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Sheldon L. Forehand, CPM
Idaho Mediation Association
Board Member



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Mediation consists of negotiation between disputing parties, assisted by a neutral third party and it is defined as: "The intervention into a dispute or negotiation by an acceptable, impartial and neutral third party (with no decision-making power) to assist disputing parties in voluntarily reaching their own mutually

*Mediation is a problem-solving process

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-It is private, confidential and completely voluntary.

-Can Be Court Ordered



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- Mediation as Alternative to Court-Based Decision Making

The basic problem-solving process of mediation is a series of stages; introduction, opening statements, identify and explore issues, brainstorm options for mutual gain, and agreement



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- Elder mediation works best when older adults have sufficient capacity to participate as rational and autonomous adults. However, adult guardianship cases concern adults who are allegedly incapacitated.



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-allows families to
create workable
and mutually
acceptable
solutions to their
difficult disputes.



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The History of Mediation

- Courts began encouraging alternative dispute resolution in the 1970s as Court dockets became increasingly more congested.



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* develop communication strategies to enable them to successfully work together to make important decisions in the future.

Cont.

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Other Pros

- Reduced Cost
- Faster Dispute Settlement
(Court can take months and in some cases years)
- Set a Positive Tone (restore friend and/or family relationship)...a bridge back!

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Be Understanding

- It's important to acknowledge your parents' fears regarding the future and their disappointment with not being able to function independently. Let them know you understand how difficult this is.
- Then imagine how frightening it would be for you to no longer be able to have the same level of physical security you do today or be able to make decisions for yourself.



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- *BE READY TO HEAR BOTH SIDES
- *KNOW STRENGTHS AND WEAKNESS(REALITY CHECK)
- *PREPARED FOR YOUR POINTS TO BE QUESTIONED
- *KEY INTEREST IN DISPUTE
- *ESTIMATE OF COST OF LIGATION
- *WILLING TO CONFIDE IN MEDIATOR (CAUCUS)

Prepare to Meet

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Example 1

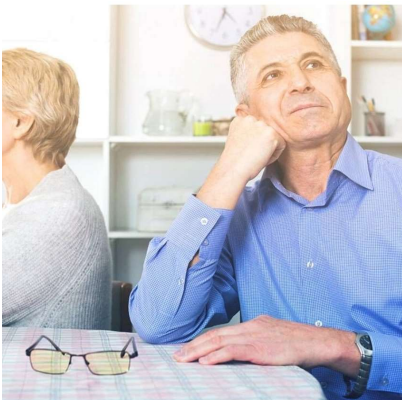


Sisters

Father being cared for by one of the sisters and the other living out of state not agreeing with care and future planning for dad's care.

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Example 2



Brother and sister. Use of moneys and treatment for mom

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Does anyone here have
experience working
with a mediator?

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NOTHING IS FINAL
UNTIL BOTH
PARTIES AGREE
AND SIGN OFF ON
THE AGREEMENT



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While families want what is best for the elder, family members may disagree over what the “best” entails and conflict erupts over who will care for, have access to, and make decisions for the elder.



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For many families, however, this process is not so graceful, and family members are faced with making difficult decisions

Cont.



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As a result, adult siblings
may find themselves in
court arguing over
decisions for an elder
parent.

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When
conflict
happens...



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THE PROBLEMS?



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What Causes these conflicts (Factors)

