CHAPTER 9

Reaching Agreement

If an agreement is reached, mediators can try to create an atmosphere in which the parties savor their successes together. This can include congratulatory and complimentary statements by the mediator, stressing the hard work and sacrifices made by all involved and the ways in which agreements the parties have reached are preferable to their court or other alternatives.

—Douglas N. Frenkel and James H. Stark, *The Practice of Mediation: A Video-Integrated Text*, 2nd Edition (2012).

The goal of mediation is to help parties discuss their concerns with the concrete purpose of reaching agreements that can be carried out by the parties voluntarily or enforced by a court if necessary. In this chapter, we will explore the approaches, skills, and tools to help you help your clients achieve this goal.

Typical Divorce Agenda

After dealing with immediate emergency issues, most mediators work with the parties to establish an agenda, and you can help your client make sure that important concerns and needs are raised. In a comprehensive (parenting, support, and property) mediation, a customary agenda may include the following:

- Personal conduct and separation issues such as agreements regarding sexual contact (between the parties or third persons), physical separation of the households (who will move and when), couples living together in the same home, physical safety, diminishing emotional enmeshment such as repeated and lengthy telephone calls, derogatory

remarks, handling of relationships with extended family and friends, and other issues and concerns raised by the parties
- How the parties will handle negotiation of issues outside sessions and regarding which issues and in what format such out-of-session discussion will take place
- Immediate issues concerning time-share of the children
- Immediate issues concerning support, payment of current debts, and management of assets
- Decision making over issues involving the children and labeling
- legal custody (e.g., sole, primary, joint, or no label at all)
- Time-sharing of the children, including a school schedule, holidays, vacations, and special days
- Identification, valuation, and allocation of assets and debts
- Permanent child and spousal support
- Miscellaneous issues such as filing taxes; handling insurance; and filing court documents and ancillary documents such as deeds, partnership resignations, QDROs for retirement, and vehicle registrations

A client handout for a divorce agenda is included in the Resources section.

Your client should be prepared to start working issue by issue and building the overall agreement step-by-step. Success is incremental. If you are in the mediation room, try to recognize even the smallest indications of agreement and overlook many of the setbacks. Your belief in and support for your client that there will eventually be full agreement plays an important role in building an agreement.

Agreement Readiness

Most parties and lawyers believe that the key to getting a deal in mediation is "bargaining": trading positional positions back and forth until the parties compromise.

Although we provide tools for effective bargaining around the mediation table, we also stress agreement readiness as a necessary condition to negotiate. Are the parties ready to settle, or are they still infatuated with their own positions?

Here is the key to assessing agreement readiness. If either or both parties are constantly saying "yes . . . but . . ." to you, to the mediator, and to each other, each party needs more work to achieve readiness. For example:

> Husband: I am willing to agree to return the children at 7 p.m., but she never has them ready on time for pickup.
> Wife: I would get them ready on time, but he is usually so late in arriving that I no longer worry about the agreed-upon time for pickup because he never is there on time."

The key to overcoming the "yes . . . buts . . ." is to ask your client to be responsible and accountable for his or her behavior and request reciprocity from the other party.

Identify and Acknowledge Initial Positions of the Parties

An essential tool that you can use to help your clients and their spouses get past their positions is to acknowledge the *positions* as stated by your client and the other party. This identification and acknowledgment of the position demonstrates that you understand and empathize with what a party says that he or she wants. This builds trust and rapport that are essential in your effectiveness.

> Husband: "I want the house sold now so that I can get my share of the equity."
> You: "It is my understanding that for you to have use of your share of the house, you would like it sold as soon as possible."

Ask the parties to acknowledge that they need a new approach to solving their problem.

Until parties understand and indicate an awareness that they are open to exploring a new option, they can "yes . . . but" and they might remain stuck.

