

CSA Journal

CASE IN POINT

Clients and Aging Parents: Elder Mediation and Other Tools for Navigating Family Conflict

Elder mediators fill an important role by offering professionals a solution to the sticky family dynamics and hot-button topics facing clients later in life.

BY NICOLE LANCE, BA, JD



CASE IN POINT



NOW YOU CAN EARN 5 CSA CE CREDITS

After you have read this article and the accompanying case study (page 76), you have the option to earn 5 CSA CE credits by completing an online multiple choice quiz. Go to www.csa.us/page/Journals, then scroll down to the section entitled "CSA Journal: Earn 5 CSA CE Credits."

Clients and Aging Parents: Elder Mediation and Other Tools for Navigating Family Conflict

A hand holding a chain that leads to a woman sitting on a rusty sphere, surrounded by lightning bolts.

Elder mediators fill an important role by offering professionals a solution to the sticky family dynamics and hot-button topics facing clients later in life.

BY NICOLE LANCE, BA, JD

Why Is Elder Mediation Needed?

As individuals experience general decline or major crises later in life, these are oftentimes inflection points for the entire family. It's complicated; there's a lot of emotion, uncertainty, and copious information to digest as family members struggle to understand what's going on and what's possible. Moreover, as noted by researchers and practitioners alike, poor communication and difficult family dynamics contribute to family conflict. In turn, family conflict impedes financial planning (DeLiema, Vernon, Karp, & Zheng, 2020), estate planning (TD Wealth Survey, 2018-19), and medical decision making, especially in chronic care management and ICU settings (Schulz & Eden, 2016, p. 245).

For all these reasons, consensus is growing around the need for adept facilitators who can skillfully guide difficult family conversations in order to help families address later-in-life challenges (Schulz & Eden, 2016; AARP, 2017; McDonald III, 2018). What's needed is a comprehensive approach, one that gives voice to each person's perspective within a larger whole while also looking holistically at multiple overlapping areas of concern. Unfortunately, "current professional structures do not make it easy to help a family approach their situation and problems holistically" (Larsen & Thorpe, 2006, p. 312).

Instead, professionals who serve the elderly (or their adult children) often are not sure how or whether they should speak to families face-to-face about their challenges. They may be reticent to say much, feeling ethically or contractually obligated to "stay in their lane." They may also feel ill-equipped to have what feels like a personal conversation outside their area of expertise; after all, they were not hired to serve as a life coach. Or they might be willing in theory to broach a difficult topic but not know how to do it, and so they remain silent even if they see that the current trajectory will likely lead to crisis and fewer options down the road due to a lack of planning and communication.

What Is Elder Mediation?

Where there is mid-level conflict related to life transitions as people age, i.e. families want to address issues with family members but need help with the communication and decision-making process, elder mediation can help. Elder mediation is a growing and increasingly common avenue for resolving elder disputes outside of the courtroom and is endorsed by AARP, the American Bar Association (ABA), Family Caregiver Alliance (the nation's largest nonprofit devoted to caregiving), and in the seminal book, *How to Care for Aging Parents* (Morris, 1996). In cases involving mild to moderate conflict, mediation can be successful in getting parties to set aside their differences and focus on solutions for the elder (ABA, 2018; Bertschler & Cocklin, 2004).

There is no universally agreed-upon definition of elder mediation but one leading definition is:

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision-making by the parties to the dispute (ABA, AAA, & ACR, 2005).

Common challenges addressed during mediation include:

- Conservatorship and guardianship disputes;
- Dementia care;

- Driving;
- Family business transitions;
- Finances: control, expenditures, investments;
- Inheritance considerations before/after death;
- Intergenerational conflict among people in the same house;
- Living arrangements: whether to move, where to go, and how to live; and
- Medical care, including end-of-life.

The secret sauce of elder mediation and the reason it can produce positive results where past conversations have failed lies in the presence of a neutral and skilled mediator, someone who can make participants feel safe and secure, which reduces fear and opens people up to listening and active problem solving (Parr & Cohen, 2019, p. 15). Moreover, an elder mediator brings clarity by asking pointed questions that family members simply can't (or won't) ask each other. And finally, a skilled elder mediator knows how to shift to a pure problem-solving approach in situations involving high conflict people (HCP), whose strong level of emotion and blame can otherwise torpedo an already difficult family conversation.

