After 16 hours of mediation, either the mediator was morphing into a strange predator or mass hallucinations had set in.

SETTLING

MEDIATION, ARBITRATION, "COLLABORATIVE LAW" OR SETTLEMENT CONFERENCE:

HOW I APPROACH SETTLEMENT NEGOTIATIONS AND REFUSE TO SETTLE FOR LESS THAN WHAT'S FAIR AND WHY MEDIATION IS A SCAM

Many folks go into settlement talks thinking that they have no choice but to bow to the other side's terms and proposals. Many folks desperately want to avoid trial and think that mediation is the only option. Many folks settle on working with a high-priced mediator when there are other alternatives. Here's how I deal with it all and end up settling at NO COST to me.

TABLE OF CONTENTS

INTRODUCTION

I cannot count the number of parents I meet, both mothers and fathers, who regret agreeing to final orders in a case, especially when it comes to parenting plans and orders of child support or maintenance.

Many fathers I deal with felt overwhelmed and "just wanted to get it over with", so they sometimes signed off on final orders that they didn't even read. They either trusted their own attorney, or if they did not have an attorney, they did not fully understand what the orders said, or they "seemed fine" at a glance. They soon come to realize that there are clauses in the orders that bind them to certain things that they do not want to do or cannot afford. Sometimes an omission of something important causes problems or conflicts that have them going back to court.

So, ironically, when many dads sign off on orders, and "settle for less" just to stay out of court, they end up setting yourself up for more court action later !

This of course can happen to moms getting railroaded too. And believe me, I have been there and had the chance to do the same thing. (I actually did make a mistake on an agreed temporary order, once, and I got burned—but never again). Early on, I had my chance in my case to settle on being an ever-other-weekend visitor in my daughter's life. I couldn't do that. If I was going to lose out on a full life with her I was going to do it while "going down swinging". I couldn't live with myself giving up on her so easily.

Even when the mother and I settled on me having custody, it still had to get formally filed with the court. Our corrupt Guardian ad Litem, Megan O'Brien-Stanley stood in the way of the Final Parenting Plan getting finalized, so I had to go to court and fight to get the parenting plan put into place and signed by a Family Court Commissioner. Even at the 11th hour, Megan tried to talk me into signing off on her proposal. She wanted me to take domestic violence class so I could "learn conflict resolution skills". Most fathers sign off on this to end the war. I couldn't sign off on something that I did not do. Megan tried to convince me that it was to help us co-parent. But, it was a setup. I later found out she set another father up like that. He now has full custody also, but years later.

If I would have settled on that provision, the mother could have come back to court on me and said I have a domestic violence history. I would have said, "I just signed off on it for the conflict-resolution skills." But, the court will look at it on the surface. They don't care why you signed off on it. If you cop a plea to assault they don't care that you think you are innocent and you were pushed/coerced into the plea. You admitted to it!

Many fathers agree to final child support orders that had them transfer all payments to DCS, including daycare. Then when the mother puts the children in a cheaper daycare, or takes the out altogether, guess what? DCS still continues to collect that money and some dads don't talk to mothers so they don't know. That money still gets collected. So, I never ever settle for anything less than what I am willing to agree on.

SECTION 1: THE LIST OF "I NEVER DO THIS"

1.1 I NEVER "SHOW MY CARDS"

When I am offered a settlement, I never come right out with everything that I am willing to compromise on. I never make the first offer either, unless it is the most extreme offer, 100% in my favor. For example, if I get a letter from the other side, saying, "What are you willing to settle on?" my response might be, "Full custody, mother gets every other weekend, full child support, I get to claim taxes every year (or maybe every other year), and I get full decision making on major decisions."

Why would I sound so harsh? That's the nature of negotiations. If you ever watch Pawn Stars or Hardcore Pawn or American Pickers, you see this principle in action. Everyone offers the lowest amount they will pay while a seller offers to sell it at the highest price possible. Then they dicker back and forth and negotiate and often meet in the middle.

Notice in those shows the pawn shop employees ALWAYS ASK FIRST what a seller is willing to sell something at? If I have a toy that is worth $1,000 retail and I don't know its true value and I say I will sell it for $100, the pawn broker, or employee, will respond with $50 or something, knowing that they are getting a great deal already. If I say, I want $2,000, then they might offer $400, knowing it's worth $1,000.

