

MEDIATION EMOTIONS

Every mediation contains its own level of emotional highs and lows. Often a mediator anticipates that a particular session will be filled with anger and it turns out to proceed very smoothly. Other times it is anticipated that the problem to be mediated is an unemotional "business" decision, but from the start the parties are at each other's throats.

As mediators, we should have in mind our philosophy for the particular mediation. If our philosophy, for example, is that the parties should determine their destiny, when the opportunity for intervention arises we must determine if we should intervene or let the parties go.

If the reason for your intervention is a high degree of negative emotion, a checklist of alternative techniques may be most helpful to the mediator submerged in the situation. The following is not intended to be an exhaustive, rather it is a checklist to carry in your file or our binder of "tricks of the trade" to consider or reject as the circumstances dictate.

A. Mediator Self Assessment

Before you start the mediation, it will be very helpful for you, the mediator, to assess what is your own comfort level with emotion. How was it dealt within your family? Do you as a mediator have a bias against overt expression of emotions? Be aware of how your culture deals with conflict and how other cultures deal with conflict. If the parties are comfortable with raised voices, swearing, is this okay with you? Many mediators went into the mediation field because they are conflict adverse and see mediation as a means to avoid conflict. What then will you do in a high conflict, highly emotional case? Each mediator needs to answer this for him or herself.

B. Methods to Deal With Emotions

Now that you decided to jump into the fray, what techniques would you want to consider?

1. Ground Rules

You may wait for the emotional outbursts to arise, or in anticipation of them, you can elicit from the parties, or depending upon your mediation style, provide parties with, "Rules of the Road" (be courteous, do not interrupt, no yelling, no insults). If you allow the parties to set the rules, you must consider whether your self assessment will allow you to let the parties proceed with what may be acceptable behavior to the parties, but is unacceptable to you, even if it is moving the parties toward their mediation goal.

2. Caucus

a. Use it: In a private meeting between one party to the mediation and the mediator, you can help that party deal with their emotions. You can let them express their anger in a role play, help them to deal with it, and put them in a position to express their emotions with the other party when they get back into the joint session.

b. Don't use it: If you are comfortable with anger and other emotions, consider that expressed conflict is when the true position of the party is going to come out.

3. Intervention

Many experienced mediators believe that once a party's emotions have been aroused, it takes considerable time to get back to ground zero. You may be able to constructively

craft an intervention under the theory "why let a party get to a red light if you can intervene at a yellow light?".

a. Acknowledge it, but don't accept angry judgment.

"I understand you are angry and that from your perspective she had no right to fire you."

b. Have parties talk through you, the mediator. This is a modeling technique. The mediator reduces the emotion in what is being said and in so doing teaches a party HOW to speak and address appropriate topics.

c. Keep things in short, manageable chunks. Anger leads to repetition, and repetition leads to escalation of anger. Do not let the repetition start. In other words, avoid "repetitive negative behavior."

d. In a caucus keep your own voice slow and smooth: "What do you want the other side to hear? What impact do you hope it will create? When you express your fear/anger/sadness, what is your goal? Will your expressing emotion accomplish your goal?"

e. If the emotion is "anger," characterize it as "unintended." Typically, only intended behavior elicits anger. If as a mediator you characterize the conduct as unintended, your characterization may defuse the anger.

f. Name the emotion and validate it. If in your mind the emotion is destructive, bring awareness. "Tom, when you raise your voice, Joe seems to tune you out. How can we make this process work better for you?"

g. Reframe it. "Your loud voice indicates to me how passionate you are on this issue."

h. Stop and let them release. "Let's stop right here. Is this pattern of talking familiar to you? Has it been useful in the past? Do you want to keep doing this while you are paying me to be here?"

i. Set an absolute time for safe expression. "I will not participate if you yell like that. If you do so again, I will stop the mediation."

j. Refuse to participate. "I have tried to redirect the way you talk to each other, but that did not help. I am going to leave you alone and I am going to get a drink of water. When you are finished talking this way, come and get me."

k. Magic question. "Is there anything you want the other side to understand that they haven't been told yet?"

Summary:

Some of the above techniques can be used by a mediator to the extent that they are consistent with the mediator's philosophy. One mediator, at the end of an extremely emotional mediation which had reached impasse, decided to elicit some empathy and assistance from the parties and their attorneys, asking: "What would you do at this stage if you were me?" To which they replied in unison, "Find another field of work!"

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