Structure And Benefits Of Elder Mediation

The first step for any family considering elder mediation is to consider carefully the goal of mediation from each person's perspective and in neutral terms (e.g. "Mom's care" as opposed to "Jon's mistakes when caring for Mom." Indeed, it can range anywhere from getting all the relevant parties together in the same room for a "learning conversation" that clarifies people's needs, interests, and concerns, to defining and moving toward solving particular problems, to actually resolving issues and reaching agreements. Elder mediators who meet one-on-one with each person ahead of a joint mediation session will explore goals of mediation during an initial pre-mediation meeting.

Family members decide who should participate in a facilitated conversation, with input from the elder mediator. Generally speaking, anyone who is directly affected by the topic at hand and decision makers should participate. In addition, people may want a support person to accompany them, e.g. a spouse, partner, or even a professional. Sometimes, it is obvious who should be there and family members readily agree; other times, people disagree and this becomes the first issue that an elder mediator helps a family work through. The elder mediator may also decide to interject herself into the process and recommend that

a particular party not participate if, for example, she thinks that person does not adequately understand their role or may act to undermine the process. Group size is an important consideration. Though it makes sense to include everyone with a stake in the decision present during mediation, if the group is too large it can become unyielding and a successful outcome more elusive.

In cases where a family member has dementia, the decision of whether and how to include that person becomes more complicated, but it can be done. An elder mediator helps the parties ensure that the elder understands the general nature of mediation and the issues at hand (referred to as “capacity to mediate”), which is not the same as legal capacity. A skilled elder mediator is sensitive to making sure that an elder does not give up important legal rights during mediation without sufficient protections in place (Braun, 2020). The question of participation can be addressed during a pre-mediation meeting.

More generally speaking, during this meeting the elder mediator gets to know each person in private, their goals for mediation, their interests and concerns, and uses that information in order to develop a tentative mediation plan. The mediator also takes this opportunity to prepare family members about how to maximize their mediation experience.

Elder mediation convenes with a family meeting, beginning with a brief opportunity for each person to say what’s important to him or her, followed by a “**learning conversation.**” The purpose of this learning conversation is to discover and explore each parties’ interests, concerns, and relevant feelings, separate from arguments and positions (Stone, Patton, & Heen, 2010). An agenda for the meeting is formulated, which may change as the meeting progresses.

As the mediation unfolds, the elder mediator helps the parties search for commonality, reframe perspective, brainstorm, and evaluate options. A mediator also assists the parties in figuring out what type of information and expert advice they need from third parties other than the mediator in order to make informed decisions. Typically, this process takes at least two sessions, and it can easily take more, in different forms. During this time, parties may want to exchange information, documents, and professional service options, e.g. medical work-ups, legal steps (advance care directives), financial planning, insurance issues, and living options (Larson & Thorpe, 2006). Along the way, there are many things that can and do go sideways; if it were easy, families would do this themselves.

During elder mediation, there are five basic requirements. It must:

- **Be Voluntary.** No one is forced to participate.
- **Be Confidential.** With rare exception, what is said in mediation is never disclosed by a mediator. The parties are also expected to maintain confidentiality except as they agree otherwise.
- **Have mediator neutrality.** A mediator represents each person equally and will correct power imbalances to ensure that each person’s voice comes through during mediation, that each person feels heard and understood. The mediator does not give advice but is there simply to support each person in trying to meet their goals for the mediation.
- **Support informed consent.** A mediator works to make sure that people have the information and resources they need in order to make informed decisions.
- **Support self-determination.** Each person should determine for themselves what he or she wants (Kardasis, Larsen, Thorpe, & Trippe, 2011).

In practice, satisfying these requirements is not always straightforward and the requirements sometimes conflict with one another, which is one reason why working with a skilled mediator is important. Moreover, where there is potential elder abuse (that is often difficult to detect) or a family member may be vulnerable, elder mediators must be alert so as not to facilitate a process that unknowingly compromises anyone’s legal rights (Braun, 2020).

Possible outcomes of mediation include:

- Partial or total settlement of outstanding issues;
- Trial decisions (e.g. parties agree to try one approach temporarily, to see how it works);
- Agreement to separate spheres of influence;
- Procedural solutions to substantive problems (e.g. parties agree that future decisions about care will be made based upon an agreed-upon metric and not the parties per se);
- Agreement to provide alternative satisfaction (e.g. one of the adult children agrees to shoulder most of a parent’s care and in return their sibling agrees — as alternative satisfaction — to provide the sibling with some kind of benefit); and
- Improved understanding and relationship between people (Moore, 2003, p. 321-22).