> Husband: "I want the house sold now."
> Wife: "I want us to own it together for the next 12 years until all of the children graduate high school."
> You: "It sounds as though you both agree that neither of you is willing to accept the other party's position. Am I right?"
> Wife: "Yes."
> Husband: "Yes."
> You: "Do I also understand that you both want to work out the issue of the house in mediation rather than have a judge do it?"
> Wife: "Yes."
> Husband: "Yes."
> You: "Because you agree that you want an agreement and neither of you is willing to accept the other's position, the only way I know is for both of you to agree to a new third way—not yours, Wife, or yours, Husband. Are you each willing to try to find that third way?"
> Wife: "Yes."
> Husband: "Yes."
> You (to the mediator or other lawyer): "Do either of you have a sense as to how to get us back on track?

When you are attending a session, ask the parties, the other lawyer, and the mediator for permission to suggest an alternative or make a suggestion.
If you want to avoid or reduce resistance to any ideas or advice that you would like to offer to help, try this preliminary step of asking for permission before giving advice:

> You: "You seem very set on your views about the house. I have an idea that I'd like to explore. Would you like to hear it?"
> Wife: "Yes."
> Husband: "Yes."
> You: "All right. I can't promise that this will solve the problem or that either of you will like it. But regardless of the outcome, are you willing to hear the entire idea and at least consider it?"
> Wife: "Yes."
> Husband: "Yes."
> You: "What would you think of the possibility of Wife finding a way to buy out Husband's share of the equity at today's value (we would need an appraisal), have Husband's share bear interest at an agreed-upon amount, have principal and interest accrue with no monthly payments, and permit Wife an agreed-upon amount of time to pay off this amount or sell the house? There are several details to work out, but what does each of you think of this overall concept?"

Try using this tool with your client, with the other party, with the mediator, or with another collaborative professional.

Encourage Ground Rules

Structure is a safety net for parties who are drowning in conflict. Mediators are trained to have the parties agree to clear boundaries in their behavior toward each other and reflect those boundaries in agreements. For example, mediation ground rules may include no cell phones or name calling and you can encourage your client to not only abide by ground rules, but also ask for the mediator to establish additional ground rules if needed.

A key issue in virtually every divorce mediation is to identify the ground rules for parties to use in communicating with each other in session and outside. While it is common for many mediators to convey Party A's offer to Party B, whenever possible, you should be supportive of having the parties present their own offers directly to each other. By stating each term and provision of their own proposals, the parties "own" every position they take during negotiations. When the parties say the words themselves, the proposals better reflect their needs. Equally important, as one party listens to an offer being presented by the other party, a working trust may begin to build.

Although many lawyers feel more comfortable when they mediate in private caucuses, if the mediator communicates the offer, the party is at least one step removed. In addition, direct party communication also prevents possible distortions or errors (by the mediator) in relaying the positions of the parties.

Some mediation participants are reluctant to present their own offers. Many feel inadequate or unprepared to articulate their own negotiating positions. Others may be excellent negotiators at work or at a car dealership, but fall apart when negotiating with their ex-spouses.

To maximize the parties' success in presenting their offers to each other, you should coach your clients to help them determine what they want and how to ask for it. Framing an offer is a difficult challenge—so is finding the right way to communicate the offer so that it will be heard and considered by the other party. You should be willing to spend time with your client prior to a proposal being communicated.

In addition, you should coach your client who is receiving an offer. You can "preview" an offer by helping your client to listen closely to the offer and not to interrupt or lose control. Provide an opportunity to meet after your client hears the details of an offer to discuss the pros and cons and to prepare a response.

We have found that with this type of help, parties appreciate having their own voice in the mediation and having the opportunity to assess the behavior and position of the other party.

Red Flag Rule

This is a ground rule that you can suggest to prevent things from getting out of hand. You could offer it like this:

> You: "So I understand that you are planning to divide up the family photos next Saturday between 2 and 3 p.m. while the children are with their friends and that you have asked for some guidelines. Can we focus on one rule?"
> Parties: "Yes."
> You: "If either of you feels uncomfortable during the selection process, either party may raise your hand and say, "The red flag is up." This means that discussion is over for the day. Neither of you may call the other that day to try and reengage. No reason needs to be given, so you can't argue over the reason. You can also raise the red flag verbally if either of you is uncomfortable during a phone conversation. If there is a problem, you can discuss it with either of us (lawyers) or with the mediator. Are you both comfortable with this ground rule?"
> Parties: "Yes."
> You: "Do you have any questions or concerns about it?"

