitrarily

2. The Parties Retain Ownership of the Issues and Fully Participate in their Resolution
   a. Negotiation: the parties and counsel lead the discussion and can communicate directly
   b. Litigation: the judge leads the process; parties do not speak except by pre-authored declarations and as witnesses, then are subjected to cross-examination and discrediting

3. An Agreed Resolution Can Give the Parties Finality
   a. Negotiation: Parties sign a fair, full and final (non-appealable) Settlement Agreement
   b. Litigation: Unhappy parties can file motions, appeals & modifications of the outcome

4. Confidentiality Is Only Available in a Private Proceeding
   a. Negotiation: Communications are confidential, only final papers are filed for Internet
   b. Litigation: All speech is public & recorded; all documents are scanned for publication

5. Avoid The Win-Lose Paradigm of Court
   a. Negotiation: Goal is to achieve the interests of both sides, achieve a win-win solution
   b. Litigation: There is a winner and a loser; each party can be a loser on various issues

6. Litigation Can Cause a Loss of Friends and Respect; Impair a Person or Child’s Support System; Destroy Relationships; Impede the Ability to Resolve Issues Together in the Future

7. Uncertainty/Unpredictability of the Court Outcome v. Firm Decision by Parties
   a. Negotiation: Parties are in control of outcome; outcome is final; parties can move on
   b. Litigation: Impossible to predict outcome or case would have settled; the only certainty is that finding the outcome will cost greatly in time, money, energy, emotions

8. Increased Efficiency and Reduced Costs of a Negotiated Settlement – No Trial Costs!

9. Major Difference in Core Values as Between Negotiation and Mediation vs. the Court
   a. Mediation Value: Identify interests, needs and desires of parties, then work to accommodate all possible within the existing estate and circumstances of the parties
   b. Litigation: Consistency, absolute equality – Search for closest established law or court decision on each subject and impose it upon the parties as the outcome for their case

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