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The "Gentle" Divorce

An Interview of Michael Wayland, Professional Mediator for Families



Photo by Forrest Payne
forrestpayne@qx.net

Interviewer: Is there such a thing as a "gentle" divorce?

Michael: Divorce is painful and there is no way around that. But if it can be conducted in an environment of respect and cooperation, you can end up with better outcomes. In my opinion, that better way is through mediation.

Interviewer: Can you explain mediation?

Michael: Mediation is where you take two parties in conflict that are in need of a resolution. Instead of lawyers and a courtroom, you use a neutral third party that is the mediator. First you help them to identify all the things they need, all the outcomes. Then the mediator goes back and forth between them building a bridge of communication to help them reach all the needs and desired outcomes.

Interviewer: Why is the litigated approach less desirable?

Michael: A few reasons. One is the nature of litigation. Litigation by its very nature is adversarial – me versus you. In one corner you have the plaintiff (filing party of complaint) and his/her lawyer. In the other corner, you have the defendant and his/her lawyer. The goal is to win. The cost of winning can be very high, both monetarily and emotionally for both sides. If there are children

involved, the costs can be even higher and more destructive to the family system. Finally, there is of course, a loser. One walks away happy and the loser walks away unhappy, and bitter. This is the family system that remains for the children to thrive or fail within.

Interviewer: How is mediation less of a fight?

Michael: Mediation is the cooperative system. To use the word "cooperate" does not mean that the parties are not mortal enemies. The point of cooperation is not that people are not at war with each other, but that they know enough of what serves them best to succeed. Mediation is about both parties winning. How do we all get what we need? I think that building a bridge of communication is a better way for both to win, especially in the case where children are involved. The mediator is that bridge.

Interviewer: So in the litigative process there is no bridge built between the parties?

Michael: The parties wouldn't be in court if there was a bridge, they would've settled out of court. The minute they enter the court, there is a fight, a winner and a loser. Let's look at some overwhelming statistics:

-28% of non-resident parents who mediated saw their children weekly 12 years later compared to 9% who litigated and 11% of the national averages.

-52% of non-resident parents who mediated talked to their children weekly versus 14% of parents who litigated and 18% of national averages

*see notes on reference

Interviewer: Wow! That is an amazing difference. And everything that is in the court documents then becomes public record?

Michael: Yes, that is a very important second point to the question, "Why mediation?" The minute you file the complaint of "seperation" with the courts in the beginning of the divorce process, the documents become a matter of public record. Any public record can be accessed by anyone.

Interviewer: Anyone? I wouldn't want just anyone to know such personal details about my life.

Michael: People can use what they find in those records both socially and in a business manner against people. Of course, there is the awful cases of celebrities' court documents being published in gossip magazines. But I also know of a case in which a man's divorce was used in a business dealing to defame his character. The result was a loss of his business reputation in the community and an eventual loss of clients and bankruptcy.

Interviewer: So how does mediation work?

Michael: I have a standard process that takes 5 meetings to do. The meetings usually take from 1-3 hours. If the parties are reasonable and amenable, the mediation can happen in the same room. If it is less benign, the two parties are put in two separate rooms on the same premises and the mediator will go back and forth between the rooms. The first step is to establish a parenting schedule if there is children. The next step is budgeting future living expenses. The third step is dividing property. The fourth step is pulling it all together. The final and fifth step is signing the memorandum agreement. The agreement gets filed with the court, but the records remain private and confidential. The records or minutes of a mediation can be destroyed. The only thing then that is a public record is the actual signed agreement.

Interviewer: How about the money part of it? How much does mediation cost?

Michael: On average, mediation can cost about \$3,000 for both parties, so a split of \$1500 each. On comparison, a divorce can cost on average anywhere between \$20,000-\$40,000 per person. That does not even include any appeals.

Interviewer: How many divorces go into an appeal process?

Michael: The average is 76%. So, you might want to take the above figures and double that. The other point of this is the time involved.

Interviewer: What is the average timing of a mediation?

Michael: As I described above, I use a standard template of 5 meetings. That can bring the mediation to conclusion in as quickly as 5 weeks. I have known of some clients that used the 5 session process over the course of a weekend.

Interviewer: That is pretty amazing. I have known divorces to take years and that just seems agonizing for everybody.

Michael: I agree. Especially for the children.

Interviewer: I agree as well. After all, it was never the children's fight to begin with.

Michael: In mediation, there is better outcomes in the agreement process, the timing process and the costs. But it is the statistics around the children, that got me involved in this business. My wife and I divorced using lawyers. I wanted a better way. If not for my children, then for someone else's. In mediation cases, because the outcomes are agreed on by both parties, the parties without children can walk away without so much

harm done. The parties with children, can get along better for custody issues and visitation.

Interviewer: So are people with children your focus clients? Who else is better served by mediation?

Michael: Well as we talked about, people who want to save money on litigation are very much my focus clientele. Also, people who want their privacy in these matters, and care that their personal affairs are kept discreet. But absolutely, the families that have children, and decide divorce is the desired outcome, it is the gentler way.

Interviewer: And so, the "gentle" divorce can be a reality. Thank you Michael.

Michael: Thank you.

Michael Wayland is brother to Catherine Wayland and has worked in the area of mediation for over 17 years. His background was in the corporate sector for the first 15 of those years with companies such as Chrysler, Pepsi-Co-Frito-Lay, GE Capital, NBC Television and Stanley Tools. Michael is now practicing mediation in the private sector with families.

To consult with Michael on any issues, please contact him at scottwayland2@yahoo.com

Reference: Emery, R.E. Laumann-Billings, L. Waldron, M., Sbarra, D.A., and Dillon P. (2001) Journal of Consulting