

Bob Kerr



Columnist Bob Kerr: A saner, simpler way to bringing an end to a marriage

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They still liked each other. Maybe they still loved each other. But they couldn't stay married. There were issues. Trust, or the lack of it, was among them.

But they could still talk to each other, so they decided to settle their divorce by talking. They would not squander money and emotion in a court case. They hired a mediator. It took a few sessions and there were some strained moments, some tears, before they reached an agreement that divided their assets in a way that left neither feeling cheated.

They could be the poster couple for divorce mediation. They were reasonable and caring. Mediation does not always fit so neatly into the process. Couples who once loved madly often end up despising each other in a way that makes it tough for them to be in the same room, let alone carry on a reasonable discussion about the best way to go.

But mediation is always an option. It can be part of a court case or it can be the sole solution. It can save tens of thousands of dollars.

In Rhode Island Family Court, where milking the misery is just a way of doing business, mediation is sometimes viewed as a very dirty word. It threatens income. But it works. It gives divorcing couples control over what will happen to the things they care most about — such as children. And it avoids the legal pillage of the things they have worked hard for.

"I would tell anybody going through a divorce, get a mediator," said a man who knows.

He contacted me after a column I wrote two weeks ago about one of the truly vicious parts of divorce — the deliberate attempt by one spouse to turn children against the other. He told me that his divorce case had been in Family Court for almost 18 months and was not even close to resolution when a judge finally ordered a mediator to step in.

"He sat us down in a room with our lawyers and told us we weren't leaving until we got it done."

The "bleeding" stopped in one day, he said. He estimates he and his wife spent more than \$100,000 on legal fees before meeting with the mediator.

So why don't more people do it? Why don't more people avoid the maddening, draining, often secretive ordeal of going to court and at least try to work things out in a way that puts them in control? Why don't more people see the self-destructive madness in paying \$200 an hour to be told what's in their own best interests?

It might be because mediation doesn't really claim a prominent place in the legal conversation. For some lawyers, that's just fine. But for a bunch of people caught in the nightmare of a scorched earth divorce, it isn't fine at all.

“Mediation is not in the common language,” says Frank Geremia. “It’s not really understood in the community.”

Geremia is a professional mediator. So is his wife, Michele. Their practice is MouthPEACE Mediation in Bristol. Last year, they and other mediators started talking about the things they do, and from those conversations came the nonprofit Rhode Island Mediators Association. It has about 30 members. Most are lawyers. They talk about mediation — how to make it more effective and how to promote it as an alternative to costly litigation.

“We want to help you have a conversation,” says Bruce Kogan, a law professor and director of the mediation clinic at Roger Williams University School of Law. “It’s up to you. You own the context of the conflict.”

Kogan, who also works in labor relations, concedes that sometimes mediation is not the way to go, especially if there is domestic violence involved. But he says divorce lawyers have an obligation to suggest mediation to their clients. And mediation accepted early can avoid a whole heap of regrets down the line.

“People can end up not solving problems that are going to become recurrent,” says Kogan. “They’re going to have the same fight over and over.

“But if there is mediation in the beginning, that fourth motion on interfering with visitation might not happen.”

There are those fourth motions sometimes. There are disputes over support payments. There are disputes over who gets the flat panel and who gets the iPod, who gets the Lexus and who gets stuck with the VW. And disputes mean legal motions and legal motions mean trips back to court and more billable hours. And a couple loses control of their own future to the business of divorce. They lose a bundle of money and sometimes their kids get badly scarred. And in most cases, they had an alternative that would not leave them feeling so badly taken.

“Maybe we can help you move beyond the stuck point — consider how we can look at the future,” says Kogan.

It’s not complicated. A divorce does not have to be a foot-thick legal folder put together from dozens of court appearances. It can be a conversation. It can be a simple matter of sitting down with a person who knows how to find a starting place and move the conversation along. Couples might talk of things they never talked about before.

It might cost \$1,500, compared with a whole lot more in Family Court.

“Sometimes, they can’t figure out how to talk to each other,” says Geremia. “They can’t be in the same room. Then, when the process works, they feel good about themselves.”

Obviously, it can’t work in all divorces. But mediation can claim a much more prominent role in allowing two people to end a marriage with mutual respect and money in the bank.

To find a mediator, you can check the Yellow Pages. Or you can contact the Rhode Island Mediators Association at www.RIMEDIATORS.org.

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