

Divorce by mediation? Option can work, but not widespread

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Because divorce is costly and time-consuming, mediation has become a popular option used to settle cases quickly. But most chancery court judges and family law attorneys in Mississippi have resisted the concept.

"The Supreme Court of Mississippi has promulgated rules to allow chancellors to order mediation, but the idea has not yet caught on," said Mark A. Chinn of Chinn & Associates, PLLC in Jackson. "It's still too new."

The Mississippi Bar Foundation recently furnished the Alternative Dispute Resolution (ADR) Section with a \$15,000 grant to initiate a pilot program, which provides free mediators to divorcing couples on a financial needs basis.

"The program pays for the mediation services of family law litigants who, in theory, cannot afford to have their matters mediated," said Martin Smith, a family law attorney from Poplarville and co-chair of the ADR Section. "Through this program, we're trying to introduce to the court system in Mississippi the usefulness and success rate of mediation in divorce and family law matters."

The pilot program is available in every chancery court district in the state, and chancery court judges have been encouraged to identify cases that would qualify for and benefit from mediation. Even though national statistics show that four of five mediation cases are successfully resolved, there hasn't been a positive response from lawyers or judges in Mississippi, said Smith.

"On the front end, I think it's because it's something new," he said. "And like a lot of other boys, we're not resistant to change, but we're slow to adapt to it. To a certain

extent, the chancery judges feel like a part of what they do in family law matters is already a form of mediation. But there's a difference between a mediator conducting mediation and a judge conducting a pre-trial conference. A mediator cannot get the parties to agree on the time of day to meet, but a judge can order it."

A success story in Tennessee?

John Branson, a family law attorney in the Memphis office of Butler, Snow, O'Mara, Stevens & Cannada, PLLC, said mediation has revolutionized family law in Tennessee since Rule 31, which provided for mediation, was passed several years ago.

"The judges let us know they were going to expect us all to mediate, and there was a lot of the same resentment, grumbling and eye-rolling because it was one more thing we were going to have to learn about," he said. "I thought mediation would only apply to a sub-set of cases where the lawyers couldn't settle or were about to go to trial. I figured, how much of a gap could there be between those two?"

Branson was so convinced that mediation wouldn't work, he scheduled an appointment two hours after his first mediation hearing, at 3 p.m.

"I thought we'd all go home early, but to my utter amazement, by 6 o'clock, everything was decided," he said. "Both parties were able to vent, to tell their side of the story, and then they were ready to settle. And an independent third party brought the parties together. Divorce clients will listen to a mediator, where they won't listen to us lawyers."

The success of mediation in Memphis has resulted in "Rule 31 Mediators," family law attorneys who stopped practicing law and started mediating.

"It has absolutely changed the practice of family law,"

said Branson. "Even cases like the Hatfields and McCoys have been settled by mediation. It's cut down on the wear and tear of families going through the divorce process."

The ADR Section of The Mississippi Bar will track the mediation success rate on about 40 cases before the pilot program ends.

"Nationwide, about 95% of all cases are settled before they go to trial anyway," he said. "Mediation is just a step toward that ultimate settlement. Mediation gets to the crux of the matter early on, before the parties get involved in a lot of expense with depositions and attorneys' fees. The first thing we illicit from the parties involved is a promise that they will try to stick with mediation as long as a mediator thinks some progress is being made. We hope Mississippi attorneys and judges will be more receptive to the idea."

To introduce a form of mediation, Chinn established Divorce In A Day, which costs \$1,995.

"A typical low-grade retainer for any divorce costs at least \$1,500 apiece, and that's just the beginning of the time, struggle and hassle," said Chinn. "Our program was designed to allow people to access mediation directly, without the involvement of lawyers. And it's been handled within a day. Custody matters are perfect for mediation. The only place we don't advise mediation is when there's been an extremely physical or mental relationship. Otherwise, it works."

Branson said he's a convert.

"I hated the idea," he said. "I thought mediation was stupid and boring, but I was wrong. There are few cases that go to mediation in Memphis, Tenn., that aren't settled."

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