



How Mediation Can Take The Venom Out Of Divorce

Adam Katz-Stone MAY 19, 2000
Cover Story

Mark and Sarah were 50 and 44 years old, respectively, when they split up three years ago. He was a public relations professional at the time, she a nurse. Both had a common goal going into the divorce: to not trash the lives of their kids, then 8 and 11 years old.

Instead of trusting the proceedings to attorneys and judges, they turned to John Spiegel, a graduate of Yale Law School who in 1996 decided to forgo the formal

practice of law and become a divorce mediator.

He has a private practice in Montgomery County, and also does mediation work at Baltimore's Jewish Family Services.

"I can't emphasize enough how phenomenal John was, how sensitive he was. He was just extraordinary," said Mark, who with the mediator's help was able to work out a parenting arrangement and come to a financial understanding with Sarah.

The mediation work cost the couple about \$3,000 — a far cry from what a typical divorce-with-lawyers will run. A middle-class couple often will spend \$40,000 to \$60,000 in the course of a divorce, Mr. Spiegel said, and he described a couple he worked with last fall who had dropped more than that just to get through the pre-trial discovery phase of their breakup.

"They had spent all that money, and they had absolutely nothing to show for it," he said.

It's not just the money. In Mr. Spiegel's view, divorce lawyers have a vested interest in stirring up the rancor between parting spouses — a circumstance that hurts the kids most of all.

"The one thing you can predict about family court battles is that at the end of the trial the children are likely to be losers regardless of which parent 'wins.' They end up with parents who have become more estranged than they were at the outset by the experience of the court process, which focuses on fault-finding and which allows for mutual humiliation," he said.

Even if a couple seeks therapy on the side, he said, it is likely they will be scarred by a court divorce.

"Anyone who has been through this experience knows that the good work you do with a therapist can be completely undone by the impact of adversarial litigation. Everything a couple learns can just go right out the window as soon as each of them is deposed by the other's lawyer," he said.

A lawyer by training, Mr. Spiegel spent most of his legal career handling child abuse and neglect cases. In the late 1980s he handled family law as a staff attorney for the District of Columbia, and what he saw there helped convince him that there had to be a better way.

"I actually was seeing on a daily basis the dynamics of parents fighting about their children in front of a judge," he said. "Over time I became less inspired by the work."

As a teacher in the Washington Jewish community and a member of the Fabrangon chavurah there, he worries about the toll these proceedings ultimately will take on the community.

"The ripples from one nasty divorce go out like a stone in water. It's not just the children or the parents who are affected. Jewish institutions like the synagogues can also be greatly disrupted. I gave a talk about three years ago to the Washington Board of Rabbis. After the meeting, a rabbi came up to me and described a synagogue she knew of that simply could not function because there was a bitter divorce between two key leaders. They were both board members, and the whole board had ended up being polarized around that situation," he said.

It is partly in order to avoid such situations that Baltimore's JFS has welcomed Mr. Spiegel into its tent. Since the spring of 1997, Mr. Spiegel has worked with a dozen couples through JFS, charging \$150 per one-hour session for a process that usually takes eight to 12 sessions.

"One of the most damaging parts of the divorce experience is the litigious, adversarial proceedings. Mediation as an alternative has now become a very well-recognized option," said JFS Executive Director Steve Solomon. "If both parties are prepared to do it, we can save them a lot of trauma, we can save them a lot of aggravation and we can probably save them an awful lot of money in lawyer's fees."

Online Resources

www.courts.state.md.us/adr.html the Maryland Alternative Dispute Resolution Commission

www.familymediator.com Web site of Davis S. Goldberg, a family mediator in Gaithersburg

www.cybersettle.com a for-profit online mediation service

www.mediate-net.org the University of Maryland's On-Line Mediation Service

He lauded Mr. Spiegel as "an incredible individual with a tremendous sensitivity to Jewish values, as well as a very, very competent legal mind."

The outgoing director of JFS's divorce and separation program said the mediation service is an important addition to the agency's existing offerings.

"I quite honestly had to be convinced," said Joan Kristall. "I thought you could not possibly put two warring adults together in the same room and have them agree on anything. But as soon as I met John Spiegel and heard what he had to say, I was convinced that this was the only route to go, and that it was incumbent upon us to get out the message that there was another way to go besides going to war."

Today Kristall is a devotee of the mediation process in family breakups.

"If someone goes to litigation, he hires an attorney, she hires an attorney and when it is all said and done they may be \$100,000 poorer. That is obscene. It is a long, dragged-out process where attorneys take two extremely vulnerable people and escalate their vulnerability. They only add fuel to the fire," she said.

Divorce is not the only arena in which mediation has proven a useful tool for calming rancor. The use of mediation and other forms of alternative dispute resolution, or ADR, has been rising steadily in Maryland for the past several years. As the courts reel under a backlog of cases, businesses and individuals are looking to mediation to resolve cases more quickly and at less expense.

Businesses put their hopes on mediation largely because "the costs of litigation are very high, the delays in getting to court are getting longer and the results are not always what they want," explained Roger Wolf, director of the clinical law program at the University of Maryland School of Law.

The school offers a program in which future lawyers are trained in mediation skills. Mr. Wolf said that about 50 of the school's 700 students participate in ADR training, a sign of just how far the local legal profession has come in embracing ADR. He noted that businesses are especially fond of mediation in disputes involving two closely tied parties — say, a manufacturer and a supplier of raw materials. Both sides want justice, but they also want to stay friends. Should mediation fail, he noted, the parties always have the option of fighting it out in court.

Mediation got a big boost in 1998, when Robert M. Bell, the chief judge of the Maryland Court of Appeals, created the Maryland ADR Commission. A longtime advocate of alternative resolution, Judge Bell launched the commission in the hopes of promoting mediation throughout the state's legal apparatus.

In December 1999 the commission put out an aggressive action plan. In the coming years the commission plans to launch a major media campaign, establish a professional code for mediators, revise circuit court rules and create an ADR network within

the business community.

Mediation appears to already have a firm hold among Maryland businesses. Among a select group of Maryland businesses surveyed by the Maryland ADR Commission, 64.4 percent said alternative dispute resolution is a "less expensive" way to settle employee relations issues. Nearly half said ADR was "less time-consuming" and a third said it "improves employee morale."

Of those businesses responding to the survey, almost half said they have used some form of mediation to resolve external disputes.

The long-term prospects for mediation in the business community remain unclear, however. A study by the RAND Institute for Civil Justice found that in six ADR programs studied, mediation was "not a panacea for perceived problems of cost and delay..." Cases took just as long to resolve with ADR, and cost just as much, the study found.

In domestic cases, by comparison, the benefits of mediation are commonly acknowledged, especially by couples who have put the system to the test.

Mark and Sarah say the decision to mediate made all the difference in their parting. "I come from a family of lawyers so I could easily have gone that route, but divorce is a process that is hard enough without that," said Sarah. "Having a lawyer means putting a middleman between us, which means you don't get a real feel for what the person wants, which makes it harder to reach a compromise. By comparison, we had to sit in a room together and hammer this out ourselves, face to face, without any threats."

Mark said he, too, is satisfied with the outcome of what was, by and large, a cordial and rational process.

"We came out with an optimism that we could make it work based on the framework that John had given us and the ground rules that we agreed to," he said. "There was a lot of give and take, as well as the understanding that if a year went by and things weren't working, we could open up the process again — which we have not needed to do."