Interest-Based Negotiations

A key approach for negotiation is a focus on the interests of the parties. Interest-based negotiation derives from Fisher, Ury, and Patton's seminal book *Getting to Yes: Negotiating Agreements Without Giving In*. Interest-based thinking is quite different from the type of negotiation traditionally used by litigators, which reflects the adversary system and is focused on the vindication of legal rights. Inherent within this "old paradigm" is a view held by both lawyers and their clients that lawyers are in charge and that if the other side won't compromise sufficiently, courts will produce justice. Power, leverage, and fear are used to create self-doubt in the parties to push for compromise. The conflict is considered a zero-sum game in which every dollar paid to the other side is seen as coming out of our client's pocket.

Because the focus of this adversarial approach is to maximize the financial gain on each issue, there is little or no consideration of or value ascribed to the ongoing future relationship between the parties in determining a successful outcome of the negotiation. The assumption is that both parties will be equally unhappy about the result and that somehow they will go on with their lives, heal or not heal, but the impact of the negotiation is rarely linked with the long-term viability of family relationships.

Under the new paradigm of interest-based negotiation, the focus is to dig below the stated positions of the parties to identify and meet underlying interests and concerns as opposed to legal positions. The goal is client-centered, not lawyer-centered, decision making. Although financial considerations are important, factors such as impact on the emotional functioning of the parties and children, speed of resolution, control over result, and costs of the negotiation are factored in. The input and advice of nonlawyer experts such as therapists and financial professionals are considered just as important as or more important than lawyer expertise. As in the old paradigm, negotiators try to create dissonance in the parties to reflect upon their positions. The difference is that instead of using threats and fear of litigation as the sole means of creating dissonance, interest-based negotiators create dissonance by exploring each party's BATNA (Best Alternative to Negotiated Agreement). Win-win scenarios are not only possible, but also quite common. Candor and transparency in communication are viewed as essential to building the trust necessary to reach effective agreements, and the process defines the long-term relationship between the parties as valuable and worth preserving to the greatest possible extent.

De-Position with Positive Self-Interest

Interest-based negotiation may seem like a great thing, but do you have just a bit of doubt as to whether you can pull it off or whether the other side will play with you?

Here is a strategy that we bet will work (most of the time).

Be smart, not nice. To negotiate, start with the self-motivation of your client or the other side. And rather than challenging, accept what they say. People generally trust others who value, acknowledge, and don't challenge them at the start.

Let's see how this works. Your client is the wife who wants to stay in the house. Husband wants it sold. You know that if it goes to court, no one can predict the outcome.

How do you help your client be open to another possibility other than staying in the house? Here it goes.

1. Restate her position: "I understand that you want to stay in the house."
2. Give her what she wants: "For our discussion today, let's pretend that Husband agrees that you can stay in the house."
3. Transition to the positive self-interest of your client getting what she wants: "So if you aren't fighting about whether you get to stay in the house, how do you benefit from such an outcome?"
4. As your client gives her underlying concerns and needs, go through each one and keep asking for more—never challenge them regardless of how unrealistic or unworkable: I will benefit:
   "Stay in the housing market because I could not otherwise qualify"
   "Make money as the house appreciates"
   "Have stability by staying in the neighborhood"
   "Make my husband keep his word"
5. For each of the underlying concerns and needs, reframe them mutually so that they lead to other options and will be accepted by the other side as well.
   "Find a way to continue owning your own home"
   "Increase your current assets with sound investments"
   "Make sure you and your children maximize your stability and minimize chaos through the separation process"
   "Build trust with your husband by being accountable to promises and commitments"
6. After restating all of these reframed concerns and needs, ask your client for the following commitment: "If I could assure you that we will focus on each of your needs and concerns as you stated [in #5], would you be open to exploring a solution other than staying in the house. Just be willing to explore; you do not have to accept."