When YOU go first in the deal, you might low-ball yourself from the gate. Moreover, you are showing your cards too early in the game.

I meet several parents, mostly fathers, who are so tired and beat down from litigation, that they plead and beg the other parent to settle. The father might think, "This makes no sense. Why are we fighting? Why not just save money and be done with it?" But, if you are dealing with a control freak and then you expose yourself as tired and wanting to give up then they know that they have all the leverage in the negotiations and they can further control you and offer less. You just made yourself vulnerable to be played with even more. If you are begging and pleading to be done with court action then you are showing your willingness to give the other side almost everything they want.

I never make such concessions.

In my own case, I had no idea that I was wearing the mother down. She was getting tired of the court battle and pretty much couldn't go on after 7 months of "family law warfare". One day, her attorney called me out of the blue and said that she wanted to offer me full custody. I had no idea and almost fainted.

Now, if I would have "showed my cards" that I was getting beat down, frustrated and aggravated, then she might have pushed to take our daughter to California. The GAL in

our case told me during my interview and home visit with her, “The mother is thinking about moving out of state. What do you think about that?”
I told her, “If she moves, then I’m moving.” I was serious. I was not going to let her move my daughter away from me and destroy that relationship. Now I could have “shown my cards” and said, “I don’t feel like fighting this battle. Isn’t there a way this could work out? Or could I get as much visits as possible if she moved?” No. I was not letting them know anything less than me wanting to be equally involved in the child’s life period. If they were not going to meet me half way, then they needed to prove their case at trial.

Little did I know, the mother was aggravated solely because I didn’t lay down and die and roll over and agree to whatever her terms were.

I believe that if fathers will just stand their ground and push the issue until the breaking point, then they would end up with a lot better deals than when they settle and give up too much. It’s always darkest before dawn. So, even when it looks hopeless, you can always think it cannot get worse than this. If you keep pushing, they may offer you more, just because you didn’t go away and lay down and die when it looked like you should have.

I was relentless in my case all while being willing to work things out. Think about a war. Many wars have been won by smaller armies. But, when the smaller armies stood their ground and did not give into the bigger army (that was used to surrender), sometimes bigger armies retreat, or give up, or underestimate the smaller ones.

On a smaller scale, a bully who bullies a kid for his lunch money at school will continue to get that lunch money as long as the kid shows that he is afraid and that he is willing to compromise and surrender his lunch money. But, if the kid one day decides to stand up to the bully, the bully might not know what to do with himself because he is so used to living off of intimidation or control. The bully might actually be a coward deep-down inside. But, if you end up having to fight the bully, you might get a bloody nose. But, I guarantee that bully is not going to want to fight you every day for something the bully got easily from you through intimidation.

The same goes in a court “war” or “bullying”. Most fathers concede and settle on temporary orders because they are afraid of the unknown or their attorneys tell them, “This is a pretty good deal.”

I worked with a father who signed off on $2,000/month in child support and $2,000/month in maintenance or alimony as a temporary order. The mother accused him of domestic violence and being a danger. But, when he settled on this temporary order, all of a sudden it was a miracle! She was willing to drop the DV allegation! Of course, she used it to scare him. He “showed his cards” and admitted that such scare tactics can get him to settle. He was afraid to go to court. Really, it was his attorney who was afraid to go to court and not fight.

At the end of the case after he had fired his second attorney, he represented himself at a four-day trial. It turns out that the mother did not need the maintenance and none was ordered at trial. She made 60% of what he made. They both were financially comfortable. So, he never had to voluntarily give her $2,000/month on top of child support. He got suckered into signing off on it and his own attorney sold him out.

1.2 I NEVER SETTLE ON WHAT IS UNFAIR

When it comes time to settle, or even when folks go to trial, no one ever gets 100% of what they are asking for. But, that doesn't mean that I am going to settle for something that is outrageously unfair. I may compromise on something 60/40, but never 80/20.

In my own case, I initially lived three blocks from my daughter's mom. I worked at night. I could be my daughter's daycare. In my pleadings I was going for custody (due to the control, manipulation and alienation from the maternal family). But, I would have easily settled on every-other-weekend and being our daughter's daycare during the day.