Benefits of elder mediation include:

- Improved communication, understanding, and decision making going forward. For example, adult children may come to appreciate that what

aging parents want from their kids is “to be cared *about*, [not] *for*” (Berman, 2016). That new understanding opens the way for a more productive conversation about how to address safety concerns while upholding autonomy;

- Avoidance of costly mistakes and litigation;
- Transformation of conflict into advance planning;
- Gaining control over what’s important to you; and
- Protecting, and even improving, family relationships in the process.

Professionals And Elder Mediator Cross Referrals

A professional should consider referring clients and their families to elder mediation any time they appear to struggle with a conversation about an important topic. Examples include:

- *Family Lawyer*: represents an aging mother and has helped the adult children informally over the years. The adult children now squabble about care and finances. The lawyer recommends mediation, sensing that what everyone needs is a family conversation, not a lawyer talk. Benefit to attorney of recommending elder mediation: avoids ethical dilemmas and dealing with topics that don’t interest him.
- *Parents’ Accountant*: represents aging parents who tell him that their kids are asking uncomfortable questions about their finances. She senses the family’s need for new types of conversations and refers them to elder mediation so that family members can talk about legacy, control, roles, and fairness considerations.
- *Aging Life Care Professional (GCM/ALCP)*: has assessed an elderly client and recommended a plan of care; however, family members disagree about what is actually necessary and there is a lack of compliance. She senses that there is deep-seated personal strife that is interfering with compliance. Not sure how to recommend elder mediation to the family, she calls an elder mediator who coaches her through how to recommend mediation to the family in such a way that they can listen and not be threatened by the suggestion.

For their part, elder mediators also refer to other professionals, e.g. to an ALCP (when a family needs an assessment), to an assisted living or other facility (to review housing options), or to a financial advisor or elder attorney (for professional advice).

Elder Mediators: Qualifications And Assessing “Fit”

Finding a skilled elder mediator can be challenging. There is no central clearing house, no one universally accepted credential or main source of referral. Many but not all elder mediators are lawyers, social workers, nurses, or psychologists. Seeking a referral is best, e.g. a local chapter of Family Caregiver Alliance, hospital personnel, or ALCPs. Some elder mediators are listed through professional associations including:

- Association for Conflict Resolution (ACR), Elder Section
- Academy of Professional Family Mediators
- Mediate.com

When interviewing an elder mediator, potential questions to ask include:

What is your background? Look for an elder mediator with both content and process expertise, which means that he or she has successfully completed advanced elder mediation training.

In terms of content expertise, he or she understands the types of problems and issues faced by older persons, how to manage a complex mix of legal, medical, and psycho-social issues and can work in the context of a wide range of issues, concerns, dynamics, and options in elder mediation (ACR, 2012). An elder mediator who possesses medical knowledge, such as a nurse or bioethicist, can be incredibly helpful in resolving disputes about critical medical situations. Beyond content expertise, a skilled mediator possesses process expertise and knows how to facilitate communication and decision making unique to challenges related to aging.

What is your approach and style? Mediators differ in philosophical approach and in how they run a mediation, so ask them to describe both. Listening to their response will help you gauge suitability. Also ask if they have been trained specifically to work with health-care providers, if that is of concern to you.

Is our conversation confidential? Ask about the privacy of your conversations; it varies by state. The concern is making sure that if a situation goes to court in the future, that the elder mediator is not called in to testify about anything said or done during mediation.

What is the cost? There is a wide range, often between \$250 and \$350+ per hour, which can translate into \$1,800 to \$3,000+ for an intensive mediation. The time needed depends upon the complexity of the situation and the number of people involved. ”The process may sound like a lot of money and work,

but it is often well worth it for people who care about maintaining or rebuilding familial bonds” (Kardasis & Dugan, 2012).

Elder mediation is neither covered by insurance nor typically employer benefit “EAP” plans, though some EAP plans do cover mediation services in other contexts *and* family support services, so possibly an argument can be made that employer benefits should cover elder mediation. Most people pay for elder mediation services out of pocket. And while there are a limited number of nonprofit community mediation centers located throughout the country that provide free or low-cost mediation services, they usually focus exclusively on different kinds of disputes unrelated to seniors and the unique challenges of their families. There are, however, some that offer elder mediation service, so a quick internet search should tell you whether a given nonprofit center in your area offers free or low-cost mediation services around care, estate and other age-related challenges.

