

Elder-care mediators help resolve feuds

By Sandra G. Boodman
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The elderly man became increasingly alarmed as the battles among his five grown children grew acrimonious.

His two daughters, worried that he wasn't taking proper care of himself, wanted him to move to a retirement community. His three sons balked, insisting that he was managing fine in his own home. At a family meeting their father made this jarring announcement: "I'm nearing the end of my life, and you are making me so unhappy that it might be easier if I killed myself and ended the fighting."

His threat shocked the warring siblings into resolving their dispute, according to lawyer Karolyn Blume of Arlington, who was present at the meeting. Blume did not represent any of the parties but served instead as a new kind of geriatric specialist: an elder-care mediator. In the past decade or so, the use of mediation, increasingly common in divorce and child-custody cases, has expanded into a new realm. Mediators, many of whom have legal training, are offering services to help splintered families resolve highly emotional disputes over the care and finances of aging parents, the allocation of an estate, even end-of-life treatment.

Unlike lawyers who are hired to advocate for one side, elder-care mediators function as impartial observers in a voluntary process designed to be less adversarial - and cheaper - than a court proceeding. Mediation is increasingly being recommended by lawyers and judges to families for whom a temporary stalemate or long-term estrangement has morphed into a full-blown crisis, often triggered by parental disability. Mediators say their job is not to dictate a solution, but to establish a framework for making decisions and to forge a consensus that is right for a particular family.

"We focus on communication skills and analyzing family dynamics, and trying to get everyone on board," said Janet E. Mitchell, an Indiana lawyer who directs the Midwest Mediation Training Center in Fort Wayne and is co-founder of a Web site called ElderCare Mediators.com. "Families are typically pretty bad off before they hire us."

Blume estimates that more than 80 percent of the 100 elder cases she mediated in Pennsylvania, where she practiced for years until recently when she moved to Arlington, were successfully resolved. "I think before mediation, there were just fights," she said. "People are starting to see that there is an alternative."

'Mom always liked you best'

While the cost varies depending on a mediator's location and experience - the hourly rate ranges from \$150 to more than \$400 per hour, according to Mitchell - it is usually less expensive than going to court. Some mediators, who typically sign confidentiality agreements, work in teams to guard against the appearance of favoritism, a complaint epitomized by the phrase many say they hear with surprising frequency, not to mention vehemence: "Mom always liked you best."

"It makes it sound petty, but it's not," said Louise Phipps Senft, founder of Baltimore Mediation. "It's very real." But the mediators' focus is not on exploring old wounds but on ensuring that the views of all participants are heard in making decisions.

While mediators say the demand for their services is growing - "Everyone tells me, 'I know someone who could really use you,'" one said - many participants are reluctant to discuss their experiences. None of the six mediators interviewed for this story - or others contacted through an e-mail group list - was able to find a family willing to talk about the process.

Many clients feel "there's a negative connotation to mediation," said Massachusetts mediator Rikk Larsen, who says families may be embarrassed that they are unable to make decisions on their own and need to hire a professional to help them.

Larsen, a founder of Elder Decisions, a firm that conducts sessions and trains mediators, says their use has mushroomed for reasons both demographic and cultural. Americans age 85 and older comprise one of the fastest-growing segments of the population, according to the Census Bureau, and their children, the baby boomers, "are comfortable with the notion of therapy and [experts who provide] services," he said.

But unlike with lawyers or social workers, from whose ranks mediators are often drawn, the practice is virtually unregulated and there is no standard set of requirements, which concerns some geriatric experts.

"Just about anyone can hang out a shingle and say they're an elder mediator," said Penny Hommel, co-director of the nonprofit Center for Social Gerontology in Ann Arbor, Mich., a 38-year-old organization dedicated to advancing the rights of older people. Hommel, a veteran elder mediator, regards the process as an alternative to the more restrictive option of legal guardianship, which sharply limits the independence of, and decision-making, by older people.

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Hommel adds that it is particularly important that an older person whose future is being discussed be present at mediation if at all possible to ensure that his or her wishes are represented. "Many mediators who don't have a lot of training see guardianship as beneficent and are not sensitive to the older person having a voice," she said.

Hommel notes that there is no requirement that elder mediators know about regulations governing Medicare and Medicaid, tax and estate laws, or powers of attorney, which are among the complicated issues that often arise during sessions.

"We've seen situations where the mediator didn't know enough to tell people to see a lawyer before making property transactions that could have made it impossible to receive Medicaid," she said.

"I think a lot of people see it as a growing field because of demographics," Hommel added.

Beware the swooper

One of the factors that can complicate elder mediation is the sheer number of participants; divorce cases, by contrast, involve two people. Sometimes financial planners, clergy and estate lawyers attend mediation sessions at a family's request. Larsen said the largest session he has held included 15 people, one of whom was participating by teleconference from Scandinavia.

It is common for siblings to bring their spouses or partners, and "sometimes that's fruit for conflict right there," said Senft, the Baltimore mediator, particularly if one sibling "has a wonderful husband and the other one married a [jerk]".

Before the formal group sessions, mediators typically contact each party for a private phone conversation designed to elicit the participant's perspective on the key issues facing the family. These calls can take anywhere from 15 minutes to three hours.

Larsen said that he and his partners operate from the philosophy that an older person should participate and that independent living should be preserved, if possible.

Sometimes siblings or other family members refuse to attend; mediation can still occur without their participation. But there are limits. "We can't do a mediation without an important party, such as the kid who has power of attorney or the one who's doing the caregiving," Larsen said.

After the individual phone conversations, a formal group session, or sometimes two or three, is scheduled. Larsen said his average fee for the process is roughly \$5,000, which is sometimes split among the participants or paid by one or both parents or out of their estate.

Group sessions occur at the family home, in a nursing home, hospital room or mediator's office. "Ninety-five percent of the time, if you get them in the room, they get invested," Larsen said. "It's very rare for people to walk out."

Larsen, the father of 10 children, prefers meeting on the family's turf because it enables him to observe the dynamics. "Sometimes they'll sit in the same place they did at the dinner table 30 years ago," he said.

A common task, he said, is to neutralize the "swooper"- an out-of-town relative who swoops in and immediately makes demands about what should be done.

"You need to let people talk and feel that they are being heard," said Blume, without allowing one party to hijack the process.

Money, she said, is frequently the underlying focus, regardless of the amount involved. "I've had cases where it's been, 'Why spend it on Mom? She doesn't know where she is anyway, let's keep it for us,' " she recalled. "Sometimes it's about the influence of one child or a group of children over another."

The five children whose father threatened suicide, she said, all decided he should remain in his home instead of moving and that each would spend one day a week with him.

Failure to communicate

Some mediation sessions can be especially wrenching, particularly if they involve a dying parent.

Blume said one of her most memorable cases involved a woman in her early 90s who had no living will and was in a persistent vegetative state. Her three children were engaged in a furious battle about whether to terminate life support.

One insisted she be kept alive no matter what, while the other two wanted to end extraordinary measures. The hospital refused to take action without a unanimous decision, and a doctor suggested mediation.

The siblings met with Blume in the hospital, near the intensive care unit. As they talked about their mother, an active woman who had ridden horses into her 80s, they decided she would hate the condition she was in, and all three agreed that life support should be withdrawn.

Larsen said that one of his most memorable cases involved a family that "bickered the whole time and never resolved anything. But at the end they all hugged me, and told me they'd never had such a good conversation."

"Normal communication in families is so abysmally bad," he quipped, "that we don't have to do much to make it better."

boodmans@washpost.com

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