But, the mother put her in a daycare at her own cost, as crazy as that sounds. And the day care was seven miles the opposite way from our homes. So, the mother would rather have a new person/stranger watch our child than the father, who lives three blocks away. And she'd rather pay that stranger $600/month on her own than have me watch her for free. I thought that was crazy. And I was never going to settle for anything less than being our daughter's daycare and flipping every other weekend.

Goldberg & Jones ("Divorce for Men" attorneys) told me they wanted $5,000 to fight for me to have every other weekend. I told them I could be the daycare and they said it would not happen. They are on my "Worst Attorneys" page on my website. I was not going to settle on that. So, I searched high and low for resources until I found someone who taught me how to fight myself.

I was going to go down swinging and shoot for what was fair and they were going to have to prove to the court that such a compromise is not fair.

But, was never going to "show my cards". I wanted it to come out of their mouths first (that they were willing to settle on me being the daycare). So, we went to court. I told the court that I should have custody, but in the meantime, the court should ***at the very least*** let me have the child while the mother was at work. The court ordered that I could have the child 4 hours per day and the daycare could have her for the other four hours, since I would be "too tired" to have her 8 (according to the biased court).

That was better than what the average dad gets when fighting for custody or 50/50 with an infant child. But I was NOT going to stop there. I could have said, "Let's settle on this" and offered to end the war to her attorney. But, I had gained too much ground from not having visitation at all.

1.3 I NEVER GET SHORT-SIGHTED, ALWAYS LOOK AT THE LONG-TERM

When the mother in my case dragged me into court in 2003, objecting to my relocation of 40 miles (while she lived 1,000 miles away), it began a 19-months ordeal that resulted in nothing gained for her, because I persevered. Her attorney bluffed that there would be a two or three-day trial. When I refused to settle with her on a Final Parenting Plan, she pushed forward as if she was going to trial. It wasn't until after 14 months in court that I finally started seeing the signs that she originally had no intention of going to trial. The entire action was brought just to scare me into settling on a new parenting plan. (She could have been civil and offered a new one any time. But, her attorney likes abusive litigation, so he wanted to go that route and make some money while harassing me.)

Now I could have settled on an outrageous parenting plan early on in the relocation case and I would have saved myself 18 months of tough litigation and stress. But, I would have been suffering for the next 16 YEARS of my daughter's life by giving the mother too much control and agreeing to mutual restraining orders that would have been a "set up" to get me in trouble with the courts. I am so glad that I did not settle.

This is the problem I often see! Dads never look down the road far enough and consider the repercussions of what they settle on. They are in a hurry to sign off on orders that make the here-and-now pain go away. But, there often is more pain that lasts a lot longer, down the road. For example, I know of several fathers who signed off on visitation "by agreement of the parties". No specifics. Well, that was so vague that it could never be enforced. If the father had an agreed visit on Tuesday and the mother changed her mind and the agreement was by phone, she can lie and say she never agreed. Or she can always say, "I don't agree" and the father never gets visitation. And he has to come back to court to do a modification or try and hold her accountable. A hasty decision to make the temporary pain go away, usually results in worse and more pain in the long run.

I never, ever take the easy way out.

If the mother says, "Sign here now--you have to get this done now", then there will be time to think about it and sign tomorrow. If she's not willing to wait one more day, and allow me to mull over it and examine the documents, then she's not serious, or she has a trick up her sleeve (or her attorney does).

Fathers often (but not always) give up and settle because they are more concerned about their own personal feelings, inconvenience and pain they are dealing with. They are not thinking about their LIFE with their children. Many say, "The children will know what happened when they grow up later on in life." NOT if the mother uses all her control and brainwashes them! That happens often. Fathers have to think that their children's welfare is more important than the father's own personal pain of fighting until the end. Fathers often are giving up on their children when then give up and settle a case and take the easy way out.

1.4 I NEVER RELENT WHEN I HAVE THE OTHER SIDE CORNERED

At one point the mother violated our temporary order, for three consecutive days. Her attorney called me. He seemed a little paranoid and said, “Are you going to do a contempt motion?” I asked him, “Should I?” I thought it was a great idea.

Now, he offered “make up visitation” for the upcoming weekend as a compromise for the missed time. I told him, “My next visit begins in 15 minutes and your client better be there with our daughter.”

He rushed off the phone to inform her that I would be there. She was there. I got my daughter. But, I still did the contempt motion. The mother got it continued because she scheduled an unnecessary surgery for our daughter (that was not preformed, thankfully).

