

The Perils of Picking Low-Hanging Fruit

By Hon. Verna Adams (Ret.)

After years on the Family Court bench—and now, in the mediation trenches—I’ve noticed a recurring phenomenon that can quietly derail even the most promising settlement discussions. It begins innocently enough, but like many things in family law, it doesn’t stay innocent for long.

Here’s how it unfolds. Many mediators, myself included, like to start with what I call the low-hanging fruit—the issues on which the parties already agree or are close to agreement. The thinking is that if we can build some early consensus, maybe the cooperative energy will carry us through the tougher topics ahead. After all, a little early progress can feel like a win for everyone.

But once the low-hanging fruit has been plucked (and yes, I know this metaphor is starting to groan under its own weight), we turn to what’s left on the tree. These remaining issues tend to be more tangled, more emotional, and—perhaps most of all—more tedious. They’re the ones that can turn an afternoon of optimism into an evening of exhaustion. I call them the anthill issues because, while each one might seem small on its own, together they can form a mountain.

They often include things like:

- Post-separation accounting
- Retroactive child or spousal support
- Epstein reimbursements
- Watts charges and Jeffries credits

Individually, none of these is usually case-defining. Collectively, though, they can be enormous—and because they’re often interrelated, they can quickly bog down even the best-intentioned negotiation.

Take Epstein reimbursements as an example. Whether one spouse can claim reimbursement for post-separation payments on community debts often depends on whether there was temporary support in place—and if there wasn’t, then someone has to reconstruct, months or even years later, what that support should have been. Before you know it, you’re not mediating anymore—you’re time-traveling through bank statements and spreadsheets.

This is where settlements start to wobble. By the time the anthill issues surface, everyone is fatigued. The mediator is losing daylight, the parties are losing patience, and the lawyers are silently wondering why they didn’t schedule a second session. Sometimes, after hours of apparent progress, one unresolved accounting issue suddenly reopens everything, and the settlement collapses like a house of cards.

So how do we keep the anthill from swallowing the orchard?

As usual in family law, prevention is better than triage. Most of these financial headaches grow worse the longer they’re left unattended. Early attention—by counsel and by the court—can make all the difference. Here

are a few practical tips for attorneys who want to spare their clients (and themselves) the misery of a post-separation accounting quagmire:

1. Get temporary support orders in place early.

Enter a temporary child or spousal support order as soon as possible after filing. If agreement isn't feasible, file an RFO. Rewriting financial history months—or years—later is expensive, frustrating, and usually avoidable.

2. Respect the ATROs.

Make sure your client understands the Automatic Temporary Restraining Orders, and that they notify the other side, in writing, of any extraordinary receipts or expenditures. A simple letter early on can prevent a world of hurt later.

3. Disclose early and completely.

Submit full preliminary declarations of disclosure promptly—ideally when the petition or response is filed, or within the 60-day window that follows. And read the fine print: copies of documents must be attached. “Disclosure” means more than checking boxes; it means transparency.

Even with diligent preparation, mediations often arrive with anthill issues still on the table. When that happens, mediators can still manage the risk—but it helps to name it.

Here are a few suggestions:

1. Pick the low-hanging fruit—but flag the anthill early.

It's fine to start with the easy issues, but don't let the parties forget that the trickier financial questions still await. Mention them early and revisit them before the end of the session.

2. Keep the anthill in perspective.

Encourage the parties to remember that these disputes, while real, are often dwarfed by larger issues—custody, property division, or simply the peace of moving on. A sense of proportion is a powerful settlement tool.

3. Bring in a neutral forensic accountant.

A skilled neutral can untangle the financial spaghetti far more efficiently than an exhausted mediator at 5:00 p.m. on a Friday. Sometimes, outsourcing the math is the best way to preserve the mediation.

Family law, perhaps more than any other field, rewards those who keep one eye on the details and the other on the big picture. Starting with the low-hanging fruit is fine—encouraged, even—but don't forget to glance down at the anthill beneath the tree. It may be small at first, but left alone, it can grow surprisingly fast.