Your client (or the other side in a negotiation) may not say "yes" every time, but you may be surprised with how many yeses you do get.

Try this baby step. It just might work.

The fact that the new paradigm is a departure from the traditional lawyer-centric, adversarial approach does not mean that the law is invisible in an interest-based negotiation. Educating clients is part of client-centered decision making. Knowing about the law

matters, but it should not dictate a particular result or define the best result for each family. Moreover, because issues such as determination of a parenting plan and spousal support involve a great deal of discretion by judicial officers, the "legal" result (especially over the long term) is difficult to predict.

You're Not the Judge—The Clients Are

When families operate within the court system, the rule of law prevails. Most lawyers are comfortable with, if not totally supportive of, resolution within the legal system. In mediation, the parties may arrive at a solution that is personally idiosyncratic or governed by values and authority far different from the law. If it makes sense to your client and seems fair, practical, and enforceable, when do you stop being a naysayer and start being supportive?

We know of a mediation for a couple who had a clear agreement providing for a sexually open marriage; each partner was free to engage in unlimited sexual opportunities outside the relationship. Problem: Sharon fell in love with a new partner and wanted to move out. Keith had promised to give Sharon $200,000 from his separate estate in case of a breakup but felt his promise was null and void due to her desire to move out and stop sex with him.

The parties spent several sessions discussing the intricate details of their contract and the consequences of breach. Was it within the contract that Sharon could be away from Keith for more than a week at a time? Was she required to leave a phone number? When she was at home, was it OK to e-mail her lover from the marital bedroom? Was it bad faith for her lover to coach her in the negotiations?

No judge would have listened to this private, *irrelevant* stuff. Few lawyers would engage in negotiations over these points! However, this was Sharon and Keith's life. Through mediation, they were able to work out a deal that was fair to them and made sense to them.

In a joint holiday card, they wished their mediator well and indicated that they were still the best of friends.

In preparing your clients for negotiations in mediation or in participating in agreement building yourself, you should be respectful and interested to listen to the positions of your client and the other spouse on any given issue. Mediators are trained to then reframe the positions in an effort to tease out the interests underlying the stated position. However, you can participate in this reframing as well. One of your greatest assets in a mediation is to bond with the other party and lawyer so that your ideas and proposals get a fair hearing as well. If you can reframe the positions of your client and the other party in a fair way that points out mutual interests, this bonding and trust building will accelerate.

As explained in *Getting to Yes*: "Interests motivate people. They are the silent movers behind the hubbub of positions. Your position is something you have decided on. Your interests are what caused you to so decide." Interests can be substantive (e.g., housing, financial security); emotional (e.g., anger, fear, anxiety, revenge); relationship-related (e.g.,

with children, with the former spouse); or process-related (e.g., momentum, a feeling of being heard). Once you have worked with the mediator and the other attorney to help uncover both clients' interests, it is crucial to link the mutual interests of both parties so that they can build from commonality (e.g., both clients want to keep the children in the same neighborhood, both want to live close together to facilitate parenting, both want certainty and finality).

After identifying the mutual interests, you can help your client brainstorm options for resolution. Brainstorming is having each party think of all possibilities. After all options are put on a flip chart, you can help the mediator and parties prioritize and evaluate the identified options based on criteria such as cost, impact on children, privacy, speed of resolution, and impact on the future relationship of the parties. The parties talk through the positives and negatives of each option. This discussion is what leads the parties to agreement.

At the Mediation Table

You Cut—I'll Choose

During the dark hours of a mediation, when an impasse looms, the parties can collaborate to build a hypothetical dummy model of resolution—putting off for a while who will get what. The mediator uses a "what if?" approach. Both parties want the same thing, such as the house, so they work out all of the terms—without initially deciding who will get each portion. More often than expected, the positive energy from the model building can break the impasse, making it easier to resolve who will get what.