The GAL wrote a declaration defending the mom and accusing me of aggressive litigation. But, the mother DID deny me visitation. And she kept doing it for two other later visitations.

This was a great opportunity for me to hold her accountable. I could have dropped the contempt motion because it looked bad to the GAL. I could have dropped it because the mother’s attorney said it was a misunderstanding and it was his fault and would not happen again. I could have done it so that I wouldn’t “look bad” to the court. (Most attorneys recommend against doing contempt because it looks aggressive). But, do you let a burglar walk into your home and steal stuff and NOT call the police? When they keep stealing from you after that, are you going to be “Mr. Nice Guy” and try to “not look bad” to the police and worry about your reputation? That would be crazy. But, that is the mentality of settling and compromising. That is the M.O. of these crazy attorneys who are too cowardly to stand up for fathers in particular.

The mother was found in contempt. If I would have compromised or settled on make-up visitation, I never would have got the contempt.

It would have been similar to warning your children that you are going to take their video game away because they disobeyed you, then you don’t follow through. Well, they are going to disobey you again and again later. Compromising with someone who doesn’t listen is not a compromise. It is you giving in and getting taken advantage of.

ON TOP OF THAT, when I got her found in contempt, that gave me leverage to negotiate with her. If I am the relentless one and she wants to end litigation, then she will give me what I want as long as I “call off the dogs”. But, if I “call off the dogs” before we negotiate, then she knows that I can be manipulated into throwing in the towel.

This relentlessness gave me insight to her state of mind. The fact that I did a contempt motion forced her to respond. She mentioned in her paperwork how emotionally drained and how she was tired of fighting—even though she brought the fight. But, I

gained insight that she was wearing down. Now, I am not talking about abusing the court system against someone to wear them down. I was aggressively advocating for myself and my rights and my daughter's rights. The mother complained about being worn down, but that was a result of me doing what I had a right to do in court (after she demanded that we go to court).

Again, what really happened was that she went to court thinking I would roll over and die and give up. I did not do that. So, the "bully" didn't know what to do with herself and she lost all leverage and control when I got some relief from the court.

But, I learned that relentlessly fighting and not compromising, in and of itself is half of the battle.

I see many fathers who are the victims of domestic violence. Their wife, girlfriend or ex-girlfriend hit them regularly or throw things at them. And even when neighbors call the police, they will not press charges. So, the crazy ex is empowered to continue to do what she does since she always gets away with it and the man "compromises". The vast majority of the time, these type of situations end ugly. The woman will falsely report the husband for domestic violence and next thing you know, he cannot see the children, is kicked out of the home and has a criminal charge that he has to pay for (classes, therapy, treatment, etc.). And he almost automatically is behind the 8-ball or loses his family law case, if he goes there.

When you are in a war, you can't negotiate with the enemy, unless you know the enemy is under submission or the enemy holds up the white flag and surrender. Until then, you have to fight relentlessly. The rules of war may sound a little corny in application to a family law matter but the principles are actually the same. If I did not fight my "family law war" like the war that it was, I likely would have lost. That includes NOT compromising or settling on anything less than what's fair and NOT giving up ground that I have gained (getting the mother in contempt instead of agreeing to make up visitation – making her unaccountable).

1.5 WHY I NEVER WILL USE ARBITRATION TO SETTLE A CASE

I would never go to arbitration to settle disputes. During mediation I can walk out anytime without any obligation to anyone. In arbitration, it is similar to a "mini-trial". It is conducted like a trial but not as formal and not as grand of a stage.

But, the problem for me with arbitration is that it is a final decision just like trial. I would never sign up to roll the dice at a mini-trial for a final decision. I'd rather have a full-blown trial and put all my witnesses on the stand, have my "day in court" and question my daughter's mom on the stand under oath for a full day at least and make her give an account for all of her lies. Arbitration may be appealed but it is too hard to win such an appeal and risk it all. Plus, the retired judges who do arbitrations are a little off their rocker and too much out of touch with reality for my taste.