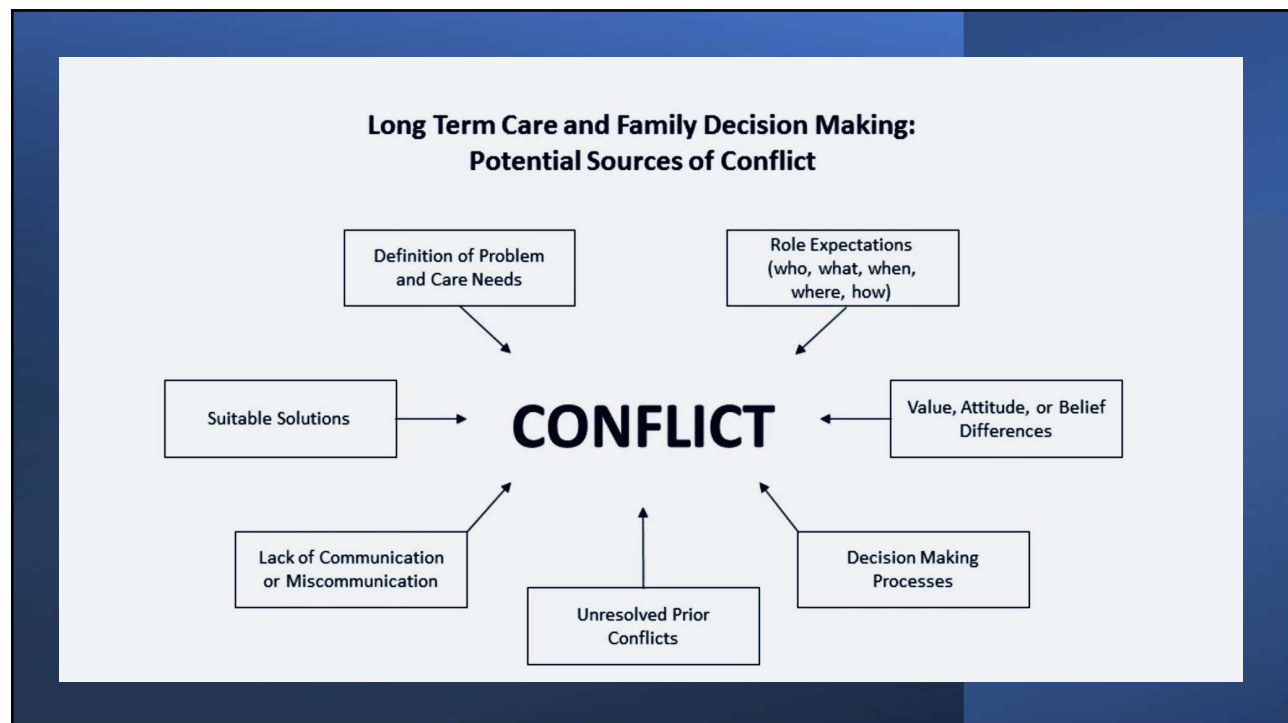


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The experiences of families suggest that there are seven potential sources of conflict commonly experienced.



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Consider



Attorneys whose clients have the benefit of mediation will have more confidence that their clients are truly of one mind about their intentions.



The practice of using mediation to resolve will and trust disputes is in its adolescence. The practice of using mediation during estate planning—before any disputes arise—is in its infancy.



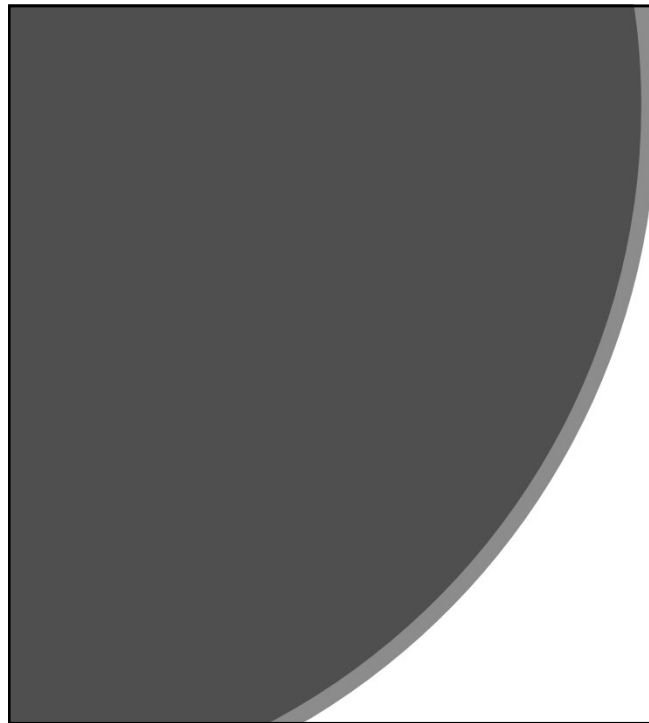
For better outcomes utilizing mediation during the planning stage—before they have the chance to damage important relationships.

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Mediators help families figure out issues like:

