



Professionals: Teaming Up With A Facilitator

Many professional fiduciaries and attorneys assist their clients by using facilitative skills: listening attentively, helping their clients broaden their perspectives, asking probing and clarifying questions, breaking issues down into manageable parts, and showing empathy. If an attorney or fiduciary can apply these and more facilitative skills, why use a facilitator? The benefits to the clients, and to the attorneys and fiduciaries are numerous:

1. The facilitator is neutral: not aligned with any person, or position. This allows a fresh approach, with no history, and no personal impact from the conflict, which helps the discussion move forward toward a positive, problem-solving approach. The facilitator's neutrality enables the family member and professional participants to be acknowledged and to give voice to their concerns.
2. The attorney's and/or fiduciary's duties to their client remain uncompromised by the needs and demands of the other family members as the attorney and/or fiduciary participate in discussions with or about their client. A guardian, for example, can clearly state his or her opinion as to what is in the best interest of the incapacitated person, and the facilitator can assist the other participants understand and acknowledge the guardian's position. At the same time, the facilitator can help the family members communicate each of their concerns to the guardian, and help the guardian hear and acknowledge those concerns.
3. The facilitator attends to and supports each participant, including the attorney and/or fiduciary. This attention from the facilitator creates a meaningful opportunity to speak directly, to be heard and to understand the issues underlying the dispute or conflict.

4. A facilitated meeting eliminates triangulation: all parties are present and the facilitator helps the participants have direct, open communication among all participants, including the attorney, fiduciary, client and family members.
5. Recommending the use of a facilitator to minimize or avoid conflict helps satisfy ethical and statutory duties. Attorneys have a duty to give clients candid advice. RPC 2.1. In giving such advice, a lawyer “may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” RPC 2.1.

Petitioners and attorneys in guardianship proceedings must consider lesser restrictive alternatives to guardianship. A facilitated family meeting concerning a trust or power of attorney dispute can explore the ability of a trust or power of attorney to meet the needs of an alleged incapacitated person, an important step before deciding to file a lawsuit petitioning for guardianship (RCW Chapter 11.88) or petitioning for an accounting (RCW Chapter 11.94).