Challenges And Limitations Of Elder Mediation

Despite its potential benefits, elder mediation is not recommended in all cases, including when:

- A party is unwilling to fully engage in the mediation process and seems more interested in going through the motions (perhaps for tactical advantage);
- There is moderate to serious mental illness that prevents a person from problem-solving;
- There is a severe power imbalance that cannot be sufficiently countered during mediation; or
- A critical participant lacks capacity to mediate, without means to increase capacity.

Even when circumstances are appropriate for mediation, actually convincing resistant family members to mediate can be challenging. In some cases, talking with an elder mediator can help a person overcome initial reservation. Likewise, over time, some people also change their mind as they come to understand more about mediation and gain trust with the process.

Another significant challenge is helping families with what are termed high conflict people (HCPs). For families with at least one person who struggles with unmanaged emotions and all-or-nothing thinking, there is a specific method for conflict resolution advocated by the High Conflict Institute. Mediators trained in this approach focus exclusively on framing (and reframing) the discussion constantly in order

to move everyone from emotion to problem-solving mode (Eddy, 2014).

Alternatives To Elder Mediation

Elder mediation is neither therapy nor counseling, though it does have therapeutic aspects. Parties are encouraged to express feelings related to the issue at hand but only if it helps achieve the mediation’s overall goals. And if a mediator thinks there may be “below the surface” feelings relevant to understanding needs and concern, he might probe in order to help elicit them. Sometimes the mere act of naming an emotion or feeling lifts a burden and opens a person up to having a “learning conversation” (Kardasis, Larsen, Thorpe, & Trippe, 2011).

Though an important aspect of elder mediation is helping family members acknowledge one another’s feelings as a means toward an end, unlike therapy or counseling, mediation is not designed to dwell on past feelings. Rather, it is forward looking, goal oriented. A skilled elder mediator is mindful of the important role that emotion and feelings can play, while still needing to keep the guardrails of problem solving and goal setting based upon logic and reason intact as family members work to achieve their overall goals in mediation.

Another alternative to elder mediation is one-on-one conflict coaching between the coach and client, when multi-party mediation is not possible. Conflict coaching teaches “skills [that] will help [the client] prevent and resolve conflicts and keep them from escalating. During the coaching process, [a conflict coach] helps [the client] think about a conflict differently and explore options for handling it effectively.” (Zumeta, 2020; Kardasis, Larsen, Thorpe, & Trippe, 2001, p. 116). In the words of one client, conflict coaching makes a “bad situation less bad.”

Sometimes, family conflict runs so high that even a skilled elder mediator cannot get family members to move beyond their own disputes in order to focus on an older adult’s needs. **In this case, there is another option: eldercare coordination.** A court may refer a family for eldercare coordination when there are:

- Concerns about an aging person’s care and safety;
- Imbalances of power where only some parties have legal representation;
- Family alliances and/or members competing to serve as guardian; and/or
- Blameful, possessive, or controlling behaviors toward the aging person.

Currently, eldercare coordination is available in Florida, Ohio, and Southern California.

Conclusion

The need for elder mediation services is great and projected to increase. Baby boomers are aging and difficult conversations aren't getting easier. Elder mediation is a great resource for those families where there is medium-level conflict or uncertainty, and family members *want* to address issues with family members but need help with communication and decision-making. "Starting and finishing a comprehensive conversation with all of the decision makers present transforms family conflict into prudent planning. Through skillful mediation, seniors and their families can gain control of what's important to them and protect family relationships in the process" (Kardasis & Dugan, 2012). Aging-industry professionals and other service providers have an important role to play in educating families about the availability of elder mediation, conflict coaching, and eldercare coordination in helping families optimize age-related outcomes. •CSA



Nicole Lance spent most of her professional career as a business lawyer before shifting focus and becoming a certified mediator, a conflict coach, and a Certified Senior Advisor®. She is a member of the

Association of Conflict Resolution and the American Bar Association and has given many educational presentations about elder mediation to nonprofits and private care providers. Nicole graduated with a BA from U.C.L.A. and a law degree from U.C. Davis. More information is available on Nicole's website, www.mediateforward.com.

RESOURCES

The following are *additional* excellent resources that may be used for further understanding.