There are quirks, however. In a mediation, deferring the decision as to who would get the house, a couple built a dummy model on a house buyout. In the dummy model, the couple agreed that the light fixtures (including an expensive chandelier) would stay with the house at no cost to the party who would eventually be awarded the residence. Well, when Sara found that she could not afford the house, she chose the tax-free buyout—and surrendered the right to stay in the house to Joe. But here's the rub: Her parents had given the couple the chandelier as a housewarming gift. Sara was willing to give up the house but not the chandelier. An angry session later, Joe agreed to buy her a new chandelier if and when Sara ever bought another house and if she was not involved in a romantic relationship at the time of purchase!

Normalcy and Solvability

In a divorce, spouses will often concentrate on their own misery and pain, ignoring the condition of the other spouse. Or a spouse will actually blame the other spouse for his

or her pain. One twin set of tools to stop the blame game is to help parties see that the problem is normal for other divorcing couples and that the problem is solvable.

> Husband: "If I agree to let Wife live in the house, the kids will never want to spend time with me. I think it would be better if we just sold the house and each purchased new residences."
> You: "Many Dads have this same concern, and they find ways to establish a new home for the children, who then enjoy their time just as much with Dad as with Mom in the family residence.

Use Professional Articles and Research to Offer Commonality

Objective criteria or expertise can often settle an argument. If Mom says that a 4-year-old should not have overnights and Dad says he wants overnights, rather than pushing anyone to compromise, you might say this: "Would either of you be interested in what child development research says about this issue? If so, I have an article by _____. Let's look at her findings and recommendations." You can do the same thing by referring to mediation research on process issues. A summary of highlights of mediation research is included in the Resources section.

Experiment and Test Solutions

Mediation allows parties to experiment and test out agreements without fear of establishing a binding legal precedent. Agreements can be time-limited and reviewed for viability within days or weeks. Agreements can also be modified to take into account the impact of new agreements. You can reassure your client that there is no final binding agreement until all of the parts are cross-stitched into a whole written agreement subject to review and final signatures. However, if both parties choose to make incremental final agreements on bifurcated issues, let your client know that you will support such incremental agreements and will help draft it in a timely way.

Involvement of Children

Participation of children is controversial and subject to mediator discretion. Dr. Florence Bienenfeld, a noted mental health professional, strongly urges the involvement of children: "Including children in the mediation process gives them an opportunity to hear, to be heard, and to gain perspective about the difficult situation in which they find themselves.

Most children leave the mediation session less burdened and better fortified for whatever will happen to them."

She is not alone. There has been a worldwide shift in attitude toward children's involvement in parental conflicts. When we began practicing, the general consensus was that any direct involvement in the parental dispute was inappropriate and harmful to children. The United Nations as well as state agencies and private child education and advocacy groups are increasingly recognizing a child's right to be heard in matters that affect him or her. Research and expert opinion support this increased respect for the child's voice.

Professor Cassandra Adams argues that mediation is an appropriate and beneficial method of addressing and listening to the voices of children. She argues that a holistic mediation process that includes the voices of parents and children will promote the integration of interests and recommends specific child-oriented education and training for mediators who handle family law issues.

Children generally do not participate in the negotiating and bargaining stages of mediation. Before children are invited to a session, discuss this issue carefully with your client. You must work out whether siblings should come in together or separately and/or whether the parents should also be present. Your client should get assurance from the mediator that the children want to be present and that they are not to be given the impression that they are responsible for the decisions being made or that they have the power to veto or alter their parents' agreements. Your client should know that mediators are trained to reassure the children that their parents are choosing the peaceful and less destructive option of mediation in large part because their parents love them. Often by meeting the mediator and sitting in the mediation room, children fill in their concrete reality of what is happening at the mediation, which can help ameliorate their fears and concerns.

