

# Benefits of Mediation in Family Disputes

By Katie Liss, CBA Record Editorial Board

The CBA sponsored a panel discussion on the mediation process in family disputes. Panelists included Judge Helaine Berger (Ret.), a mediator at ADR Systems; Samantha Bell Sugarman, a partner at Griffin McCarthy & Rice LLP; and Jessica Winkler Boike, a partner at Beermann LLP. They provided perspective and insight on when and why mediation is appropriate in family disputes. Key issues discussed included how separating parties with or without children can make the most of mediation to allocate assets and liabilities, determine parenting time, allocate parental decisions (e.g., education, medical, religion, and extracurricular activities), and support of the children and/or of a spouse.

Panelists distinguished between mediation (“a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute,” pursuant to 710 ILCS 35/2(1)); arbitration (an impartial third party other than a judge resolves a dispute); and the collaborative law process (a collaborative team of attorneys and neutrals work with the parties outside the court system to reach an agreement).

They noted that there are myriad ways to mediate a family dispute. Some of these include the use of private mediators vs. public mediators (e.g., through the county); attorney assisted mediation vs. non-attorney assisted mediation; evaluative mediation (pointing out weaknesses in a case and predicting how a judge would rule) vs. facilitated mediation (helping everyone achieve their goals in reaching a settlement); or all-day mediation vs. segments of mediation.

Regardless of which mediation route the parties choose, the panelists were very clear that mediating family disputes – which



Pictured left to right: Jessica Winkler Boike, Samantha Bell Sugarman, and Judge Helaine Berger (Ret.).

often run high with emotions – offers the following benefits:

1. **Confidentiality:** The mediation process is private and confidential. Settlement agreements (a/k/a Memorandum of Understanding) will not be used in the court process unless incorporated into an agreed order and entered by the court. Settlement terms are also without prejudice. However, if a third party such as a guardian ad litem is invited to a mediation, it is important to note and disclose to the parties that whatever is discussed could be disclosed to the court. Pursuant to 750 ILCS 5/506, guardians ad litem may be called as witnesses for cross-examination and are also required to submit a report to the court regarding recommendations concerning the children.

2. **Control:** The mediation process allows the parties keep control of their lives by reaching an outcome – with each other’s input – that will work best for their family, instead of having it determined by a third party. “Studies have shown mediation helps divorcing couples who need to have a continuing relationship, such as in a co-parenting situation or a business dispute, by giving them more control,”

said Judge Berger.

3. **Emotional Release & Closure:** Break-ups do not happen in a vacuum; there are causes with emotional effects. Mediation allows each party to express possible feelings of hurt, anger, frustration, or whatever else they may feel about the other party in a controlled setting. After being heard and possibly having a chance to respectfully talk face-to-face with each other, the parties can then begin to work through the details of their case and attempt to settle with each other on a more positive note. This is especially beneficial when the parties have children together and will need to communicate going forward. The panel contrasted this with the litigation model, in which the parties’ feelings are irrelevant to their case, noting that Illinois is a no-fault state (the reason behind a divorce is immaterial to a party’s argument).

4. **Cost-Effective:** Mediation tends to be more cost effective than litigation. Reaching an agreement in mediation will avoid court dates, formal discovery, hearings, pretrial conferences, and/or trial, all of which are billable to the client. ■

Watch the on demand video of “The Mediation Process in Family Disputes” (11/12/2019) at [www.chicagobar.org/cle](http://www.chicagobar.org/cle).