SECTION 2: DOING MEDIATION OR NEGOTIATING

2.1 PREPARING FOR MEDIATION

I once had mediation at the Seattle facility, JAMS, because I was suing an employer for wrongful termination. I got them to pay for it. They "showed their cards" that they wanted to mediate first (which told me that they wanted to be done with the case without court action). This gave me the leverage in mediation. I knew they didn't want a battle. I knew they wanted to make this thing go away at mediation. So, I knew I had absolutely nothing to lose if I walked out of mediation. They would always come back wanting to settle closer to my demands because they really, really wanted to settle. I didn't care if we settled or not per se unless I could get a good deal. They started off offering me about $1,800 for my troubles and I was demanding $80,000. I ended up with $8,000 and since that was a good payday, it was worth it for me to settle on that amount.

The best way I have prepared for mediation or any settlement talks was, first, to walk into the negotiation with the mentality of Section 1. I'm not going to show my cards, settle for less, or give in when I feel I have them cornered or on the run. That gives me a leverage advantage walking in.

Worst case scenario, I will go to trial and make them "earn it". This alone is an advantage to me.

Many mediators demand that I bring all my "evidence" to mediation and prepared orders and more. I won't bring anything that I don't feel like bringing because I know what I need to know in my head. I know my case. I don't need to prove to myself, or others at a mediation, what the facts are. I may bring some materials, but nothing more than I personally need. I'm not going to do the opposing party or any mediators any favors. Is anyone going to do me any favors? No. It's a dog-eat-dog world in family court.

On top of that, usually all the paperwork is not finalized at mediation. It's all written in a CR2A, or some kind of chicken scratch agreement that later gets turned into actual orders signed by a judge.

If I know there is a chance to settle on certain issues, I will have final orders written up so they are signed off on immediately and entered into court immediately, so that there is no chance to renege on the agreement or delay while conflict continues.

So, going into mediation is not a stressful ordeal as some make it out to be. I would love to settle on fair terms but if I don't, then I do not lose anything. But, mediators and lawyers try and push me into settling as if it's the end of the world if I don't. If this happens, the opposing attorney is "showing his cards". He's proving to me that he wanted this case over now, at this mediation and does not want to touch this case any further. Again, that gives me leverage. So, I never stress over negotiations. I use them as a way to feel out the other party and see how far they are willing to go.

2.2 DEALING WITH THE MEDIATOR HIMSELF

First and foremost a mediator is just that: a mediator. He/she is not my legal advisor. Even if mediators are attorneys, they still cannot give me legal advice. That is not their role. I will stop an attorney mediator in their tracks and tell them that it is not their role to give me advice.

If a mediator is not an attorney and tries to tell me, "You'll never get full custody at trail" or "you'll lose on that" or "you'll never get this", then they are giving me legal advice. I will shove RCW 2.48.170 or .180 in their face in a second and tell them that they are committing a gross misdemeanor by giving me legal advice. (You can Google "RCW" for yourself and look this law up). That usually shuts up a mediator when they try and cross the line.

Whether or not the mediator is an attorney, if they tell me what I am going to get at trial, I like to first ask them, "How do you know that? What is the basis for you making such a definite statement? Can you guarantee with 100% accuracy that that is how trial is going to turn out?"

And guess what? No one in their right mind can ever guarantee anything 100%, so they have to answer "no". So, why would they be telling me what's going to happen if they can't guarantee it? If the odds are against me getting, say full custody, then I'll still take my chances and go for the low odds. I've already got a mother who refuses to meet me half way here now. So, what have I got to lose at trial?

Mediators don't like you taking control of the mediation like that because usually they are egotistical, arrogant, haughty control freaks and they want their opinion followed. They don't lose much if that doesn't happen. They still make their money, but they are used to folks following their advice and folks never daring to question them. If the mediator is a retired judge, then likely they had a god-complex during their career as a judge. So, I am "bucking the system" when I start dictating how mediation will go and when I refuse to settle on the mediators recommendation.

At my mediation with JAMS, a retired judge conducted my mediation and started telling me, "You don't want to go there and do that. I think they are making a fair offer." But, I was the one in charge of the mediation. The employer wanted to settle with me. The mediator was trying to assist the employer's attorneys because I did not have one and she assumed that I was an idiot. I control the mediation. The mediator does not.

If you think about it, "legal advice" can be just about anything. If you tell your best friend "If you go over 55 mph, you could get a ticket," then you are giving that friend legal advice. You're advising him/her on the ramifications of their actions in light of the law. So, really, it's such a fine line that most often, clerks, judges, mediators and many others are giving you legal advice when they are not supposed to. And I always call them on the carpet as much as possible to the point where they almost have nothing to say.

