

Preparing your client for FDR

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Imagine it is September 2014. It is the brave new world of family law. You are in your office one day. A client anxiously asks you what they should expect at Family Dispute Resolution (FDR) and how they might achieve the outcome that they want. What do you tell them? There are in my view four crucial subject areas to be covered off – process, substance, technique and mindset.

Process

You know a lot about mediation, and so it is easy to forget that others may not even understand the basics. They need to know. Otherwise they will be ill-prepared. Here are some of the basics you should make sure they know:

- the mediator is neutral and does not make decisions for the parties
- the process is confidential and without prejudice
- parties can leave at any time, although that might be unwise
- the usual format is: opening comments by the mediator then the parties, then general discussion, then getting to agreement and then signing an agreement
- the presence and role of support people
- the likely duration
- the need for honesty
- the need for frankness
- the benefits of the process : quick, relatively inexpensive, an efficient way of exchanging and checking information and views, less adversarial than court, flexibility of and control over outcomes, an opportunity to re-establish trust and communication, durability of agreement because of buy-in by both parties
- the process is child centred
- no settlement unless agreed to by both parties
- the effect of settlement
- what happens if no agreement is reached

Substance

This is at the heart of lawyers' work – ascertaining facts, sorting issues, and applying the understood facts to the law.



Clients will be greatly assisted if you give them a realistic appreciation of the strengths and weaknesses of what they are contending in the light of the law and its application by the courts. They

will also be assisted if you touch on the topics that should be addressed and possible outcomes: all the usual intricacies that go into parenting agreements and orders.

Your clients will be more confident and

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effective negotiators if in this way they know what issues need to be addressed in FDR, the merits or otherwise of their various arguments, and the possible terms of agreement.

Techniques

The main thing here is for you to explain to your clients that FDR mediation is a process of negotiation. They need to understand that stating what they want is the easy part. Getting the other party to agree is the hard part. In my experience, it is of fundamental importance for parties to achieve this apparently simple shift in focus from “what I want” to “how will I get it”, and yet the shift is often very difficult for them to achieve.

And so having explained to your clients that they have the dual role of both party and advocate, you should helpfully provide them with some basic tips. Again, they may be obvious to you, but not necessarily to your clients. Here is what you might say:

- write down the key points you want to make both before the mediation commences and during it
- avoid making or responding in kind to inflammatory statements
- be polite, courteous and respectful towards the other party and expect the same from them
- do not interrupt the other party and expect the same from them
- avoid blaming the other party in tones of moral censure; instead express concerns and aspirations regarding the welfare and interests of the children. *What* is said is important, but even more important is *how* it is said. It is more helpful for example to ask “what can you say to reassure me that our children will be in a drug free environment?” than it is to say “you are callously putting our children at risk by your devious and irresponsible drug taking”
- remember that both you and the other party may genuinely have misunderstood or misinterpreted events so check understandings and be slow to draw adverse conclusions
- stand in the shoes of the other party so as to understand their viewpoint
- ask the other party to stand in your shoes so as they understand your viewpoint
- stay focused on the children
- follow the directions and advice of the mediator
- welcome and seek the assistance of the mediator

Mindset

Having the right mindset is in part a feature of technique but in part a product of the important encouragement and support you are able to provide your client.

You should advise and assist your client to enter into mediation with openness; goodwill; constructiveness; clarity; honesty; enthusiasm; energy; patience; calmness; dignity; courage; confidence; realism; and optimism. A mindset containing the foregoing qualities will go a long way to ensuring a good outcome for your client and the children. They are the qualities of any good negotiator.

