



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