

# CHICAGO LAWYER

## Across the table

Family law mediation starting to get smaller, while tempers are rising

By John McNally

**F**austin Pipal's long-time assistant was sitting outside a conference room and getting more anxious. Three brothers were inside with her boss mediating an agreement to dissolve their business partnership.

Tempers were flaring. Pipal had to remain calm because the veteran mediator and owner of Resolute Systems had a job to complete. He called for cooler heads to prevail and asked everyone to get some food. To his assistant's surprise, she watched the three brothers leave and head to lunch ... together.

"They would go out to lunch, come back and continue their fight," Pipal said. "It involved issues that had been festering for many years. The challenge was to come up with a breakup solution."

Pipal has been a mediator for 32 years and divorce mediation is old hat to him. Since completing couples mediation training at Northwestern University a few years ago, Pipal has seen an increase in non-divorce couples mediation sessions on his daily calendar. These sessions can range with participants such as business partners, family business members, non-married but co-habiting partners, siblings and more.

"I learned about couples mediation as a way for the process to (work) when people want to stay together," he said.

### SETTING THE STAGE

Whenever a new couple comes to its first mediation with Pipal he sets out a clear outline. First, this process will take multiple sessions and it will be a process.

"Let's begin with the problem you know that you're experiencing," he said on how he approaches the first session.

Pipal expects his growing couples mediation work

to be ideal for the younger generations that need help coming to terms. He notes these clients don't want "full-blown therapy" and want to quickly resolve the matter.

"Because this area is new the growth has been kind of slow. But I am getting requests," Pipal said. "I'm hearing from divorce lawyers and others in related fields — some therapist friends — interested in looking at ways to stay together. It's a very small part of what I do, but I see growth potential especially with younger clients."

Pipal tries to keep attorneys at bay during this type of couples mediation unless absolutely necessary.

"Sometimes the attorneys will get involved later and maybe look at the written agreement, if the parties want that to happen," he said. "But we're not usually talking about

the kind of litigation related like separation agreements in divorces which are legal documents and carry legal implications.

"I let the clients decide whether to do that agreement in writing or not. I'd say half the time they do. The agreement talks about future behaviors. (Will there be) a family meeting on Sunday nights? Are (they) going to talk about the issue away from the rest of the family and not going to blow up in front of the kids anymore."



## GRAY DIVORCE

ADR Systems neutral Helaine Berger, who served 19 years as a judge on the Cook County Circuit Court's Domestic Relations Division, and the Child Protection and Juvenile Justice departments, has seen an uptick in "gray divorces" mediations on her schedule. Gray divorce is when longtime, older partners decide to end their marriage.

Berger said each mediation presents "unique challenges" and can be tough to reach a conclusion.

"Many times there is a huge emotional overlay," she said. "It's not that other divorces don't have emotion, but when people are approaching or are retired, it shatters their life. They had a life plan."

Pensions, Berger said, are one of the biggest matters to hammer out in gray divorces. The details inside pension language can be dense, so hiring an lawyer to parse the language is important.

"If you're legally separated will the survivors' annuities still apply? You have to ask the lawyers to really get down and dirty with the



Faustin Pipal



Helaine Berger

pension system and find out the ins and outs," she said. "Or (you can) hire an expert in pensions to look at it and make sure that sometimes (just) being separated works out."

She added: "(But) sometimes someone wants to move on with their life and marry someone else. Then it's a problem. In the end they almost all end up settling, but you've got to have sharp attorneys to help identify these problems and come up with creative solutions."

When there is one party that is looking to retire it can allow Berger a creative opportunity to craft a solution.

"Whether you just do maintenance for 'X' numbers of years and let it terminate, but you (can) divide the assets a little bit differently," she said. "Everybody's not real happy with it. (They) want some certainty in life to the extent you can provide it right. They can take those numbers to a financial planner and have them help them and they can live their life."

Drilling down on the details of the issue is critical, but she has to warn participants that every agreement is unique. She has to remind people that just because your friend, work colleague or family member got certain provisions doesn't mean you'll get them at the end of the mediation.

"You (must) convince people that this isn't a formula and there is nothing in the

law that is going to specify this," she said. "Every case is unique based on its circumstances. I know that sounds basic, but sometimes you just pull out the statute and read it (and say) 'this is what the law says.' The arm-chair quarterbacks drive you crazy."

Berger is frustrated and a little nervous about the increased outright hostility happening in mediation and in the courtrooms. She said it's happened since COVID and it's a point of discussion with her colleagues in mediation and her former colleagues at the Daley Center.

"I'm not an acting judge anymore, but they perceive me as a judge. Every once in a while ...it shocks me (how) they're acting like. I have many tricks I've learned from all those years of being on the bench. If you want to start going after someone — the other party, the mediator, attorney — how does that help solve a problem? You need a timeout. You need to go in another room and cool your jets."

Whether the dispute is between rough-and-tumble business brothers, a small-business owner and employee, or billion-dollar company in multimillion-dollar mediation, "the basics are almost always there," Pipal said.

"The experience I've had over 35 years of doing mediations in all kinds of settings has prepared me for the fact that conflict is conflict and people are people," he said. "There is a dispute, there are emotional elements, and there are needs that aren't being addressed in our litigation system that can be addressed in mediation."

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