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Families struggling to care for elderly turn to mediation



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Trained mediators increasingly are helping families at odds when it comes to resolving emotional disputes over the care and finances of aging parents.



Franklin County Probate
Judge Robert G.
Montgomery

By **Encarnacion Pyle**

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When she called her out-of-town daughter, the elderly woman spoke with a slur and could barely put words together.

Medical officials at the hospital determined that the 89-year-old woman had had a series of small strokes. They also diagnosed dementia.

After she went home, it became clear that the central Ohio woman was neither physically nor mentally capable of caring for herself, but she refused to leave her home of 50 years.

One daughter lives 500 miles away, making it difficult to oversee her mother's daily care. The other lives nearby but said she was overwhelmed with other family and work obligations.

So the out-of-town daughter, who had power of attorney, hired a home-care agency and took their mother's checkbook away because she was giving money to anyone who asked.

It wasn't long before tensions between the sisters escalated to an all-out war. At an impasse, it was suggested the family seek the help of an elder-care mediator.

Trained mediators increasingly are helping families at odds when it comes to resolving emotional disputes over the care and finances of aging parents.

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At the heart of many of the disputes are “misunderstandings, miscommunications and underlying issues that have nothing to do with the problem at hand,” said Christopher Scott, who with a partner runs Capital Mediation Associates, a private practice in Columbus.

“The beauty of mediation is, it provides an opportunity for all sides, including the aging adult whenever possible, to talk and find common ground,” said Scott, who worked with the elderly woman and her two daughters.

Lawyers and mediators have helped resolve disputes involving aging adults for years. But more recently, experts have pushed for specialized training in the unique and increasingly complex issues related to helping people live well into old age.

Caring for an older loved one can be an emotional task, said Shirley Whitenack, president of the National Academy of Elder Law Attorneys. There often are difficult decisions to make, and the aging parent or adult is not always able to make those decisions.

Common issues: When should an elderly person give up driving? Should the older person move from home? Who should provide which care-giving duties? Who should get guardianship or power of attorney?

Other issues that often have to be resolved include the older adult's end-of-life decisions and how assets will be distributed after death.

“A lot of times, what they're really fighting over, like the Smothers brothers, is who mom liked best,” Whitenack said.

In the worst situations, difficult discussions can drive a lasting wedge between brother and sister, child and parent, or family members and critically important outside caregivers, said Shelley Whalen, executive director of Community Mediation Services of Central Ohio, a nonprofit conflict-management resource center in Columbus.

Unlike lawyers who usually represent one side, mediators are an impartial third party who can help families come to a consensus through a voluntary process designed to be less adversarial — and cheaper — than going to court, Whalen said.

To be effective, all relevant family members should take part, she said. Geriatric-care managers, financial planners and other professionals familiar with the older person's needs also can be helpful in finding solutions.

Mediators don't make decisions for people as a judge or arbitrator would. And the conversations happen in private, Whalen said.

“The whole goal is to help parties come up with solutions that are acceptable to them and not to dictate those decisions,” she said.

Though faster, cheaper and, most important, less acrimonious than the alternatives, there's still a lack of public funding to make mediation available to people of all incomes, especially if the mediation hasn't been court-ordered, Whalen said.

Her nonprofit group charges a sliding fee of \$40 to \$120 an hour for elder mediation because she hasn't been able to find outside funding to subsidize the costs. By comparison, the mediation fees for people dealing with child-custody issues drop as low as \$10 an hour.

As a result, Whalen said, she is able to take on fewer elder-care cases at a time when the aging population is increasing.

In 2013, about 45 million adults 65 or older lived in the United States. By 2030, about 1 in 5 Americans — 72 million people — will be in that age group, according to U.S. Census figures.

Every month, 15,000 Ohioans turn age 60.

“The need for mediation is only going to explode,” Whalen said.

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“It’s been very successful,” he said. “About 7 out of 10 cases that have been referred to mediation have resulted in a resolution.”

The court has sent an average of 30 matters to mediation each year since, which would mean about 150 disputes since then that didn’t have to go to trial, he said. The services are free to families, as long as they use court-employed mediators.

“It saves a lot of time and money,” said Michael Moran, director of the probate court’s program who does most of the mediation work himself. “Let’s face it: Who wants to spend \$40,000 to \$50,000 on legal fees when you don’t have to?”

It also promotes healing between family members, in ways going to court can’t, Moran said.

In 2004, lawmakers passed a law that allows probate courts to charge up to \$15 a case to create a dispute-resolution fund. The Franklin County court did that and last year spent a little more than \$29,000 from the money it collected.

For even more difficult elder-care cases, the Montgomery County Probate Court in Dayton is testing an “elder-caring coordinator” program similar to those designed to help parents in contentious divorce cases.

“Mediators are good for simple issues, but complex cases often take a lot more time and need much more hand-holding,” said Arvin Miller, a magistrate with the Montgomery County court.

Say you have an older husband and wife who both need guardians, he said. And they each have children from a previous marriage who don’t agree what should be done.

The coordinators for that case would be more social worker than mediator and would work with families for up to three months, much longer than regular mediation, Miller said.

As for the 89-year-old central Ohio mother and her daughters, they came to an agreement after three one-hour mediation sessions.

On the urging of her geriatric-care manager, the mother agreed to accept caregivers into her house.

The daughter who lives in town promised to visit the mother twice weekly and keep her sister apprised of how she is doing. And the out-of-town daughter agreed to provide her sister with monthly finance reports.

epyle@dispatch.com

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