Articles about Mediation, Generally:

Between Aging Parents and Adult Children (Jack Hamilton & Elisabeth Seaman, 2000). <https://www.mediate.com/articles/generational.cfm#>

Caring for an Older Person and Facing Difficult Decisions? (Center of Social Gerontology, undated). http://www.tcsg.org/MInoncourtbrochure_01.pdf

"Eldercare Mediation" article referenced by University of Michigan School of Medicine and Kaiser Permanente websites: Retrieved from <https://www.uofmhealth.org/health-library/abn0530> and <https://healthy.kaiserpermanente.org/health-wellness/health-encyclopedia/he.eldercare-mediation.abn0530>

How Elder Mediators Differ from Other Eldercare Specialists (Debbie Reinberg, 2008). <https://www.mediate.com/articles/reinbergD1.cfm>

How to Choose an Elder Mediator (AARP, 2017). <https://www.aarp.org/caregiving/financial-legal/info-2017/how-to-choose-caregiver-mediator.html>

Mediation Could Benefit Families with Aging Parents (Jenny Montgomery, 2011). <https://www.theindianalawyer.com/articles/27412-mediation-could-benefit-families-with-aging-parents>

When Aging Issues Lead to Family Conflict (Arline Kardasis and Rikk Larsen, LawyersWeekly, 2005). <http://www.elderdecisions.org/docs/lawyersweekly.pdf>

Will Family Mediation Services Help You Resolve a Conflict? (Merritt Whitley, 2020). <https://www.aplaceformom.com/caregiver-resources/articles/family-mediation>

Financial Disputes and Elder Mediation:

Keeping Families Out of Court: Mediation as an Alternative to Litigation in Trusts and Estates Disputes (Liza Hanks, 2016). <https://www.lifedeathlaw.com/keeping-families-court-trust-estates-mediation/>

Mediating Inheritance Disputes (Jeffrey Fink, 2014). <https://www.mediate.com/articles/FinkJ3.cfm#bio>

Mediation in Estate Planning (David Gage and John Gromala, 2002). <https://www.mediate.com/articles/gromala7.cfm>

Modern Family Structures Raise New Issues in Estate Planning (Ryan C. Coulson, 2017). <https://private-wealth.us.cibc.com/blog/-/blogs/modern-family-structures-raise-new-issues-in-estate-planning>

The Unequal Inheritance: It Can Work, or It Can "Destroy Relationships" (NYT, 2021). <https://www.nytimes.com/2021/02/19/business/estate-planning-inheritances-retirement.html>

Sibling Disagreements:

A Sibling's Guide to Caring for Aging Parents (PBS, 2014). <https://www.pbs.org/newshour/health/youre-sharing-care-aging-parents>

Elder Mediation Can Bring Families Back Together (Forbes, 2019). <https://www.forbes.com/sites/robertmauterstock/2019/04/25/elder-mediation-can-bring-families-back-together/?sh=50e92b811592>

Strengthening Troubled Sibling Bonds to Deal with an Aging Parent. (NYT, 2015). <https://www.nytimes.com/2015/05/30/your-money/strengthening-troubled-sibling-bonds-to-deal-with-an-aging-parent.html>

What Causes Sibling Estrangement? And How Can You Cope with It? (Erika Krull, 2020). <https://www.joincake.com/blog/what-causes-sibling-estrangement/>

When Siblings Can't Agree on What to do with an Elderly Parent (WSJ, 2020). <https://www.wsj.com/articles/when-siblings-cant-agree-on-what-to-do-with-an-elderly-parent-11593708118>

When Siblings Disagree About What's Best for Mom and Dad (AARP, 2017). <https://www.aarp.org/caregiving/life-balance/info-2017/siblings-disagree-on-parents-care.html>

Eldercaring Coordination:

Website is a clearinghouse for Eldercaring Coordination. <https://www.eldercaringcoordination.com/>

American Bar Association and Elder Mediation:

Dispute Resolution and Aging: What is the Nexus and Where Do We Stand? (2015). https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_36/issue_3_february2015/dispute_resolution_and_aging/ (retrieved 6/15/21)

Elder Mediation in Clinical Setting:

Conflict Resolution in the Clinical Setting: A Story Beyond Bioethics Mediation (Haavi Morreim, 2015). <https://onlinelibrary.wiley.com/doi/abs/10.1111/jlme.12324> (6/15/21)

End of Life:

How to Live Forever, A Guide to Writing the Final Chapter of Your Life Story Kimberly Best, RN (2019). Practical guide for resolving conflict and optimizing end-of-life outcomes.