2.3 MY PRO SE ADVANTAGE AT MEDIATION AND PUSHING THE MATTER TO TRIAL

When I represent myself in a case and at mediation, I am automatically at a huge advantage, when I know what I am doing.

The vast majority of family law cases settle out of court. For any case whether civil, domestic or criminal, the rate of settlement is about 95%. Criminal defendants "cop a plea". Insurance companies or big corporations would rather make a case go away and pay "hush money" and settle, than to risk the bad publicity. And most family law attorneys never want to go to trial in the first place.

Trial is draining. It takes hard work. I have been a part of many of them. Attorneys have to memorize your entire life and deal with hundreds of exhibits and write a trial brief and prep for witnesses.

This is an advantage ***to me*** because all of the work that an attorney does, I do not have to do. I do not have to memorize my own case. I do not have to do as much prep for witnesses. I know what I want to get out of them and I know what many of their answers will be. I might just write down the questions that I want to ask them. Of course, I have to assemble trial notebooks and my exhibits, which is a monotonous task at times. But, the burden and costs to the opposing attorney and party are overwhelming.

Most attorneys want $5,000 - $10,000 as a down payment to prep for trial. I might spend about $300 preparing all my trial materials when I am pro se.

The fact that 95% of cases settle means that the opposing attorney likely does not want to go to trial. That is to my advantage. They might bluff and talk a good game right up until the end. But, the best bet is that they want to settle. So, I will always show that I want to go to trial and prep to do so. I might always let them know that I am willing to save them the trouble of trial and settle out of court. But, I never show that that is my first choice. I want the other side to fear going to trial (whether it is the cost, stress, or possibility of losing something they've got).

That's why I do not understand when a father has a temporary order with very little visitation, he is the one who throws in the towel before trial and settles on what he's ***already got***. If he goes to trial, he has ***nothing to lose***, especially if he represents himself. It usually cannot get worse.

I will put the other party in the corner by preparing to get ready for trial. Once I do the EASY TASK of coming up with a Witness List and send that to the opposing attorney, they know that I am serious. They are even more convinced when I send them a Witness List. So, I might do that early, so they are shaken and worried that the matter will go to trial. This compels them even more to want to settle on my terms and get this thing over and done with.

2.4 CR2A DANGERS AND PROCRASTINATION

I know of a case in which a father went to mediation, then the parties signed off on a partially completed "CR2A agreement". Such an agreement is based upon Civil Rule 2A, which allows the parties agreement at mediation to be binding, until an official order is written up, reflecting the agreement and signed by a judge and filed in court. But, the problem is that the mediation was not complete. The CR2A stated that the parties would come back later to finish mediation but the father could have visitation. But, the father missed months of time with his child because the CR2A was so vague. And they never got the CR2A codified into a temporary or final parenting plan and filed in court.

So, when the father tried to enforce his visitation in court, the court said that the CR2A was too vague to enforce it. Then the mother got a restraining order against the father and the mediation facility refuses to set up visitation, unless he hires an attorney to represent him. But, he cannot afford an attorney.

His previous attorney (who sold him out) should have worked quickly and diligently to get the CR2A turned into an enforceable parenting plan.

As stated earlier, I want to have court orders ready to sign, if I know an agreement is possible at mediation. I can type them up the way I want them and they can be edited later or parts of the order can be scratched out by hand. Or I can have them in Word on my laptop and even bring a small printer to print out the order on the spot after making corrections. Or a staff member at the mediator's office may let me email my edited version of the orders so they can be printed out on the spot. Then I would move quickly to get the parties to go to the courthouse and get the agreement in court.

I hear too many horror stories of how delays made a settlement disappear. Or failure to even write down verbal agreements clearly, thoroughly and in detail resulted in major problems soon thereafter.

Nothing seems to ever be enforceable except detailed, clear, concise and thorough court orders. That's why I talk about the importance of the details in my own Final Parenting Plan and how I see vague parenting plans hurting the non-custodial parent (mother or father) and their rights.

2.5 I MAKE MEDIATION WORTH MY WHILE

As you can see in the cartoon on the cover of this manual, it's well known that mediation can be boring and exhausting. But, again, I look at the long-term suffering that I may endure, if I get it wrong in the here-and-now. So, I don't look at mediation any worse than a boring day at school or work, which I have endured before.

