

PRACTICE HINTS: THE ROLE OF THE MEDIATOR

Becoming a mediator is more a state of mind than it is specific skills. Whatever your profession of origin or background discipline, as a mediator you will no longer have the luxury of approaching clients from that perspective alone. To effectively mediate, lawyers will be obligated to understand the business and personal issues, mental health professionals must understand the business and legal aspects, and other professionals will likewise need to appreciate the necessary parts of a dispute. The need for this kind of systemic understanding is fundamental for dispute resolutions regardless of the matter—a business conflict or family conflict. All business disputes have an interpersonal aspect to them, and most personal disputes have business aspects, and business and personal issues frequently have legal ramifications.

ARE MEDIATORS NEUTRAL?

Mediators are often presented as being “neutrals” which may be misleading. “Neutrality” suggests that the mediator is able to be objective and “above the fray” so-to-speak. That may not be accurate; the mediator to a dispute is more accurately, in systemic terms, part of the system—a participant-observer. The mediator will be actively engaged with both parties in a balanced manner. Parties may not feel safe with a “neutral” mediator who like an umpire, will merely watch the action below and call points and penalties and is not responsible to protect either party. A “balanced” mediator, on the other hand, has the responsibility to protect all parties.

THE “RIGHT” WAY TO MEDIATE

The right way to mediate is a contradiction in terms. There is no right way. There are, however, certain skills and strategies that can be developed and issues that ought to be addressed in order to assure that the decisions made by the parties in mediation are informed and voluntary. The mediator is responsible for the process, not the outcome.

Many of the skills, strategies and techniques a mediator uses are commonly known; there is no magic. However, too often disputes are settled only by chance. What is not commonly done is to systematically and by design apply those skills to resolve or manage conflict.