Mediation – A Resource for Helping Families Make Decisions Together

Guest Contributor: Crystal Thorpe, MSW, MBA

(This article first appeared as a guest contribution at the website of the Massachusetts Guardianship Association - www.massguardianshipassociation.org. Please see disclaimer below.)

When you and your family face decisions about guardianship and its alternatives, it can seem difficult to communicate and make decisions together given the many different opinions and emotions involved. Mediation can provide a process for families to make decisions in a way that can both prepare for the future and preserve relationships. Mediator Crystal Thorpe offers information on mediation and how it can help resolve disputes and possibly avoid litigation.

1. **What is mediation?**

   Mediation is a process that helps families communicate and make decisions together. The process is both confidential and voluntary and can include the elder or the loved one with a disability, family members, professional advisors, caregivers, advocates and/or surrogates. The mediator is a trained neutral facilitator who structures the process.

2. **What does a mediator do?**

   Mediators help families communicate more effectively in order to reach an agreement regarding important decisions. They create a safe space to talk, and can help you and your family members:

   - Identify the topics or issues you wish to discuss
   - Express what is important to you so that others can hear and understand
   - Determine what additional information you may need to make well-considered decisions
   - Brainstorm options
   - Decide on a mutually agreeable plan
   - Document (if you so choose) decisions you have made, as well as next steps for moving forward

3. **In many families, conversations can get emotional, making it difficult to talk together and make decisions. How would mediation be any different?**

   In mediation, the mediator creates a structure for the conversation so that each person has an opportunity to speak and be heard. The mediator works to understand each person's perspective, and helps family members better understand each other. Sometimes families learn new ways of communicating and making decisions together during the process that they can continue to use after the mediation is over.

4. **Who makes the decisions in mediation?**

   Family members work together to make the decisions. Each family member has a say in the outcome, and no one is forced to agree to anything they are not comfortable with. The

mediator does not take sides or judge, but rather helps the family create a decision that is acceptable to everyone.

5. **When might someone use mediation?**
   Mediation can be helpful for future planning, to resolve disagreements, and as an alternative to litigation.

   For proactive planning – When families face important decisions and want to plan for the future in a way that respects each person's wishes and values, they may choose mediation to ensure that all stakeholders have a voice in the process with the goal of creating an acceptable outcome for all involved.

   To resolve disagreements – When individuals and family members disagree about issues that they care about, mediation can increase understanding and help people develop mutually acceptable decisions and move forward.

   As an alternative to litigation – Families also use mediation as an alternative to litigation. Mediation can save families time and money as compared with litigation. It is private and confidential, and it allows participants to maintain control of the outcome (rather than handing decision-making over to a judge). Note that attorneys, as well as other professional advisors, are welcome in the mediation process and can help ensure that decisions are well-informed.

6. **What are specific types of situations when mediation can be helpful?**

   Issues commonly addressed in mediation include:

   - The level of care that may be needed for a loved one
   - Living arrangements
   - Guardianship issues, such as:
     - Whether a guardianship or conservatorship is needed
     - Who should be appointed a guardian or conservator
     - What a guardian or conservator should do and what decision-making powers and responsibilities they should have
     - Alternatives to guardianship or conservatorship
   - Caregiving roles and responsibilities
   - Different perceptions of fairness
   - Finances and bill paying
   - Personal property distribution
   - Inheritance, estate and trust matters
   - Driving and transportation
   - Medical and end-of-life decisions

7. **What if family members think an elder or a loved one with a disability needs a guardian and are fighting about who's going to take care of that individual?**

   Mediation can be used to give everyone a chance to express what they want family members to know about how they feel, and why they feel the way they do, in a safe environment. Once

family members hear what is important to each other, the mediator can help the family explore options that can meet each person's needs.

In mediation, everyone has a "voice at the table," each person's rights are respected, and no one needs to agree to anything they are not comfortable with.

8. What if there is a concern that an elder or a loved one with a disability won't be able to actively participate in the discussion or that it will be too upsetting for them?

The mediator can work with the family to develop a process that can maximize each person's capacity to participate. This might include:

- scheduling the meeting at certain times of day and for shorter lengths of time to increase an individual's ability to participate;
- having the individual participate in parts of the meeting to express his or her views and interests;
- including a support person to help advocate for the individual; and/or
- in some cases, including a person who has authority to speak and act for the individual.

A principle of mediation is that each person has a voice at the table about decisions that will impact him or her, and the mediator will work to ensure that each voice is present and represented.

9. How does a family start the process?

Any family member can start the process by contacting a mediator (see below for information on locating a mediator in your area). The mediator will gather general information about the scope of the issues and who is involved, and will provide information to the family about the process so that family members can decide whether they want to participate.

10. Where do meetings occur?

The mediator will work with the family to choose a place and time that maximizes each person's ability to participate in a family meeting. Sometimes this is at an elder's home, a meeting room in a facility or apartment complex, or a "neutral" location or office. The goal is to choose a comfortable space for all participants where individual needs can also be met.

11. Who pays for mediation? How much does it cost?

Mediation services are usually billed on an hourly basis. Some families share the cost of mediation among all the family members, and in other families the cost is paid by one person, a few participants, or an estate. Regardless of who pays, the mediator serves the whole family. Rates vary among mediators, but the total cost of mediation is generally much less than the cost of litigation.

12. How can I find a mediator to work with my family? Are there mediators who specialize in guardianship issues?

Mediator directories are available at the following websites:

- Massachusetts Council on Family Mediation – www.mcfm.org
- Mediate.com – www.mediate.com

Community mediation programs may also provide mediation services at reduced rates.

Look for a mediator who specializes in working with families who are facing caregiving or guardianship issues. For decisions involving elders, there is a growing field within mediation called Elder Mediation. While the principles and goals of most mediators are similar, mediators who specialize in these areas can bring an awareness of the issues involved, related laws, and available resources.

***Crystal Thorpe**, MSW, MBA, is a mediator, trainer, and founding partner of Elder Decisions®, a division of Agreement Resources, LLC, which specializes in adult family mediation and provides training for mediators and eldercare professionals. She has over ten years of experience as a mediator and is a member of the Association for Conflict Resolution and the Massachusetts Council on Family Mediation. She and her partners recently published a resource book for families titled Mom Always Liked You Best: A guide for resolving family feuds, inheritance battles & eldercare crises (2011). She can be reached at 617-621-7009 or crystal@ElderDecisions.com.*

This article first appeared at www.massguardianshipassociation.org - the website of the Massachusetts Guardianship Association. **Disclaimer:** The MGA website is maintained exclusively for informational purposes and does not constitute legal advice. Visitors to this web site who have a legal problem should always consult an attorney for legal advice. Viewing or using the information on the website does not create an attorney-client relationship. The guest contributor's appearance on this website is solely for informational purposes and does not constitute a referral or endorsement of their firm or business, agency or organization. The third party web sites are listed solely as a convenience, and their listing does not imply endorsement of the agencies or organizations.