I can always walkout on the mediation. I have that luxury because I am not settling for anything less. The mother is the one who dragged me into court every time we went

there (except to modify child support). She was looking to gain something when she went to court.

The first time we went to court, I had no visitation. Things could only get better. They couldn't get any worse. So, I fought and fought and if her offers were not good enough, I had nothing to lose or nowhere to go but up. So, the ball was in my court when it came to mediation. I had all the leverage. Again, the mother was looking to gain (a parenting plan that limited me) and I had nothing to lose (because I started off at ground zero).

If I know that mediation is not going to work or that the other side is not budging at all, I will "play out" mediation as long as I can and use it as a "weapon" for leverage, especially if we are court ordered or required to go to mediation. If I know we are not going to settle, I could walk out of mediation after only 10 minutes of talking and I would be satisfying my court-ordered attempt at mediation. A judge in my case may tell me that the parties should settle. But, the judge has no right to do so (even though they do it all the time). That is not a judge's role and my TRIAL judge is NOT a mediator or my legal advisor.

On the other hand, I could drag out mediation and make it seem like we are close to a deal for 4, 5, maybe even 8 hours. If the attorneys are present then an 8 hour day costs $1,600. The opposing attorney in my case does thing solely to rack up billing costs for himself or for me when I had an attorney. Why can't I do the same thing?

If the mother is on her "last leg" of litigation, by the time we are done with an all-day mediation, she really is not going to want to go to trial. Leverage to me! Now I really am more likely on influencing the other side to want to settle with me closer to my terms.

Again, mediation can also be used to squeeze out of the other side what they may want to sacrifice. I can make them show their cards before I show mine, and so I can become more informed about my case and where the parties stand with each other.

2.6 KNOWING THE RULES OF EVIDENCE (ER)

Knowing about the Rules of Evidence (ER) also helps me when it comes to mediation. I have an entire manual how I deal with what is admissible and inadmissible in court, "Evidence and Objections". Even though I'm not officially ***in court*** during a mediation session, it helps to know what's admissible, especially when the opposing party is trying to "talk trash" and coerce me into settling on their terms.

ER 408 states that settlement talks are not admissible in court. If I offer my daughter's mother to have 60/40 custody, she can't use that against me later in court, if mediation fails. I may go right back to fighting for full custody in court. But, she cannot say, "Hey he said at mediation that I can have 60/40 custody." ER 408 prohibits that. If folks could use "offers to compromise" or negotiation talks against each other, then no one would ever negotiate. And the courts want people to negotiate and settle outside of

court. The courts are already busy enough trying to have trials for the 5% of cases that go to trial. If no one ever settled, the courts would be backlogged for decades.

The other rules of evidence are good to know at any time throughout a court case because I know what can and cannot be used against me. By this, I also can know when someone is bluffing or not.

2.7 WHY I WOULD NEVER PUT "MEDIATION" IN THE "DISPUTE RESOLUTION" SECTION OF MY PARENTING PLAN

In Washington, parenting plans have a section called "Dispute Resolution". In this section, the options to pick for how to resolve a dispute include: mediation, arbitration, counseling or court action only. My parenting plan is "court action only". I would never pick anything else. Why? Well, partially for the reasons in Section 3 below. Mediation is a money-making scam.

But, also, why would I limit myself to resolve a dispute ONLY ONE way? Especially if that one way costs money. See, family court is set up to continually have parents in conflict, to have them keep coming back for services, or to have them keep using lawyers/judges who are often the mediators and arbitrators.

If I have "court action" as the way to resolve disputes, then the parties can still have the opportunity to mediate if we want. If "arbitration" is picked, then we can only go to arbitration and that is a final decision. If "mediation" is picked then the dispute resolution can be dragged out for months and then it's too late.

With "court action" I can go to court as soon as I want to.

I have seen cases in which the parties disagreed on a child's school. Well, one parent requested mediation. And when you request mediation, you submit the request to the mediator and often have to wait until the mediator gets a hold of the other party and the other party submits an available time. Then the mediator gets back to you about the available time. If it's not available for you then you go back and forth on times. Or the other party keeps dragging it out until the child is in school and it's practically too late.

See how inefficient this process is?

