

Tips for working with people in conflict: Trees; A Mediation Lesson-Learned.



This is a new line of discussion for our blog. In the past we have focused on leadership, communication skills, and topics relating to ombudsman skills. This new line of posts will focus on lessons learned from more than thirty years of mediation work. During this timeframe, when I reflect on the many varied cases I have

mediated, I am invariably reminded of the brilliance and commitment of the mediation participants with whom I have worked and their level of commitment and sincerity. I have so often come away from my mediation work impressed with the human spirit and with a renewed sense of hopefulness about humankind's commitment to collaboration.

I was recently chatting with my fellow Biz Ex Team consultant, co-founder and colleague, Monique McKay about our various adventures, misadventures, and lessons-learned during mediation sessions. The conversation arose, because Monique had just returned from a teaching session at William and Mary, where she serves as an adjunct professor. She was recounting how impressed she was with her students and we were speaking of those learning moments that inspire each of us, and I was reminded of a learning moment I had in a mediation session.

The learning moment was one of those times when something that I had learned and knew in the abstract, became meaningful in a real way. I was asked by the local district court to mediate a conflict between two neighbors. The conflict had escalated into litigation between them and the relationship was very distrustful on both sides.

On one side was an elderly couple. They had lived in their home for many years. During the time that they had lived in their home, the city had developed around them. They now found that they had neighbors in a now upscale neighborhood that lived in close proximity, when for years, they had lived in splendid isolation. The elderly couple were longtime retirees, who loved to spend their time in their yard and garden. On the other side, was a comparatively younger couple that had

recently arrived from out of state and bought the house next door. The couple was independently wealthy and, also spent quite a bit of time at their home.

The conflict between these two couples arose over something as seemingly innocuous as gardening. The elderly couple loved their roses, trees, and vegetables. The elderly wife used routine garden sprays to keep her roses aphid-free and her gardens pest free. That year, the area was experiencing record drought. As a result, the local piñon pine trees were stressed and many were succumbing to the ravages of the local bark beetles. To combat this possibility, the elderly couple wished to spray their trees with a poison proven to help prevent bark beetle infestation.

Meanwhile, on the other side of these events, the wife of the wealthy younger couple was experiencing the effects of “multiple chemical sensitivity.” She claimed to be highly sensitive to the chemicals used next door, to the point that she found them to cause her to become gravely ill. As a consequence, this couple asked their neighbors to stop spraying their garden and their trees altogether.

The elderly couple met the younger couples’ request with incredulity. They found the request overbearing – especially so, since they had observed that the younger woman, though claiming to be chemically sensitive, was a regular cigarette smoker. And, after all, the elderly couple had lived in their house since the 1940s! How could their neighbors honestly believe that they could dictate what they did on their own property?

On the other hand, the younger couple earnestly believed that the younger woman’s right “not to be poisoned” more than outweighed the others’ property rights and, at the point where the court asked me to mediate the situation, the court had preliminarily agreed – having entered a preliminary injunction, which restrained the other couple from using any poison sprays on their property.

This was the setting for the mediation. After the standard processes to establish ground rules and to all the parties the opportunity to share their side of the story, I began the process of working with the parties to explore options to resolve the case short of continuing the litigation process. Before too long, it became clear that the parties were deadlocked and that neither was willing to let go of what they believed to be fundamental interest. On one side the couple fervently believed that the health, and potentially even the life of the woman involved was at risk and, what was more, they believed that the elderly couple was simply trying to take advantage of the situation because of this couple’s wealth. On the other side, the elderly couple felt incensed that these younger people were taking advantage of them and infringing on their property rights only because of what they perceived to be some sort of hypochondriac-type mental disorder. If their neighbors were allowed to continue the injunction, the elderly couple risked losing a huge part of their retirement nest egg and family wealth, because the value property would be devastated as the many trees that screen and sheltered the house died off, leaving the house exposed to the street, wind, and noise. Not to mention that a large part of

their daily fulfillment involved caring for their plants, shrubs, gardens and trees. For them their lifestyle and thousands of dollars were at stake, all caused by what they believed to be the flighty-claims of a smoker who was apparently not sensitive to cigarette smoke, but was highly sensitive to relatively innocuous garden sprays not even applied on her own property.

The mutual mistrust in the room was palpable. I began to feel that sad sense of flagging hope as a mediator groping for any approach that might divert the session from an impasse. Something in the back of my mind told me I was missing something. Aside from the obvious disagreement around the issue, any mention of an option that involved a settlement amount to compensate the elderly couple for the trees that they were most likely to lose, was met with fervent rejection by the younger couple. This didn't add up to me. What was I missing?

The answer came in a caucus with the younger couple. In their past location, the fact that this couple was very wealthy was widely known and it turned out that in the past they had been the target of several law suits, which they believed were nothing more than efforts to extort money from them. Thus, from their perspective, this



elderly couple was simply another one of those money seekers. Likewise, the elderly couple was completely distressed at the prospect that they could lose hundred-year-old trees that, with their limited resources, would be impossible to replace.

Something in this brought to mind one of the many impasse-breaking adages I had been exposed to, that is to shift the currency or commodity involved if the parties are making no headway towards resolution. So, a simple question came to me. In the presence of the other couple, I asked the elderly couple how many trees they thought they would lose, if they were not allowed to spray for bark beetles. They answered that, if they lost every tree, that would be sixteen full-sized pine trees. To them, this was a catastrophic loss that they would never have the resources to replace. I turned to the younger couple and took a chance. I asked them if they would be willing to replace any trees that happened to die due to bark beetle kill with comparable trees. I was dumbfounded when the husband answered, "Well, it's only trees, sure!"

It turned out that the younger couple's mistrust of anyone seeking money had completely closed them off from considering any money settlement. But, once the

settlement involved trees rather than dollars, the settlement was reached in a matter of minutes.

It is always tempting to claim after-the-fact expertise when, as a mediator, you happen to stumble upon an answer that works. But I believe that the plain truth is, in the heat and press of a real-time mediation process, for the most part, even experienced mediators work more out of instinct and the mental equivalent of muscle memory. I do thank and acknowledge my many trainers and mentors for planting the seed for asking the question, but I likewise could have completely overlooked the approach. Since that time, I try to be much more observant of the possibilities, when a settlement in one form is unacceptable to the parties. Is there another currency we can use?

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