

MEDIATION: OBSTACLES BECOME OPPORTUNITIES

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What is Mediation?

Speaking very briefly, mediation is designed as a voluntary process whereby two or more parties to a dispute meet together, discuss objectively the issue(s) in dispute and fashion their own solution to their problem. The problem need not be a legal one. Mediation has been used successfully in a number of settings to resolve various disputes. These include disputes between school officials and participants, municipal matters and even between victims and offenders.

A mediator is a trained professional who is impartial to the dispute. He or she assists the parties to work through the dispute and reach a solution that is satisfactory to all concerned. The mediator does not impose a solution on the parties, and does not evaluate the merits of any proposed solution, but creates an atmosphere for the parties where all options can be “put on the table”, discussed and evaluated by the parties themselves. The mediator’s job is really to manage the mediation process, and not the content of the discussion (within reasonable boundaries of course). In many cases the mediator is not much more than a peacemaker and peacekeeper between the parties.

After parties agree to mediate, the mediator encourages them to identify all of the issues that must be discussed, and then list all possible solutions without evaluating them. This assists the parties to speak openly, and helps them to start listening to the other (s). It can also test the mediator’s skill, as it is often necessary to try to get each party to change their focus from themselves to what is best for a solution (often called lateral thinking).

Once all possible options have been generated and listed, the parties then determine criteria to evaluate each option that has been listed. It is through the process of generating options, criteria to evaluate these options, and actually evaluating them that the parties create a solution.

What is fascinating to see as a mediator is that so often parties who state that they cannot agree on things quickly work together to fashion a solution that will meet all of their needs. Frequently, this is accomplished without a lot of strenuous interjection and redirection by the mediator.

Obstacles become Opportunities

One of the most challenging things to do as a mediator is to find common ground with the parties to begin to mediate from. Usually I meet with each of the parties individually before a joint session that I can find some way to connect with them individually. Hopefully, there is enough similarity between the disputants that I can connect with each party in a similar fashion, and then bring them to a more common starting point when the joint mediation sessions begin. For example, most parents agree that their children have positive attributes and what they are. This can provide a good starting point in a family matter.

What is also surprising, however, is how often the identified obstacles for the parties provide opportunities for discussion and the development of common ground between them. For example, if the parties to mediation are disputing

over a child and her custody, they can usually agree on what the child's routine is during the day. Often, the parties can also agree that conflict between her parents is not good for her, and that it is in her best interest to have both of them involved actively in her rearing and education. Once this agreement is reached, and supported by each parent, it is much simpler to work out the mechanics of how each parent will continue to meet his/her obligations to rear and educate the child. This shifts the focus of each party from what his or her 'rights' are as a parent, to what is the best interest of the child. Usually parents can then agree on the basis for a parenting plan.

We are to be Peacemakers

I believe that in the Sermon on the Mount Jesus lists a number of qualities that Christians are to have. They are not qualities that we can choose from, as if shopping for produce, and picking those we like, or that will decorate our spiritual plates by "looking nice". These are the qualities that we are to have, so that others may know whom we worship and why our lives are blessed. In Matthew 5:9 Jesus says, "Blessed are the peacemakers, for they will be called sons of God" (NIV). From this it is pretty clear that we are to be peacemakers. I believe this speaks to us both professionally and personally.

The next step of course, is to determine how to become an effective peacemaker. Just like parties to mediation, it often requires some assistance in lateral thinking to adjust to our focus from ourselves. We need to focus on who Christ wants us to be, and not on who I want me to be. This is often difficult, especially for lawyers as we are used to being able to provide answers and solutions to others, and often expect others (clients) to follow whatever advice we give them.

We must look at ourselves and ask, do I show that I have the qualities that Christ wants me to? Does the world know me as a peacemaker? Upon further review of Matthew 5, it appears that to be effective peacemakers, we need to also have the following qualities (also listed in Matthew 5): meekness, poverty of spirit, a hunger and thirst for righteousness (and not what I think is right, or best for me), mercy, purity of heart (this is not a complete list).

Becoming a Peacemaker

In Romans, Paul provides some further direction for us. Romans 12:9-21 is a powerful passage that assists. (I encourage you to read and reflect on it.) Specifically, to assist in our refocusing on Christ, Paul tells us to persevere in prayer (v.12). He encourages us to live in harmony with one another, and not to claim to be wiser than we are (v.15). These are powerful words. They also reflect what Jesus said in the Sermon on the Mount - to be a peacemaker, to be meek, and poor in spirit.

As with all other aspects of our spiritual lives, we must start with prayer. We need to pray for our practice, our clients, and ourselves as we strive to make peace for our clients. Remember, God promises to answer our prayers, and to guide us through our spiritual journey.

In Romans 12:18, Paul says, "If it is possible, so far as it depends on you, live peaceably with all." (NRSV) This makes sense, for how can we expect anyone

to see us as peacemakers, if we cannot even manage our own affairs, and live peacefully.

I do note, however, that Paul qualifies this by saying that we should live peaceably with others, insofar as it lies within us to do so. There will always be those who cannot make peace, just like there are those for whom mediation is not appropriate. We must be careful, though, not to shirk our peacemaking role by simply believing that it is the other party who is not willing to work at peace.

We must examine our own hearts to be sure whether that really is the case.

We must also not claim to be wiser than we really are. In other words, we must be meek, open to criticism and willing to learn from others, including our clients.

This may be one of the greatest challenges we face as legal professionals.

Being humble, especially when a client expects us to always have the answer is difficult, but not an insurmountable obstacle when we can rely on Christ to help us.

Finally, in Romans 14:19, Paul exhorts us to pursue what makes for peace.

Again, to accomplish this our focus must shift from ourselves. I must focus on what God wants, and not simply what I want. What God wants will edify all of those around me, and will bring others closer to Him. This will result in righteousness for the peacemaker and for the parties who are at peace.

We must look at what we do in our practice as well as how we do it. In the majority of cases, our job is to assist our client in ridding themselves of an obstacle to a peaceful life - whether it be a criminal charge, an unsettled estate or another matter. That's the easy part.

What is hard to determine is whether we display the attributes Christ wants for us as we do our job. For example, as I negotiate a wrongful dismissal settlement, am I acting out of self-interest to get the biggest settlement possible, or am I serving my client by concluding the matter fairly and quickly, so that he may move forward in his own life? Am I treating opposing counsel and the opposing party with respect, or am I showing my ego more than poverty of spirit and mercy? Although it is easy to get caught up in these secular mindsets, I believe we are challenged to practice with these attributes showing to our clients and to opposing counsel.

It is by doing this that we will turn our clients' obstacles into opportunities for Christ to shine through us, and to reach those we practice with, and the clients we serve.

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