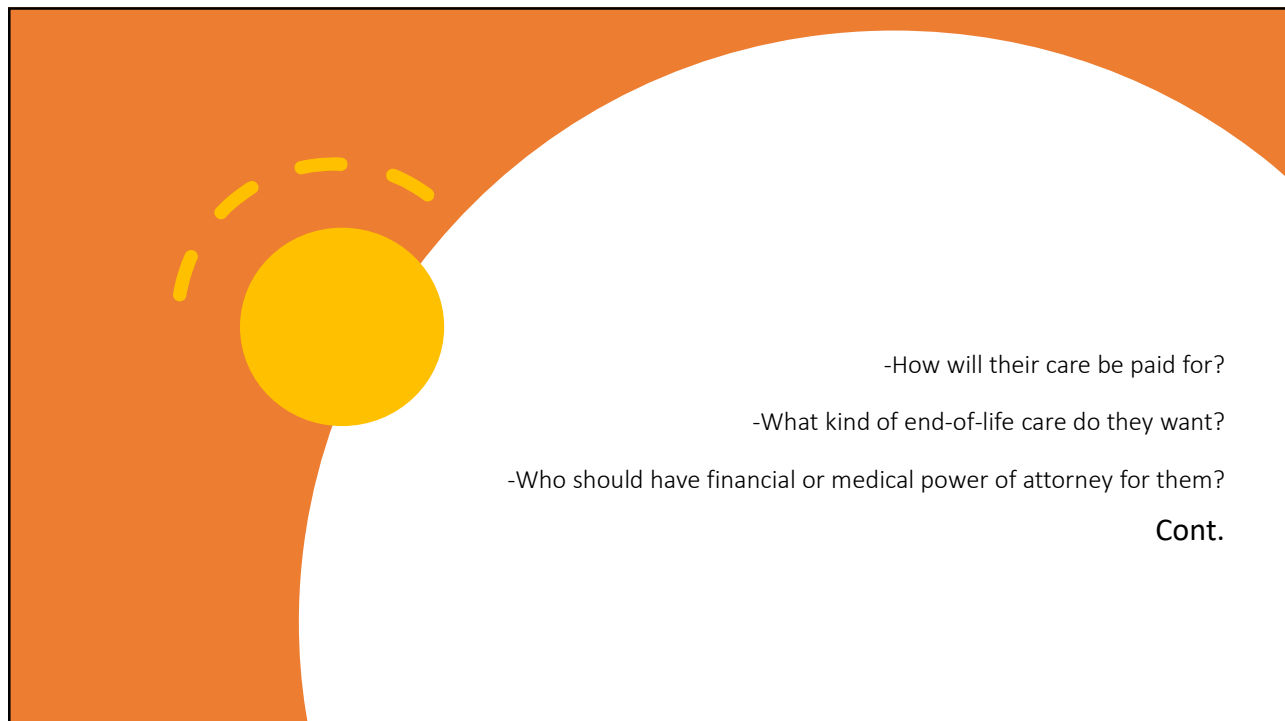


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- Where is the best place for Mom and Dad to live?
- Should Mom or Dad still be driving?
- Who will care for them?
- What kind of care do they need?

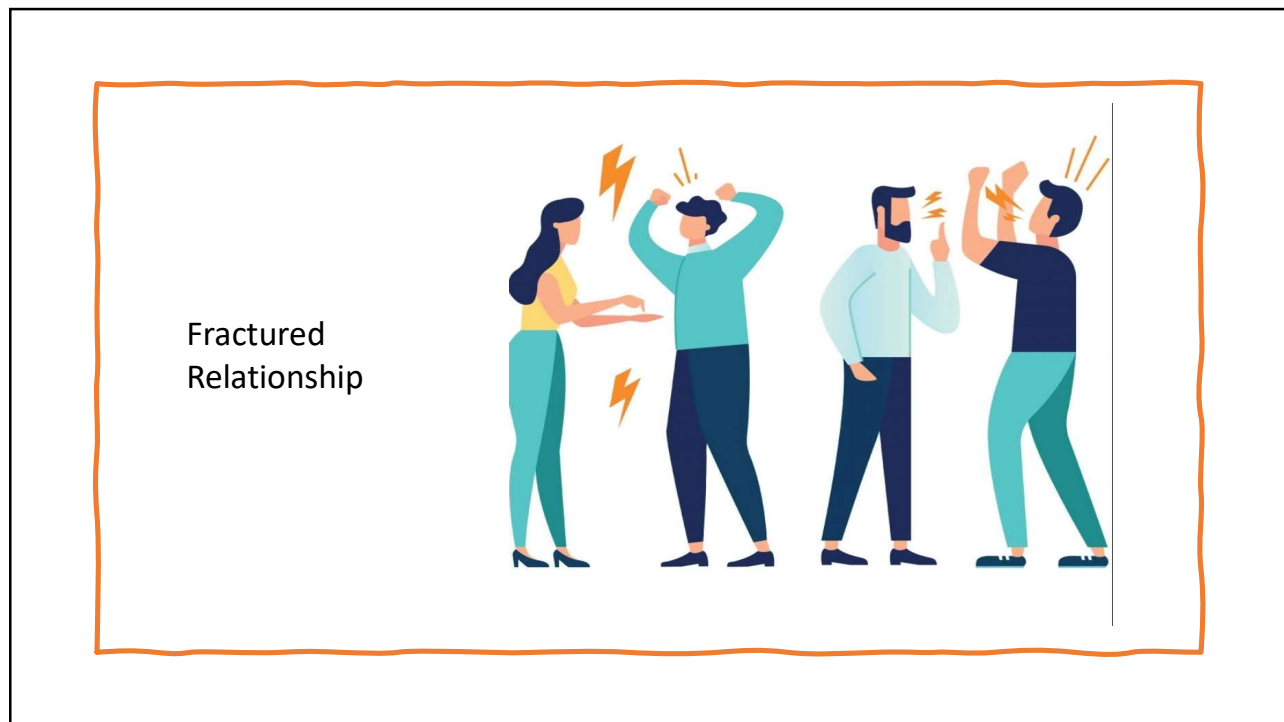
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- How will their care be paid for?
- What kind of end-of-life care do they want?
- Who should have financial or medical power of attorney for them?

