

Mediation Tips from A Mediator and Retired Judge Sandy Brooks' interview with Retired Judge Michael Mason

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By Sandra A. Brooks

Sandy: How long have you been a mediator, and approximately how many matters do you mediate a year?

Judge Mason: I've been mediating since approximately January 2019. Last year, I did just short of 80 mediations.

Sandy: Of the cases you mediate, how many are family law matters? And of the family law matters, how many do you estimate reach a settlement through mediation?

Judge Mason: Around 40% of the cases I mediate are family cases. I would estimate approximately 85% are resolved through mediation.

Sandy: Do you believe your background as a Circuit Court Judge benefits you as a mediator in family law cases?

Judge Mason: Yes. I think frequently, the attorneys for both parties have a reasonable sense of where the case should settle. Often the problem is getting the clients to accept that outcome is reasonable. I think coming to the mediation with years of experience as a judge who's seen a lot of these cases can help convince the clients the result is a reasonable one, even if not one they are particularly happy with.

Sandy: What are some of the most complex family law issues to mediate?

Judge Mason: The most difficult cases to mediate are relocation cases and cases that involve allegations of abuse that are not independently corroborated. It's very difficult in those matters to find some middle ground the parties can accept. The other difficult ones are those where the economically dominant spouse is self-employed and his/her income varies significantly from year to year, frequently taking a downturn once the divorce is anticipated. Also, those where the parties' assets include a business which requires valuation. The valuations are normally miles apart.

Sandy: Do you have any advice for attorneys prior to mediation?

Judge Mason: Yes, always talk to the mediator and let them know what you honestly think might get the case settled. If there is a problem with the client, let them know. Also, make sure you've shared any important documents you intend to rely on at the mediation with the other side in advance so they have a chance to review it. Usually, the other side will totally discount any information they are seeing for the first time at the mediation without an opportunity to check it. As well, they typically resent it being given to them at the last moment, and that can affect their view of the other attorney.

Sandy: Do you have any pointers for the parties to maximize their success at mediation?

Judge Mason: Be prepared. Don't wait until the morning of the mediation to prepare your joint property statement unless there is none to speak of. Get your pre-mediation statement to the mediator in time, so they have a chance to review it and any exhibits in enough time to speak to you in advance of the mediation. Have the key documents that support your position readily available during the mediation and share them with the other side in advance. Understand the attorney on the other side is generally not your enemy or being a jerk. Their client has a very different view of the relationship, which they have communicated to the attorney. The attorney is typically acting based upon those facts, which are very different from the ones that guide you.

Sandy: What are some strategies for moving the parties past an impasse?

Judge Mason: Sometimes, when the parties feel they've reached an impasse, I've found it helpful to recess the mediation for a few days/weeks. Often after the parties have a chance to get away from the immediate negotiations for a while, they will reassess their positions. On occasion, I've also found it helpful to offer the parties a mediator's suggestion to help bridge a gap. I propose a solution which they are free to accept or reject. Neither party is told if either accepts the proposal unless both do.

Judge Michael Mason began practicing law in Maryland in 1974. He spent ten years in the Montgomery County State's Attorney's office. He was the head of the Career Criminal Unit when he left in 1984 to set up a small general practice with two other prosecutors, Judy Catterton & Paul Kemp. They were later joined by a third, Martha Kavanaugh. He was in private practice for about ten years, and they did a little bit of everything that involved going to court. In January of 1994, he was appointed by Governor William Donald Shafer as an Associate Judge of the Circuit Court for Montgomery County. He was sworn in as judge in March of 1994. He served full-time as an Associate Judge until December 2018, when he retired. He continues to sit as a Senior judge on an as-needed basis. He served numerous rotations as a family judge during his almost 25 years full-time on the bench. He occasionally hears some matters as a family judge. Beginning in January of 2019, he began a private mediation practice and has since mediated well over 200 cases. The largest single segment of the cases he mediates are family cases, but he does a wide range of other civil cases.