RISK MANAGING YOUR PRACTICE

Something every practitioner should do sooner than later

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Linda Kochanski and Mieke Brandon
Risk management

- Mediation is becoming a profession…but with the growth comes the pitfalls
- Complaints are increasing …because the parties are also consumers
- This seminar will look primarily at family dispute work but a lot of the comments equally applicable to all forms of mediation
- Acknowledge Mieke Brandon for her insightful articles as a background for this seminar
Misunderstandings vs Complaints

• Not unusual to have misunderstandings in family work, perceptions and emotions are largely at work

• However when the misunderstandings turn to complaints, this can cause impact for the practitioner on many levels.

• While you can’t completely safeguard against complaints, there are certainly ways to minimise and deal with the complaints as effectively as possible.
Reflective questions….

• When parties have complaints…what are they complaining about?

• Our abilities?

• Our knowledge?

• Our process?

• Parties reaction to the above?
Intake

• Clichéd but a thorough intake can prevent a lot of issues later.

• This applies across the mediation spectrum, not just family

• Matching of expectations of the mediation is also important to be checked out

• Safety concerns should be fully explored

• Agreement to mediate: needs to be explained fully and questions need to be encouraged
• Agreement to mediate: also should include complaint process
Remember you have a Party A and a Party B (at least)

- Party B’s often feel behind the 8 ball already but you need to have that in the back of your mind
- Party B often vulnerable and sometimes hostile in approach
- Need to explore the needs of Party B, expectations etc.
Practical tips for mediators

• Importance of rapport
  - initially in intake
  - reinforced in the mediator’s opening statement
  - check in/feedback

• Transparency of the process for all, doesn’t what model you are using, PURPOSE of each stage needs to be overt

• ROLE of mediator also needs to be reinforced during the proceed.

• How does impact on complaints?....
Practical tips for mediators

- EVEN handedness in exploration, balance between the parties…common complaint.
- Not getting air time leads to other complaints
- Acknowledgement of underlying needs and concerns during the joint session also important…to be heard and to be seen to be heard
- Balanced approach essential…but can be difficult..why?
Practical tips for mediators

• Private session: use wisely:

  • Remember ‘how the mediation is going for you?’ shouldn’t be just a token question

  • ‘Is there anything you want to say that you felt you couldn’t day in joint session?’

• What if? Reality testing….not opinion
“Shuttle” mediation: common in practice; but often not done well

Manage the time …often the key here

Careful to report back accurately and appropriately

Confidentiality within the shuttle mediation…don’t think the parties won’t talk.

Use private session and shuttle…get the parties to ‘walk in the other parties’ shoes”
Think of the parties

• Have their expectations been met?

• Remember the satisfaction triangle…substantive, procedural and psychological

• Realistically identify the workability or otherwise of the agreements…broken agreements always cause for complaint and other implications
Don’t forget the feedback

• Don’t be afraid to ask how the parties think about the mediation:
  
  - score 0 -10 on goals being met, if give a 6 ask how 7 could be achieved
  - used either in joint/private session
  - question what do they need to hear from the other side to achieve goals
When the complaint arrives….

• Yes you are probably anxious and no body like to get a complaint

• Try and see the complaint as something that will enhance your practice (if dealt with appropriately)

• Part of the ‘best practice’ for the mediator, therefore process for dealing with a complaint must follow an overt process
When the complaint arrives

- Acknowledge the party and their issue, concerns;
- Allow time for the complaint to ‘vent’ ….but gently guide them to the issues/goals that can be dealt with (emotion can’t)
- Take the complaint seriously BUT not personally;
- Identify what went well for the party, what didn’t, when etc. and more importantly what they now want to achieve
When the complaint arrives....

• Process for dealing with it ..timeframe, expectations and DO it..

• Depending on the level of complaint....supervision, hot discussion, seek advice for appropriate professional or body

• Document what you need to and use it to create /refine your policy for future reference
Questions, Concerns and Experiences

Time to share
Reference for future reading

• M. Brandon: *Family Dispute Resolution: 12 Steps for Practitioners to minimise the Risk of Complaints.*
  
  (2015) 5 Fam L Rev 34

• M. Brandon: *Self-determination in Australian facilitative mediation: How to avoid complaints*  
  
  (2015) 26 ADRJ 44