The Conversation Project website. Helps people share their wishes for care through the end of life. <https://theconversationproject.org/>

REFERENCES

- AARP. (2017). *How to choose an elder mediator*. Retrieved from <https://www.aarp.org/caregiving/financial-legal/info-2017/how-to-choose-caregiver-mediator.html>
- ABA, AAA, & ACR (2005). *Model Standards of Conduct for Mediators*. Retrieved from <https://www.mediate.com/pdf/ModelStandardsOfConductforMediatorsfinal05.pdf>
- ACR. (2012, July 30). *Elder care and elder family decision-making mediation: Training objectives and commentary*. Retrieved from http://acrelldersection.weebly.com/uploads/3/0/1/0/30102619/eldercareobjectives_7_30_2012.pdf
- Berman, C. (2016). *What aging parents want from their kids: There's a fine line between caring and controlling—but older adults and their grown children often disagree on where it is*. Retrieved from <https://www.theatlantic.com/health/archive/2016/03/when-youre-the-aging-parent/472290/>
- Bertschler, P. and Cocklin, L. (2004). *Truce! Using Elder Mediation to Resolve Conflict among Families, Seniors, and Organizations*. Victoria, Australia: NCS Publishing.
- Braun, J. (2020). *Elder mediation: Promising approaches and potential pitfalls*. Retrieved from http://www.uws.edu.au/___data/assets/pdf_file/0019/502219/02_Braun.pdf
- DeLiema, M., Vernon, S., Karp, N., & Zheng, M. (2020). *Thinking ahead: Informing the design of a roadmap for keeping your money safe as you age*. Retrieved from <https://www.soa.org/globalassets/assets/files/resources/research-report/2020/thinking-ahead.pdf>
- Eddy, B. (2014). *So, what's your proposal: Shifting high conflict people from blaming to problem solving in 30 seconds*. Scottsdale, AZ: Unhooked Books.
- Eldercaring Coordination.com. (2021). *Home page*. Retrieved from <https://www.eldercaringcoordination.com/>
- Friedman, G. (2009). *Challenging conflict: Mediation through understanding and inside out: How conflict professionals can use self-reflection to help their clients*. Chicago, IL: American Bar Association.
- Hanks, L. (2016). *Keeping families out of court: Mediation as an alternative to litigation in trusts and estate disputes*. Retrieved from <https://www.lifedeathlaw.com/keeping-families-court-trust-estates-mediation/>
- Kardasis, A. & Dugan, J. (2012). *Elder decisions in elder mediation*. Retrieved from <https://www.mediate.com/articles/dugan1.cfm>
- Kardasis, A., Larsen, R., Thorpe, C., & Trippe, B. (2011). *Mom always liked you best: A guide for resolving family feuds, inheritance battles & eldercare crises*. Norwood, MA: Agreement Resources, LLC.
- Larsen, R. & Thorpe, C. (2006). *Elder mediation: Optimizing major family transitions*. Retrieved from <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1072&context=elders>
- McDonald III, M. (2018) *Elder mediation may avoid litigation*. Retrieved from https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2018/voice-of-experience--september-2018-issue/elder-mediation-may-avoid-litigation/
- Moore, C. W. (2003). *The mediation process: Practical strategies for resolving conflict* (3rd ed.). San Francisco, CA: Jossey-Bass.
- Parr, C. & Cohen, S. (2019), *Love's way: Living peacefully with your family as your parents age*. Peabody, MA: Hendrickson Publishers, Inc.
- Schulz, R. & Eden, J. (Eds.). (2016). *Families caring for an aging America*. Retrieved from file:///Users/nicolelance/Downloads/23606.pdf
- Stone, D., Patton, B., & Heen, S. (2010). *Difficult conversations: How to discuss what matters most*. City of Westminster, London, England: Penguin Books.
- TD Stories. (2019, March 13). *Family conflict reigns as greatest threat to estate planning, according to TD wealth survey*. Retrieved from <https://stories.td.com/us/en/article/family-conflict-reigns-as-greatest-threat-to-estate-planning-according-to-td-wealth-survey?>
- Wood, E. F. (2015, February 1). *Dispute resolution and aging: What is the nexus and where do we stand?* Retrieved from https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_36/issue_3_february2015/dispute_resolution_and_aging/
- Zumeta, Z. (2021). *Conflict resolution coaching overview*. Retrieved from <http://zenazumetamediation.com/services/conflict-coaching/>



SCENARIO :

Mediating Family Conflicts Improves Family Outcomes: Dad with Alzheimer's

AS PEOPLE AGE, LIFE CAN GET MORE COMPLICATED for families, especially blended ones with stepchildren, stepparents, in-laws, etc. As a professional, you see clients struggle with substantive disputes that arise related to living arrangements, care, control of finances, and driving, among others.

