

August 18, 2014; Mediation

Today, I'd like to focus on a settlement approach that is currently receiving a lot of attention across the United States - mediation. Mediation is a process where a trained mediator tries to help opposing parties reach an agreement that they can both live with.

On Guam, the "father" of mediation is Attorney Pat Wolff. When I think about Pat, I reflect back on the old saying "One person can make a difference." Pat's efforts, and those of his entire family and army of volunteers, have made Guam a better, and more peaceful, place. No one on Guam has worked so long and so hard to help people peacefully resolve their differences. He and his volunteer mediators are unsung heroes.

Pat was way ahead of his time. He incorporated his organization, *Inafa' Maolek*, in 1983. *Inafa' Maolek* is a volunteer-run mediation service open to anyone on the island. The mediators come from diverse professional, cultural, and language backgrounds. Over the last 31 years they have mediated hundreds of disputes.

Inafa Maolek has been very active, and very successful, in mediating conflicts between divorcing couples. The mediators are especially passionate about trying to shield children from the conflict between their parents.

According to Pat, parents often minimize the negative impact arguing has on their children. This has been my observation as well. A successful mediation session will help lower the level of tension within a family and begin the healing process. There is no greater gift divorcing parents can give their children than maintaining open communications between themselves. The psychological benefits to their children are immeasurable.

When should couples turn to mediation? Pat suggests that couples first try to resolve their conflict themselves, if possible. If they can't come to an agreement, they should apply for mediation services as soon as possible. This is important because as time passes the couple's positions become set and the conflict tends to escalate. This makes resolving the differences increasingly difficult.

A trained mediator will be assigned to conduct the mediation sessions. Although a few mediators are lawyers, most are not. All *Inafa Maolek* mediators are required to attend a 15-hour course to learn basic mediation techniques. The course is conducted at the University of Guam. Following the course, mediation candidates observe a number of mediation sessions conducted by experienced mediators. The candidates then begin to conduct sessions themselves and are in turn coached by senior mediators. All *Inafa Maolek* mediators continue to attend Mediation Mini-Trainings to maintain and improve their skills.

The mediation session follows an established pattern. The mediator and the parties, sometimes along with their attorneys, all sit together at a table. Each party is given an opportunity to identify the problem(s) and his or her reaction to the problem. Depending on the situation, the mediator may meet separately with each party to discuss possible solutions, or they may all remain seated together at the table and try to reach a mutually acceptable compromise.

Mediation is confidential. Even if the couple is involved in an active court case, nothing said in the mediation session may be reported back to the judge, unless both parties agree.

Mediators are neutral. In other words, they do not take sides with either spouse. Mediators don't suggest solutions. The couple must decide on the resolution between themselves. Mediators assist the couple in finding common ground upon which they can build a successful resolution to their dispute.

Pat emphasizes that the ultimate success of mediation depends on both parties coming to the table with an open-mind and willingness to participate and compromise.

Fortunately for Guam, our legal system now embraces mediation. On May 21, the three justices of the Guam Supreme Court adopted mediation rules and ordered the rules into immediate effect. These rules apply to all non-criminal cases.

Under the new rules, within 75 days of filing a civil matter, including a divorce case, all attorneys must file a certification that they have read the Court's new brochure "How Mediation Can Work for You" and given a copy to their clients. In addition, lawyers must certify that they discussed the possible benefits of mediation with their clients.

In its order, the Supreme Court established ethical rules for mediators and for conducting mediation sessions. Mediators must be objective, have no conflicts of interest, and maintain complete confidentiality. The Court emphasized the importance of trying to settle cases whenever possible and as soon as possible.

If the parties indicate a willingness to try mediation, a judge will refer the matter to an appropriate mediation service. The Court specifically recognizes *Inafa Maolek* and Pacific Arbitration and Mediation Services (PAMS), a private, for profit organization. (I am a registered mediator with PAMS). All PAMS mediators must be lawyers who have obtained mediation certification. Parties may use other mediation providers, but must first obtain court approval.

Most divorce and domestic disputes are referred to *Inafa Maolek*. Although *Inafa Maolek* is a nonprofit organization and its mediators are volunteers, there is a modest fee of \$65 to help cover the organization's administration costs. PAMS

usually handles more complex civil matters. Their rates are considerably higher than *Inafa Maolek*. Cases referred to PAMS by the Court have rate limits.

For more information call *Inafa Maolek* at 475-1977, PAMS is 472-2089 or online at www.pamsguam.com.

Pat Wolff is understandably proud that his efforts, and the efforts of his volunteers, have influenced the Guam Supreme Court to officially endorse mediation. This is a giant step forward in helping Guam residents find peaceful ways to solve difficult problems. Thanks Pat!