I have more say-so, control and more access to an immediate solution, if it is just court action. If the other party demands mediation for dispute resolution in the parenting plan, then that means she won't want to go back to court again. Therefore, "court action" is a better option for me. When a conflict comes up, she won't want to go to court. So, she may likely do anything to resolve the matter on my terms or meet halfway.

Everything in family court is a leverage game, as I see it (until you go to trial and then the decision is up to the judge). But, even after my case is over and when/if I have to

go back to court, I want the leverage, especially if the other side has a history of being unreasonable and stubborn. Mediation in the dispute resolution process gives either side a chance to manipulate the other, or to create their own leverage, especially the side who is selfish and who doesn't really care about the children. (They have nothing to lose). Usually the parents who care more about the children are the ones who want the process to go a specific way (efficiently and smoothly). A parent who doesn't care about a child has leverage like a terrorist who doesn't care about women and children. They can bomb the good guy then go hide behind the women and children, knowing the good guy won't shoot or bomb back.

SECTION 3: WHY MEDIATION IS ACTUALLY A SCAM

3.1 IN GENERAL

In short, mediation is a scam because my attorney, your attorney and the mediator all sit down and shoot the breeze about what I may or may not get in court.

In my own case, everyone would have told me that I couldn't get 5-days-per-week visitation and that I'd never get custody. Now, I could have paid a mediator $500 and an attorney $500 to sit around and just talk about that. And then I could have listened to them and quit my case and I would be miserable and my daughter would be in California and I would be kicking myself, have ulcers and a nervous breakdown regretting my decision and even more, regretting paying a couple of idiots to tell me I didn't have a chance.

Look at me now.

The main point though is that these "professionals" make THOUSANDS of dollars by just sitting around and talking. And most of them are wrong when they talk. But, mediation is hyped up as "alternative dispute resolution (ADR)" or as "collaborative family law".

Look, settlement has been around since the dawn of time. It is not some brand new, "eureka", genius formula that someone just came up with that makes everything easier and better. It is a hyped up marketing strategy to get attorneys easy money.

Do some research and look up mediators in your area and see how many regular attorneys practice as mediators. They all refer each other. It's a "good ol' boy" network in which they look out for one another. And the organizations that do mediation regularly (like Volunteers of America or Pierce County Center for Dispute Resolution), they constantly get written into court orders. It's a buddy-buddy system.

Think about this…If you were an attorney and you could make an easy $1,000 just sitting around and talking about what might happen in a case and then that case settling

without trial and you could keep doing that over and over again, what would you do? Would you advise your client to go to trial for which you have to exert sweat, blood and tears and late night hours preparing for? Or would you advise client after to client to go to mediation and just talk for $250/hour. That's a GREAT gig. Just shooting your mouth off for $250/hour!!??

It's a scam to get attorneys easy money.

And some mediators like Bartlett, Pollock & Besk in Seattle make as much or more than the attorneys do. They charge a minimum half-day fee. So, if you resolve your case in 20 minutes, you still have to pay $400.

It's a hustle. And everyone involved is an extortionist, hustler, crook.

3.2 THE FUNDAMENTAL REASON WHY MEDIATION IS A SCAM AT ITS CORE

If you set aside the money issue, here's the main, #1 reason why mediation is a scam. At its core, mediation is MOOT. There is no actual need for it. Why? Because if you can settle with your ex-husband or ex-wife, while sitting down with a ***total stranger*** in the middle of you two, then you could have settled that issue ***without*** that total stranger involved. Either you two were going to settle or you were not going to settle. The total stranger middle-man is totally irrelevant.

If your "ex" has his or her mind made up to ***not*** settle with you, then a middle-man is ***not*** going to change your ex's mind. His/her mind is already made up!

Now, if the mediator is doing his/her job correctly, he/she will just sit in the middle and offer no legal advice and just facilitate the debate, arguing and bartering and passing messages in between the parties. Why do you even need that middle-man at all then?

It is a scam.

Why pay someone to do something that you can accomplish ***without*** that someone, especially if you already have attorneys present? The attorneys can just talk between each other or they can go back and forth with your present. Or better yet, they can let the parties talk and figure it out on their own and have the attorneys draft the paperwork.

It is a scam. No matter how you cut it, mediation is a moot and pointless waste of time and money. Or at the very least, the need for a mediator is a moot and pointless.