

What Makes Probate Mediations Settle?

Lessons from Four Decades of Family Conflict Resolution with Bette Epstein

KATY JONES

MARKETING PRODUCTION MANAGER

Trust and estate disputes are rarely about the legal documents alone.

On paper, the conflict may concern a trustee's accounting, a disputed distribution, a conservatorship, or the interpretation of a trust provision. In reality, probate litigation often

involves grief, family history, caregiving responsibilities, sibling rivalries, disappointed expectations, and decades of unresolved conflict.

Few neutrals understand that dynamic better than Bette Epstein.

Before becoming a trust and estate attorney, Epstein practiced as a licensed psychotherapist. She later spent more than three decades litigating probate, trust, conservatorship, and fiduciary disputes before transitioning her practice to mediation. Today, she brings an uncommon combination of psychological insight, legal expertise, and practical problem-solving to some of the most emotionally charged disputes in the legal system.

Her experience has taught her that successful probate mediations rarely turn on a single legal issue. Instead, they succeed when the parties begin addressing the underlying dynamics driving the conflict.



The Legal Dispute Is Rarely the Real Dispute

One of the most common misconceptions in probate litigation is that the petition filed with the court represents the actual problem.

Often, it does not.

A trustee removal petition may stem from years of resentment over caregiving responsibilities. A trust contest may reflect sibling rivalries that predate the estate plan by decades. A dispute between a surviving spouse and stepchildren may be fueled as much by feelings of exclusion and mistrust as by any legal disagreement.

As Epstein observes, many parties arrive at mediation carrying emotional burdens that existed long before the litigation began.

"People are often grieving the loss of a family member and haven't even had time to grieve because they're engaged in litigation." She shared in a recent CLE program on family member fiduciaries & trustees.

Her background as a psychotherapist taught her to listen carefully and without judgment. While she is quick to note that mediation is not therapy, that training remains invaluable. It allows her to identify the interests, fears, and motivations that frequently drive behavior in probate disputes.

Understanding those dynamics often reveals settlement opportunities that are invisible when parties focus exclusively on legal positions.

The Moment Family Becomes Business

A recurring theme in Epstein's work is the sudden and often uncomfortable transition from family relationship to business relationship.

Siblings become co-trustees. Stepchildren become remainder beneficiaries. A surviving spouse becomes dependent on trustees who may also be future beneficiaries of the same assets.

The emotional history remains unchanged, but the legal obligations become entirely different.

Many families are unprepared for that shift.

Parents frequently nominate children as trustees without considering whether those children can function together in a fiduciary relationship. Epstein has seen cases where siblings who could barely sit together at holiday dinners were expected to administer substantial trusts jointly after a parent's death.

The result is predictable.

Family disagreements become fiduciary disputes, and fiduciary disputes quickly become litigation.

One of Epstein's most important observations is that many probate conflicts are not caused by bad actors. They arise because family members fail to recognize that they are no longer operating solely as relatives. They are now operating as fiduciaries with legal obligations that often require them to place the interests of others ahead of their own.

Transparency Prevents More Litigation Than Any Court Order

Ask Epstein what prevents probate disputes from escalating, and her answer is immediate:

"Transparency, transparency, transparency."

After decades of litigating and mediating trust disputes, she has found that many conflicts begin not with misconduct, but with a lack of information.

Beneficiaries become suspicious when they do not understand why distributions are delayed. Trustees become frustrated when every decision is questioned. Family members assume the worst when communication breaks down.

The solution is often surprisingly simple.

Clear explanations. Regular updates. Open communication about timelines, expenses, appraisals, and administration decisions.

In her CLE presentation, Epstein encourages fiduciaries to provide beneficiaries with as much information as reasonably possible. In some cases, even providing view-only access to trust accounts can reduce suspicion and build trust.

"When people don't have information," she notes, "they tend to assume the worst." Transparency does not eliminate every dispute. But it often prevents minor concerns from becoming full-scale litigation.

Expectations Drive Conflict

Another lesson Epstein has learned is that probate disputes are often fueled by expectations rather than assets.

Many beneficiaries enter an administration believing they know what a parent or grandparent intended. Sometimes those beliefs are based on conversations that occurred years earlier. Sometimes they stem from assumptions that were never confirmed.

Then the documents are read.

The estate plan may provide something entirely different from what family members expected.

Parents, wanting to preserve harmony during their lifetimes, sometimes make statements that create unrealistic expectations among their children. What was intended as reassurance can later become a source of conflict.

As Epstein often tells attorneys, disappointed expectations are among the most powerful drivers of probate litigation.

The dispute may appear to be about money. In reality, it is often about a perceived broken promise.

Courts Decide Petitions. Mediators Solve Problems.

One of the most revealing stories Epstein shares in a recent podcast interview involves a trust dispute between a widow and her late husband's two sons.

The widow sought to remove the sons as trustees. The sons opposed her request. The litigation had been ongoing for years, and both sides were deeply entrenched. At first glance, the dispute appeared to be about trustee administration.

But as Epstein worked through the issues, a different reality emerged.

Neither side wanted to remain connected.

The widow did not want her financial future controlled by her stepsons. The sons did not want to spend years managing a trust for someone they viewed as standing between them and their inheritance.

The petition before the court focused on trustee removal.

The actual problem was that everyone wanted out of the relationship.

Instead of debating whether the trustees should be removed, Epstein helped the parties explore a different solution altogether: terminating the trust structure and dividing the assets in a way that would allow each side to move forward independently.

The result addressed the parties' underlying interests far more effectively than a court ruling ever could.

That experience reflects a core principle of Epstein's mediation philosophy. The best solutions are often not found in the pleadings.

They emerge when parties stop asking who should win and start asking how the problem can be solved.

Beyond Settlement

Probate disputes sit at the intersection of family, money, and loss. They require more than legal analysis alone.

They require patience. Empathy. Creativity. The ability to manage expectations. And the willingness to look beyond the immediate legal controversy to understand the human conflict underneath.

For Bette Epstein, those skills have been shaped by an unusual professional journey—from psychotherapist, to litigator, to mediator.

The result is an approach that recognizes a simple truth:

*The most successful probate mediations do more than settle lawsuits.
They help families move forward.*

Contact Bette Epstein:
bepstein@adrservices.com

Case Manager: Katy Jones
katyteam@adrservices.com
(510) 466-6630