

Common causes of delays in progressing to mediation in family law matters

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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Once the initial stage of negotiation has taken place in a family law proceeding (whether that be property settlement or parenting arrangements), the parties will move toward mediation to achieve a more structured outcome. One of the most common frustrations is the gap between negotiations and attending mediation. Clients often ask, 'why does it take so long to get from one stage to the next?'

There are several steps that need to be undertaken to prepare for mediation and if one or more of these steps are not undertaken correctly, a delay is often caused.

Disclosure in family law matters

One of the most important aspects of family law proceedings is providing full and frank disclosure under *Rule 6.1 of the Family Law Rules 2021.* Each party has an obligation to provide all disclosure that is relevant to the proceeding, which includes, but is not limited to:

- bank account statements;
- credit card statements;
- payslip records;

- tax returns;
- shares portfolio statements; and
- superannuation statements.

Providing full and frank disclosure is an important step in proceedings as it ensures that both parties have a complete idea of the asset pool (the assets and liabilities of the relationship), from which they can form the basis of the argument they will present in mediation.

However, the process of providing full and frank disclosure may delay the time between negotiation and mediation for the following reasons:

- One party may be particularly slow at gathering and providing their disclosure;
- There are complicated financial aspects of the asset pool (such as business and property investments) which may need professional valuations; or
- There may be discrepancies between each party's disclosure which will require further investigation and clarification.

Therefore, to minimise any time delays between negotiation and mediation, it is important that both parties comply with this disclosure process in a timely manner.

You read more detail about disclosure in our earlier blog, "What is disclosure in family law?"

Requirement for asset valuations can delay progressing a mediation

The asset pool may contain financially complicated assets which require further valuation. This valuation process can often add to the time delay between negotiation and mediation. However, it is important to proceed with these valuations so that an accurate value of the asset pool can be determined.

Valuers may request further information relating to the particular asset, so that they are able to perform an accurate valuation. Collecting this additional information can take time, especially if it is not readily available. Additionally, the timeframe in which a valuer can provide their service may be within weeks or even months. Not to mention that valuation services are often quite costly, and parties will have to further negotiate the way in which this service will be paid for.

Whilst necessary in some family law proceedings, an expert valuer's involvement often introduces additional time delays between the negotiation and mediation stages.

Co-ordinating multiple schedules of all parties involved

There is a very high demand for the service of experienced mediators, and this may contribute to the time delay between negotiation and mediation.

Popular mediators often have very booked calendars, meaning the earliest available date could only be weeks or months away. This means that even if both parties promptly comply with pre-mediation procedures, there could still be an inevitable delay between negotiation and mediation due to the availability of the mediator.

It is not only the mediator's schedule that has to be taken into consideration. Mediation can only occur when both parties, as well as the mediator, are available. Both parties and their lawyers will likely have full schedules, including other court commitments or personal and parenting obligations, so coordinating a time that works for everyone may be complicated and cause extended delays.

If your preferred mediator is not available in the immediate future, it may be worthwhile using this time to review all disclosure and documentation to ensure you are fully prepared when the mediation date rolls around.

Negotiation can often lead to reassessment

The negotiation stage can often lead parties to reassess their positions and adjust their strategies accordingly as they prepare for mediation.

During negotiations, each party's concerns and priorities become clearer, which may highlight the key issues that are preventing reaching an agreement. The negotiation process often provides valuable insight into the dynamics between the parties and exposes any unrealistic expectations one party may have.

After the negotiation process, it may be necessary to reassess your approach and come up with altered arguments that might be more effective in mediation. For example, if one party is unwilling to compromise on a particular financial matter, the other party may reassess their options and consider alternative solutions that might be acceptable to both parties to present at mediation.

It is important not to attend mediation prematurely. You should take your time in organising your arguments for mediation. This may delay the process slightly, but it will ensure you are fully prepared for mediation.

Get help from a family lawyer

Whilst the gap between negotiations and mediation in family law can be frustrating, it can serve a critical purpose. By allowing time for full preparation, complete disclosure, emotional adjustment, and strategic planning, both parties are better equipped to achieve a fair and lasting resolution.

Having an experienced family lawyer on your side will ensure you are fully prepared for mediation and any delays in getting to the point are minimised. You can read more about the benefits of legal representation in our earlier blog, "Should I have a lawyer for my family law mediation?"

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

02 9997 2111

info@ealawyers.com.au

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