

Self-Determination vs. Due Diligence

Letter to the Editor

@ 1999, Academy of Family Mediators

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Dear Editor:

Rebecca Picard brought up some important points in her article “When a Client Won’t Obtain Outside Assistance,” (Mediation News, Winter 1999, Vol. 18., No. 1). The dilemma we face is balancing our clients’ rights to self-determination, with ensuring that clients make decisions based on sufficient information and knowledge.

In a recent case, I had clients who were very reluctant to get the husband’s pension appraised, as they had already agreed between themselves that he would keep his (police officer) pension, she would get the house, and that they would share his 401k plan. I convinced them to get the appraisal with the idea that the wife had a right to know what she was giving up. When the appraisal on the pension came back higher than they had anticipated, after some haggling, they agreed that the wife would receive the full value of the 401k, and that they would pay off the wife’s car loan. She would receive the house, while the husband would keep his pension. This still left the husband with 55% of the assets, and the wife with 45% of the assets, I went on to explain how she could receive a percentage of his pension via a domestic relations order. It was apparent that the husband was wondering when I was going to let it go, but I wanted to make sure that the wife had the opportunity to make a decision with all the cards on the table. However, she was happy with the deal, and we moved on.

At the end of the process, I asked the clients to evaluate my performance in the mediation process. The husband wrote “I thought you did a thorough and impartial job which made both of us feel comfortable, I think there were times you were insistent on certain topics that we had already agreed upon. I know your reasoning for this, but it may be better handled by asking the parties to sign that they understand the specific point.” The wife was happy with the process and the outcome, and her lawyer supported her decision. Mediators shouldn’t be afraid to press the parties to obtain information, so that the clients can make informed decisions that will stand the test of time, even if clients show initial resistance, and even at the expense of the mediator appearing a little pushy

Sincerely, Anju D. Jessani Hoboken, New Jersey