Cont.

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Many of the same dynamics that make mediation the process of choice for separating and divorcing couples are present in trusts and estates cases. And the ethical and practical complexities that exist for attorneys representing fiduciaries add an additional advantage to the use of the mediation process.

Early intervention would allow many of these trusts and estates cases to be resolved before the lines are so sharply drawn. And attorneys representing fiduciaries or beneficiaries are well positioned to refer cases to mediation early on.

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The Four Horsemen

Why most relationships fail



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Stonewalling



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CRITICISM

illustrated by @lindsaybraman

CRITICISM
(also blame)

YOU ALWAYS DO THIS!

TALK ABOUT YOUR FEELINGS.

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Defensiveness

DEFENSIVENESS
(a type of blame)

example:

It's all your fault!

Defensiveness
ESCALATES
conflict &
deflects shared
responsibility.

BE CURIOUS ABOUT
CO-CREATED DYNAMIC

illustrated by @lindsaybraman

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Contempt



CONTEMPT
(hiding)

contempt (often verbal abuse) offers NO opportunity for joining & resolution.

INTENTIONALLY
PRACTICE NAMING
APPRECIATION

illustrated by @lindsaybraman

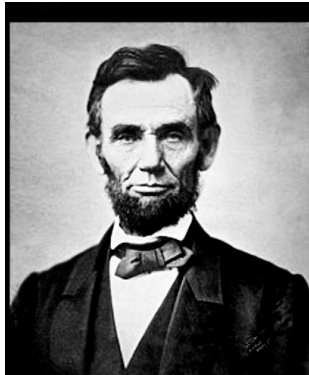
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Drawbacks

- All parties cannot be compelled to partake in the mediation process.
- The party with the authority to settle may be unavailable or unwilling to negotiate.
- Either party can withdraw.
- There are no formal rules guiding the mediation process.



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Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough.

(Abraham Lincoln)

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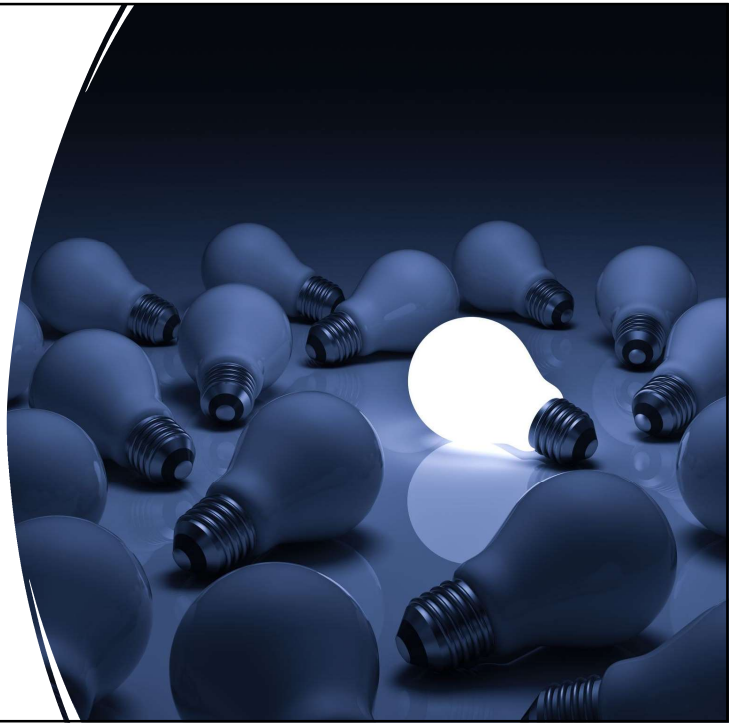
How to look at mediation.

- In my mediation process, conflict turns into opportunity when common ground is uncovered, the concerns of all parties are listened to, and areas for compromise are identified. It also helps that the conflict is framed as a problem to be solved rather than a battle to be won...



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- Mediation is “your power”, use it wisely!



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Q and A



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