



# THAT'S ONE WAY OF DOING IT: SHUTTLE-DIPLOMACY IN DOMESTIC RELATIONS MEDIATION

BY JOSEPH HOHLER III

I prefer mediating domestic relations cases face-to-face, and find shuttle diplomacy rarely appropriate, even in cases which others might call “high-conflict,” but are really just run-of-the-mill “can’t get along” situations.<sup>1</sup> Certainly, this requires mediator vigilance to manage any power imbalances between the parties, and means a willingness to pull the ripcord on face-to-face meeting at any time, never mind the ever-present threat of the parties detouring through other, random arguments.<sup>2</sup> But, if the mediator commands the respect of the parties for one another, and the process, there are few times when it should not be done face-to-face.

That said, many mediators go fully in the other direction and use shuttle diplomacy almost exclusively, to the point that many are mystified when it is done any other way. This approach raises two important questions:

1. What is gained by shuttle diplomacy?
2. What is lost by it?

In asking these questions I have no interest in the attorney’s or mediator’s answers to them. Rather, I’m interested in the *parties’* perspective and how *they* feel about this style of mediation. So, I sought answers from a handful of actual domestic relations litigants who all experienced mediation via shuttle diplomacy.<sup>3</sup>

## What is Gained by Shuttle Diplomacy?

### Reduced Anxiety

Without fail, parties in domestic relations cases are primed for conflict—after all, a breakdown of their relationship is probably what got them there in the first place. For the parties mediating face-to-face after they’ve had an often-ugly falling-out can be fraught with emotion and feel like going to war. Accordingly, removing the face-to-face aspect of mediation can often be a great relief and, without the inherent tension of it, may have the benefit of allowing the parties to reach resolutions that might ultimately have been clouded by the anxiety and hostility of ‘battle.’

### Fewer Emotion-Based Decisions

One thing domestic relations litigants must understand early on is that the court process is indifferent to their emotional needs. But even *when* they understand it, many are still driven by their emotions. This can be more intense in face-to-face mediations, where the parties are often motivated by their own desires for revenge and score-settling. Separating the parties works to alleviate their irrational motivations, leaving them to act logically in resolving the issues at hand.

### Efficiency, of a Type

Separating the parties and their emotional baggage tends to eliminate the need for setting elaborate ground rules to maintain orderly, respectful communication, making a productive discussion easier to facilitate. Better, by streamlining that part of the process, the parties can identify the issues and their positions more quickly, allowing faster entry into discussing practical solutions.

## What is Lost in Shuttle Diplomacy?

### Impersonality

On its best days, the court process is impersonal and offers few opportunities for the litigants to be treated as people. One opportunity is at trial, but even *that* is debatable. The other is at mediation.

Shuttle diplomacy, though, can often ignore that the parties are humans, with real concerns, which are often far more important to the outcome than anything else. Shuttle diplomacy may outright bulldoze those interests and concerns, treating the parties like roadblocks to resolution. In that way, parties often feel that the agreement reached was not their own, or one they had little input in, and was the product of the mediator’s agenda.

Similarly, shuttle diplomacy deprives the parties of a chance to be *heard*. Given that few domestic cases will see the inside of the courtroom in any meaningful way, mediation is the one time the parties might speak and hear each other. By

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giving the parties a setting in which they can say what they need to say, free of interruption, mediation can truly get the parties as close to a happy place as possible.<sup>4</sup> Separating them deprives them of the one chance they likely will ever have to be heard.

#### Removes the Opportunity for Recognition

At mediation, a divorce client of mine took the entirety of the couple's debt upon himself, eliminating the wife's financial commitments. But, because the parties were only face-to-face long enough to recite the agreement for an audio recording, there was never a moment in which my client knew his wife recognized her new financial freedom. And because her actions following the divorce confirmed her lack of recognition—to be clear, he did not want gratitude, only recognition—he was bitter.

If the mediation had occurred face-to-face, would that have changed anything, and would she have given him the recognition he wanted? There's no way of knowing. But, if he'd at least *had* that opportunity to explain, it might have dissipated the conflict in their relationship once the divorce was final.

#### Inefficiency

Shuttle diplomacy, with all the running from room-to-room, relaying offers, and repeating arguments, is repetitive and time consuming. Never mind that it makes changing things on the fly, exploring a variety of options, or refining an offer/counter-offer extremely difficult.<sup>5</sup> It's no surprise that, as a rule, everybody I spoke to believed their mediations via shuttle-diplomacy took far longer than needed and wasted an incredible amount of time. One side effect of this inefficiency: increased stress and anxiety as the process grew longer and longer.

### Subverts Understanding/Contributes to Misunderstanding

When the parties, their attorneys, and the mediator are all in one room, there is little doubt everybody involved is discussing the same items, has heard the same explanations and reasoning for them, and therefore should all share the same understanding of them. Shuttle diplomacy, though, has the danger of turning the mediation into a higher-stakes version of the game *Telephone*, where what goes in one end of the line may not be what comes out the other. While the mediator can be vigilant to avoid this problem, there are no guarantees the parties will reach an understanding.

### Conclusion

There are sound reasons to use shuttle diplomacy, and certainly things to be gained from it. But given the potential downsides, and the consequences in domestic relations cases, diligence is required to ensure it is used to further the parties' needs, and not merely the desire for the mediator to get a deal, because if it is not, what's the point?

### About the Author

*Joseph Hobler III is a family law attorney and mediator, practicing in and around the home of the Western Michigan Broncos – Kalamazoo. He regularly volunteers at the Family Law Clinic in Kalamazoo, is a volunteer mediator in Kalamazoo, and is an avid runner. His personal best in the 5k is 18:42; in the 10k is 38:56; and in the half-marathon is 1:28.44.*

### Endnotes

- 1 Obviously, I draw a major distinction between these cases and those involving domestic violence and other criminal conduct, which are the very definition of high-conflict.
- 2 Far from pointless, the parties' meandering into old arguments is often far more illuminating than people realize.
- 3 While I won't name the particular folks with whom I spoke, I am grateful they took the time to speak about their experiences.
- 4 I like to imagine mediation being something of a modified-Festus—it starts with the airing of grievances, but skips the feats of strength.
- 5 It also deprives the parties of their autonomy in crafting *their* solutions.