

## **Life After Love Gone Wrong – A Fox Rothschild Family Law Podcast Series**

### Episode Two: Meet Me Halfway

Featuring Sandra Fava and Katherine Nunziata

**Sandra Fava:** Hi everyone, welcome to Life After Love Gone Wrong. We are Sandra Fava and Katherine Nunziata, Family Law attorneys from Fox Rothschild, an *AmLaw* 100 firm with offices all over the country, in New Jersey and beyond. We are here to ask and answer the tough questions about family law topics like divorce, custody, prenups and lots of other family law issues, which may come up in your life and that you need to be informed about.

**Katherine Nunziata:** We recognize that if you are involved with a family law issue, your life doesn't begin or end with the law. We are bringing you this legal lifestyle podcast to answer your questions about a difficult process, while helping you live your life to the fullest along the way.

**Sandra Fava:** Family law matters are no laughing matter, but we hope to bring some levity, transparency and, dare I say, fun to these difficult topics. We hope you enjoy this podcast designed to help you through life after love gone wrong.

**Katherine Nunziata:** Hello there and welcome back to the Life After Love Gone Wrong podcast. We are Katherine and Sandra, Family Law attorneys from the lovely Garden State of New Jersey. We are here to help answer the tough, but important, questions about divorce that no one wants to talk about, but everyone wants to know.

**Sandra Fava:** Today, we are going to focus on a few buzzwords you may already be familiar with: mediation, arbitration and collaborative divorce. I think it is fair to say that many non-lawyers can easily get confused by these terms. So, let's start with the basics. Each of these are alternative forms of dispute resolution. Traditionally, legal disputes are hashed out either in a court room by a judge, or jury making a decision, or by mutual agreement of the people at odds. As times have changed, the number of legal disputes have grown, Out of the need to move cases quicker to resolution and with the goal to reduce the mental, emotional and financial toll traditional litigation takes on parties, the various areas of alternate dispute resolution have grown.

**Katherine Nunziata:** So, what Sandra is saying is that each of these types of alternative dispute resolution allow people to resolve their differences in a more cooperative way than traditional litigation allows. It sounds great, who wouldn't want that?

**Sandra Fava:** Well, there are a few tales of caution and considerations to mull over before you decide whether and when one of these alternative routes is the right fit for you and the legal issues you are facing.

**Katherine Nunziata:** True. Let's start with the differences between them. Mediation in family law matters in New Jersey can happen one of two ways. Parties can either voluntarily agree to participate, or they are required to do so by the court. This choice can happen at any time in the case, but timing may impact how other issues are handled. For example, if you wait until the week before you're supposed to have a trial, you may need to withdrawal your complaint if the court won't move those trial dates. Cases can begin with mediation, or it can happen along the way. I believe this depends on the issues at play and personalities involved. And some cases are too complex, or emotionally-charged early on to head straight into mediation. Parties may need time to accept what's happening, information may need to be shared, or experts involved to value assets, income or a business.

**Sandra Fava:** All very trues. As with most things, timing is everything. If one side hasn't even had the chance to process the fact that their spouse wants to end the relationship, they may not be in the right frame of mind to jump right into mediation. It's important to be honest with where you are emotionally when you're making the decision about when to mediate. While mediation can save time and money from general litigation, if you aren't in the right frame of mind, don't have the necessary information, or don't use a mediator with experience with the issues pertinent to your life and family, you'll likely end up spending even more money because those efforts will have to be duplicated.

**Katherine Nunziata:** And it's also a general requirement for parties divorcing in New Jersey to participate in what is called the Matrimonial Early Settlement program. You may hear it called ESP for short. Resulting from attendance at that program is two free hours of mediation with a mediator that is selected from a list of court-approved mediators. These individuals have received intensive, specific training and have been certified as mediators.

**Sandra Fava:** Like me.

**Katherine Nunziata:** They volunteer two hours of their time to help the courts settle cases. If after the two free hours the parties want to continue in mediation, they can choose to do so, but then they must begin to pay for the services. I think that fairly covers the basics of mediation. We could spend a lot of time getting into the details and "what if" situations, but then we wouldn't be able to talk about the other forms of dispute resolution.

**Sandra Fava:** Like arbitration, which is purely voluntary, meaning that the family court in New Jersey cannot require you to arbitrate any or all of the issues in your case. Arbitration can be analogized to hiring a private judge. Maybe you're thinking, why would I do that when I pay

taxes and have free judges in the county where I live who will handle my case? A few considerations: one, the courts throughout New Jersey are very busy. Read any New Jersey news publication and you will find a piece about the shortage of judges throughout the state. Less judges and the same or more legal filings leads to the natural conclusion of delay, exhaustion, frustration and higher chance for human error. Paying for an arbitration not only gives you control over scheduling, but also allows you to select someone who has the experience and is well versed in the issues relative to your life and family. They are not distracted by hundreds of other cases on their docket and will focus on the issues.

**Katherine Nunziata:** Keep in mind that there are different types of arbitration. Binding vs. non-binding, and if binding, how appeals will happen. You can limit the issues presented to the arbitrator. Parties and their counsel have control over the scheduling and the speed of which issues are resolved. Arbitrators also tend to be retired judges or practicing attorneys, so there is a lot of flexibility here.

**Sandra Fava:** And last, but not least, is collaborative divorce. This is also completely voluntary and a New Jersey court cannot require you to participate in this process. Collaborative divorce is just what it sounds like. Parties work together with a group of selected professionals to resolve their issues collaboratively. For example, there are attorneys who practice collaborative divorce and are part of groups of attorneys recognized for this work. Other professionals involved may include mental health professionals, accountants or financial advisers. The parties choosing to participate in collaborative divorce sign an agreement to do so. Generally, this agreement precludes these experts from serving as individually retained experts by either party, if the collaborative divorce process is unsuccessful or the parties move to litigation,

**Katherine Nunziata:** Collaborative divorce is a great option for families, but I give the same caveat as before when we were discussing mediation. Parties who are emotionally, mentally and financially ready to deal with the disassembling of their personal lives will have the highest success rates in alternative dispute resolution. And, with that, I think we've covered the three common types of alternative dispute resolution, and hopefully we have provide you, our listeners, with some clarification and dispelled any myths that you may have heard.

**Sandra Fava:** We hope you enjoyed this episode of Life After Love.

**Katherine Nunziata:** Thank you so much for tuning in today. If you have any feedback about what we discussed, or ideas for future topics that you'd like us to cover, please email us at [lifefterlove@foxrothschild.com](mailto:lifefterlove@foxrothschild.com).

**Sandra Fava:** Until next time, we are Sandra and Katherine, here to help you through life after love.