Sometimes, the reason a conversation about these topics is difficult is that, “While the surface dispute may be material, there are almost always deep emotional issues driving these disputes and mediation - as opposed to litigation - provides a process for revealing and resolving these deeper underlying issues” (Hanks, 2016). “*Understanding the internal dimension of the problem is at the core of what needs to be understood to resolve the conflict*” (Friedman, 2009).

In the following case, a blended family has an initial difficult conversation on their own about a father's and husband's future care needs. There is a lot of below-the-surface emotion leaking into the conversation about how to finance his care, and it ends poorly. Elder mediation can help any of your clients who want to address a family challenge and just need professional help from someone skilled at facilitating difficult conversations related to transitions in aging.

Family Background

David, Mark, and Suzi are siblings, and have a good relationship with their father, Peter. They also have had a cordial, but not close, relationship with their dad's much younger second wife, “Priscilla,” whom he married twenty years ago.

Priscilla and Peter live together, though they have always kept their finances separate. He has no

retirement savings and relies solely on Social Security for his support. Priscilla is financially independent.

Peter was first diagnosed with Alzheimer's five years ago. Now, at the age of eighty, Peter suffers from moderate-level Alzheimer's. For the past several years, as their dad's condition progressed, Mark and Suzi (who live locally) started caring for their dad most days as Priscilla is physically absent most of the time, working as a flight attendant. While Mark and Suzi have contributed to their father's care mightily over the past years in particular, they are not in a financial position to help out sufficiently going forward, should their father require paid care. Mark's biggest priority is honoring his dad's wish, which is to live at home for as long as possible.

David, their brother who lives out of state, visits occasionally and provides medical oversight (as physician). David's wife, Natalie, is close to her brother- and sister-in-laws, but not to Priscilla.

Whenever Priscilla is at work, Mark and Suzi care for her dozen or so animals. This requires coming to the home earlier than they otherwise would just to attend to the animals, and it involves cleaning up lots of messes. Priscilla occasionally thanks her stepchildren for caring for her husband and the animals. She has said in passing that she will “take care of them in her will” but never gets specific.

Off The Rails Family Meeting

Three years ago, Mark called a family meeting with everyone to discuss Peter's deteriorating health and talk about future care options and how to pay for it. Like many meetings, this one started with a



discussion of an elder parent’s needs but quickly segued into blame and argument (in this case, stepmom Priscilla unleashing about her disappointments with her husband).

Not dissimilar to the experience of other families following an emotional outburst, no one else in the room was sure how to respond, so an awkward silence ensued. Clearly, there was a lot of unspoken emotion and opinion. A few minutes later, Natalie followed Priscilla’s lead and staked out her own position, which was that no one should look to her and David to contribute most, let alone all, of any future nursing home bill because they are in a cash-even point (with kids in private school). Mark and David quickly pivoted to shift the focus on more neutral ground by sharing information they recently gathered after having toured several nursing facilities. Meanwhile, Suzi was silent, as she often was, unwilling to weigh in with her own feelings and opinions. And that was that.

The meeting was a failure because Priscilla did not acknowledge any responsibility for her husband’s care, she reminded everyone that she might leave at any time, and for their part, neither David nor Natalie were explicit about their willingness to pick up future care costs. Sound familiar? This family meeting ended poorly because people did not consider ahead of time the internal dimensions of the conflict, which are critical for resolving the more obvious practical problems.

Internal Dimensions Of A Problem

The internal dimensions of a problem are the things that may not relate logically to the substantive challenge at hand, such as paying for care, but they very

much factor into people’s decisions about how to address the problem: in this case, who should pay for care and how much. Internal dimensions include family dynamics (family characteristics or patterns of behavior within a family), communication and conflict styles, and feelings (both expressed and unexpressed). This situation involving father Peter highlights common family dynamics such as:

- *Whether an in-law — and the rest of the family — feel comfortable with the in-law weighing in on matters that affect the siblings most directly.* Here, in-law Natalie has already been fully accepted into the rest of the family, which means that Natalie will be an integral part of the discussion even though Peter isn’t her father.
- *Sibling roles dating back to childhood.* In this case, for example, Suzi’s role was “accommodator,” so Suzi likely will go along with whatever her brothers decide.

