

Mediating Elder-Care Disputes

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It's hard enough for families to navigate the complicated and emotionally charged decisions related to elder care when everyone gets along.

Throw in a family with tensions or outright hostility and it's no wonder that disagreements sometimes end up in court, an expensive proposition that can easily magnify divisions.

Another way to handle these problems is growing in popularity: mediation.

A mediator is sometimes brought in at the order of a judge seeking to settle a dispute without taking it to a jury. But elder-care practitioners are urging more families to take the step voluntarily, especially in disputes over how to handle guardianship for family members who can no longer care for themselves.

Mark Dennen's family was embroiled in nearly two years of litigation centering around guardianship for his father, then 92 years old, when a judge ordered the case sent to mediation.

"Everybody brings in all this emotional baggage and the mediator helps bring things into focus," Mr. Dennen says. "It's designed to get to a solution."

The mediation brought the legal battle to an end just months before Mr. Dennen's father passed way.

Agreement Is the Aim

The basic idea behind mediation is that a dispute is resolved through an agreement among the parties, instead of a resolution mandated by a judge or negotiated by attorneys. The role of the mediator --

usually an attorney or someone with a background in social work -- is to facilitate communication and informed decision making.

The cost of mediation varies around the country. In big metropolitan areas, it can easily cost \$300 to \$500 an hour, although it's possible to find dispute resolution centers that are significantly less expensive.

Robert Rhudy, a former legal-aid attorney turned mediator, has championed the use of the practice to resolve elder-care disputes in Maryland. "In mediation, everybody who is affected by the situation has an opportunity, in a neutral and confidential setting, to tell their story," he says. Whenever possible, that includes the elderly family member.

Defusing Tensions

The mediator can help ease communications among family members for whom the elder-care dispute may reopen decades-old wounds.

"Things like 'Mom always liked you better' and brothers and sisters who haven't gotten along since they were three years old come to the fore," says Mr. Rhudy.

Common candidates for mediation are disagreements between family members who live far away and a sibling who lives closer to the elder and may have a different assessment of that person's needs. Sometimes the disputes are between children and elderly family members who have their own view of where they should be living and who should be caring for them.

Mediation can be used to settle disagreements over living arrangements, how finances should be handled, who should be granted power of attorney, and even visitation rights among squabbling siblings. Agreements often specify the kinds of information, especially financial and medical updates, that will be provided to family members who live far away.

The personal nature of these disputes is what makes mediation helpful, says Forrest Mosten, a Los Angeles attorney who has been a mediator for nearly three decades. "The remedies that a court offers are very limited...but in mediation, an apology may end the dispute."

Mediation also allows for informal or even interim solutions, Mr. Mosten says. "You can try things out and see how they work," he says. For example, instead of immediately pursuing a formal guardianship, one child could become a co-signer on a bank account. "If that works, then you don't have to go any further."

There are some times when mediation alone isn't sufficient, says Nina Weiss, an attorney and mediator in Princeton, N.J. If a guardianship is in order, for instance, that must be ordered by the court system.

The mediation process for elder-care decisions can -- and most say, should -- bring in experts such as social workers, estate-planning specialists and health-care professionals who would typically be called upon as part of a court case. "The courts will recognize the same issues....It's just that you avoid the expense" of litigation, says Joseph Mahon, an estate-planning attorney in New Jersey (who isn't also a mediator).

Finding a Mediator

One challenge facing families looking for mediation help is that there is no formal licensing or credentialing for elder-care mediators, notes James Bergman, a co-director at the Center for Social Gerontology, an Ann Arbor, Mich., nonprofit group that has been a longtime advocate of elder mediation.

"Anyone can hang a shingle out and say they're an elder mediator," he says.

But there are plenty of experienced mediators, so it's largely a matter of tracking down those with experience in the area and, importantly, a mediator the parties feel comfortable with. One place to start are local nonprofit mediation groups, such as the Montgomery County Mediation Center in Eagleville, Pa., which can generally be located online. There are also state organizations, such as the New Jersey Association of Professional Mediators.

Some states have lists of mediators officially approved by their courts. And online, the Association for Conflict Resolution offers the public the ability to find mediators from among its members at acenet.org.

Also online, Mediate.com and EldercareMediators.com offer names of mediators (who pay small fees to be listed).

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