



My Personal Mediation Philosophy

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While conducting a mediation training session, I was asked if I could describe mediation in one word. Without hesitating, I responded “opportunity.” In mediation, parties have an opportunity to communicate effectively, telescope issues in hours or days that might otherwise take years to develop in litigation; achieve enormous savings of cost, avoid the distractions of litigation and eliminate risk. Equally important, parties have an opportunity to explore their underlying needs and interests and develop practical solutions not available in litigation or in arbitration.

In order for all participants to take advantage of the opportunities presented in a mediation, it is imperative for all participants – party representatives, counsel and the mediator alike – to devote adequate time to preparing for the process. Accordingly, I work with counsel in advance of mediation to address key preparation issues such as the need for any exchanged submissions, the substance of critical ex parte submissions, the identity of the participants and issues of authority.

I firmly believe that while the parties may own the outcome, they are looking for my leadership on issues of process. With regard to the “facilitative-evaluation” debate, I find most parties want and deserve appropriate “reality testing.” While I do not put a number on a case or even ask for the parties’ bottom line (except, perhaps, on rare occasions to break an impasse), as the only objective person in the room, I believe the parties do want to hear from me on the “merits.” In the final analysis, while parties may tell me what they want, what they need, what is fair, what is right, what is true (all of which is fair comment), I will urge parties to listen respectfully, make good assessments and make responsible decisions. In my view, the benchmark for a responsible decision is a comparison of what can be accomplished in mediation with the consequences likely to occur if the parties fail to achieve a settlement. My approach, however, will be different in each next case depending upon the positions, the people and the problem. Of course, in every case, I also explore the underlying interests and examine the potential for a “win-win” solution.

At the same time, no resolution is driven solely by disparate litigation-risk analyses. There is always some other interest, need, agenda item or problem in the background which is driving a party’s analysis and settlement decisions. I make every effort to take a multi-dimensional view of a dispute, looking beyond the differing views on positions and interests. For example, I find that differences between counsel and client can create a sometimes invisible barrier to resolution. Differences among and between the various representatives of just one side to a dispute similarly can create a barrier to resolution invisible to the other side. I often conduct an “intra-mural mediation” on just one side to get all of the party-representatives on the same page on offers, demands and issues such as the timing of a payment, or which division’s budget will take a “hit,” or whether a settlement should be based upon a one-time payment or restructured terms of a deal.

I hope what I bring to the table as a mediator, in addition to my skill, experience and integrity, are qualities of patience and perseverance. Not infrequently, party-representatives and their lawyers reach a stage where they are willing to give up and terminate the process. So long as the parties are participating in good faith, my credo is “never give up.” I have often heard it said that a good settlement is one where both parties are equally dissatisfied. However, surprisingly often, I hear from parties after a mediation that they were satisfied not only with the process, but also the result.