An awareness of family dynamics is critical to addressing challenges and one reason people hire elder mediators to help them navigate those dynamics.

Moreover, people hire elder mediators in order to help sort through communication styles and conflict patterns that interfere with problem solving, including:

- *Passive-aggressive behavior,* as when Priscilla threatens to leave her husband when one of her stepchildren says something that makes her uncomfortable.

- *Different conflict styles*, such as being avoidant like Suzi and David. They may need help drawing out their needs and concerns, as compared to someone who approaches conflict directly (Kardasis, Larsen, Thorpe, & Trippe, 2011, 54-55).

When Feelings Are The Issue

In this case, like many others, unspoken feelings pose a real challenge to resolving the substantive issue. In any case, there is a full spectrum of relevant feelings ranging from fear, resentment, and also love that are not just a byproduct of engaging in difficult talk but an integral part of conflict. Yes, in the short term, it may feel like avoiding talking saves time and reduces anxiety; however, if feelings are the issue, then what have you accomplished if you don't address them?

In this situation, like many others, the two family members most resistant to contributing toward paying for care - Natalie and Priscilla - ironically resist for the same reason. Each has deep-seated resentment, albeit for different reasons: Natalie, because she has already absorbed significant expenses for other family members, and Priscilla, who feels like she has already picked up her husband's load and doesn't want to do so anymore. If either one of them is going to agree to contribute financially for what could be a large nursing home bill, it starts with acknowledgement by others of their strong feelings. Without that, they likely will stick to their non-committal positions until the last possible moment, such as a crisis hit that forces their financial hand.

Moreover, Natalie has a psychological need to get something of value in return for anything she gives. For Natalie the most obvious option is for Priscilla to make good on her promise to make Mark and Suzi her heirs, something that would give Natalie peace of mind. Suzi has a long history of placing other people's needs ahead of her own. She needs to be able to express her own anger and annoyance at caring for the animals, and let Priscilla know not to always expect that she's there to do those chores. Unloading this emotion that has bottled up over years will free Suzi to focus her energy on helping her father and contributing to the family discussion. Mark's strong feeling is one of loyalty for his father, while David's feelings are more ambivalent; this difference plays out in what level of help each is willing to provide their dad.

For this family, it is important for people to be honest and just acknowledge that they are coming from different places and that emotions do play a role in how they view the situation and what can and should be done.

Elder Mediation Can Help

A mediator facilitates a difficult conversation. She brings clarity to the situation and helps people figure out what they want to do. Several techniques for achieving these goals include:

- *Moving conversations away from "[a dispute] about perceived facts, towards a conversation about what's really important to each person"* (Kardasis, 2011, p. 98). Here, it was really important for Priscilla, Mark, and Natalie especially to move away from a discussion of what Peter had and hadn't done over the years to contribute to his own situation where he had no retirement money to pay for care, and instead talk about what was really important for each person now..
- *Naming what's going on, whether in relation to a family dynamic, communication style or conflict style.* Elder mediators are not therapists, they are not here to change people's personalities, but sometimes the mere act of naming what's going on is helpful. No one was under the illusion that they were going to stop Priscilla's passive-aggressive behavior, but the adult children find it liberating just to have someone call it out during mediation in a way that she understands.
- *Acknowledging feelings, interests, and concerns, and then shifting the focus to problem-solving because there is still a job to do.* In this case, the family met its objective, which was to identify potential future care options, the costs associated with each, and agree that Priscilla and David's family would jointly contribute financially in a yet-to-be-determined amount. Everyone understands there is some ambiguity because no one agreed to a precise amount or to paying all the costs, but the conversation represents a huge step forward in that Priscilla and David's family each explicitly agreed to contribute meaningful amounts, which they hadn't done thus far. Priscilla also agreed to pay a greater share of household expenses, which freed up some of Peter's cash to cover future care expenses.

As it turned out, Peter never needed extra care beyond what his family provided before he passed away a year later, so the issue of financial contribution did not materialize. What elder mediation did offer in the end, however, was peace of mind. Had Peter needed the care, the family was in a better position — both financially and psychologically — to provide it than had they not discussed the matter beforehand. •CSA