In the case of many older adolescents and adult children, parents more readily choose to have them sit at the mediation table and participate as important (if not equal) parties or as resources for their needs and desires (which are important to their parents) or about factual matters such as the operation of the family business or investments. Although children should never be given the impression that they get to decide issues affecting them, a teenager's buy-in after the opportunity to be heard may make the difference between a parenting plan that is workable and one that isn't.

Starter Toolbox for Reaching Agreements

Here are some sample tools (by no means exhaustive) for you to start using the next time you attend a mediation session.

Emotional Reframing

Use this tool to capture the feelings your client or the other party has expressed. He or she will feel heard and appreciate your sensitivity, which instills confidence and reduces fear.

Wife: "He never brings Josh home on time."
Reframe: "You must be frustrated/angry/worried when this happens."

Bifurcate Divorce Issues: Salvage Agreements, Plan for Contained Litigation

Some mediations just will not settle all issues. Rather than throw out the progress and good work, one strategy is to use the progress and goodwill developed in the mediation to isolate the issues to be litigated and join the mediator to write up the agreed issues for a final settlement. This tool will not only remove the "all or nothing" scenario, but also permit parties to get resolution in a rational manner. The lawyers and mediator can work with the parties to work out which issues will be litigated and how they will be litigated. For example, within the mediation process, parties can work out expedited and limited discovery as well as how the spouses will interact with each other and the children through the end of litigation. Parties can also agree to return to mediation after the judge makes a decision to discuss how to live with the decision, heal, and plan for the future.

Negotiating with the Mediator

Unlike a judicial officer, a mediator's role and interventions can be greatly influenced by the requests and needs of the parties. As your client's representative, you can take a proactive role in negotiating with the mediator in a number of ways:

1. If your client expresses that he or she is not being given the opportunity to present his or her concerns or facts, you can request the mediator to make additional time during the sessions or in stand-alone private sessions.
2. If you or your client believes that the discussion in mediation is not considering necessary legal, financial, or parenting criteria or factors, you can supply the mediator with cases, statutes, articles, reports, or other material to enhance the quality of the discussion.
3. If the format being used is not meeting the needs of your client, you can request a modification. For example, the time between sessions may need to be compressed or delayed, the length of the sessions may need to be increased or reduced, your client may need more breaks, the other party may be taking too many breaks, or your client may need more or fewer ground rules.

4. If your client is making impulsive decisions or cannot make any decisions at all, contact the mediator to discuss a possible change in approach.
5. If the mediator is a flabby drafter, you may request that the lawyers jointly draft agreements and other documents.
6. If the parties have reached agreements on key issues, you may ask the mediator to suggest writing up binding partial agreements and have those agreements turned into enforceable court orders.

There are many other issues in which you can weigh in tactfully and collaboratively. Remember, you are not a potted plant. Most competent mediators welcome the input and suggestions of lawyers who are knowledgeable and supportive of the process. Your client is spending considerable money and is relying on the mediation process, and a key part of your job is to make sure the process is working to its full capacity.

Working with Mediator Proposals

Although the goal of mediation is to facilitate agreements by direct negotiation between the parties, sometimes snags develop. We have discussed how working in separate caucuses or having lawyers play a more active role in negotiation can accelerate agreement.

Another strategy to break impasse is the use of a mediator proposal. If the parties are stuck on one issue or are having difficulty linking an overall settlement, many mediators are willing to provide their own proposal for settlement.

A mediator proposal can work in several ways:

1. A proposal is suggested by the mediator or requested by the parties.
2. The proposal can mirror a court resolution or reflect an integration of proposals by the parties.
3. The proposal can be offered as take it or leave it or as a catalyst to more negotiation.

During bargaining, you should be vigilant about the timing and use of mediator proposals. If a mediator proposal is offered too early, it can cut off creativity and exchange of ideas that might morph into a settlement with such direct intervention by the mediator. If impasse hardens and parties start saber rattling or packing their briefcases, a mediator proposal may come too late.

