

RISK MANAGING YOUR PRACTICE

Something every practitioner should do sooner than later

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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 say in joint session?’
- What if? Reality testing....not opinion

Practical tips for mediators

- “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