In selecting a mediator, one aspect of your due diligence is to learn whether and how a proposed mediator uses this strategy. If the mediator is flexible about how mediator proposals are used, you might discuss their possible use with your client, the other lawyer, and the mediator.

If you and/or your client begin to feel that the discussions are stalled on any particular issue or an overall agreement, you should raise the possibility with the other lawyer and the mediator of using a mediator proposal. However, it is important to be clear about how the process will work and how the mediator's neutrality and trust can be preserved during and after the mediator proposal is presented.

You might consider using the following protocol in setting up and implementing a mediator proposal:

1. You should request that the mediator neutrally describe the state of negotiation. This can be done privately with the mediator or with the other lawyer.
2. You should request that the mediator set out areas of agreement in joint session.
3. The mediator should set out issues (and subissues) that need further work in joint session.
4. The hope is that the mediator will then check with the parties regarding their reaction to the mediator's sense of agreed-upon issues and those issues that need work and suggest other areas that need work to achieve overall agreement.
5. You should discuss with the mediator what facts or objective criteria are needed to bridge the gap.
6. You should discuss whether there are additional decision makers who should be involved in receiving, reviewing, and responding to a mediator proposal.
7. You should discuss whether the parties are ready hear the mediator proposal at the session or whether the mediator should send a proposal by e-mail in days following the session.
8. You should know whether the mediator proposal is "take it or leave it" or is a compilation of the mediator's ideas as to what might meet the interests and concerns of the parties.
9. You should request the mediator to prepare a written term sheet listing all agreed issues, all issues to be subject to a mediator proposal, and a detailed proposal by the mediator as to each issue.
10. Discuss whether the mediator proposal will be presented in a joint session or with the parties separately.
11. Make sure there is ample time to discuss questions and concerns with the mediator either jointly or privately.
12. Be nimble to using a mediator proposal to completely resolve issues or to kick-start further bargaining.

"Notes for My Mediation"

During a particularly tense mediation, the wife was reading this poem to herself sotto voce. She had written the words in a mood of hopeful prayer to give her comfort through several stressful and important weeks for every member of her family. This poem can be sent to clients in the mediation packet or handed out during a difficult mediation.

Notes for My Mediation

- Stay centered/relaxed/focused.
- Concentrate on positive aspects of this process. We will get through it, and it will end.
- Change is difficult, requires patience and perspective. The bigger the change, the greater the requirements. The outcome will be a good one.
- Our mediator understands the dynamic and can help—let him be in control. He has been through harder mediations. He has the experience to help.

This process requires tolerance, forgiveness, and going the extra mile

- I will continue to be responsible for myself and try to do well for our child. She is my major focus.
- I can only control myself.
- I will respond to my spouse's anger and judging with perspective and forgiveness.
- I will not allow my spouse to hurt or anger me by anything he says or does.
- I will not react personally or negatively to my spouse.
- I will continue to act affirmatively whenever possible.
- My spouse cannot help it and is not acting out of malevolence or intentional hurtfulness.
- I will continue to act with integrity, sensitivity, and with my eye on the goal of completing the process with the best possible outcome.
- I will keep my eye on the prize of peace.
- I deserve it and have worked hard for it.
- I believe I will come out of this a stronger, better person.
- I believe God will help me and take care of me.

My Vision

There will be a time within the next year when I will catch myself smiling or laughing without even thinking about it.

I will wake up with a mind and heart clear of fear of the unknown and the unanticipated financial and emotional threats that now burden my life and relationships.

I will return to being an innately happy person who values recreation, relaxation, and relationships.

I will be able to regenerate.

I have carried the burden for many years; I can continue to carry it quietly for another few weeks. It has been a long road. I can keep going a little bit longer. I have done a good job. I will get to the end and start a new beginning.

Continued

"Notes for My Mediation" *Continued*

Editor's Note: Poem submitted by attorney Forrest Mosten. Identity of the author is withheld by request. Salient facts are fictitious. Published in the Family & Conciliation Courts Review, January 1996.