

MEDIATION MATTERS

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"Can We Talk?"

Editors note: This is the first article in a new column on mediation.

"I was never ruined but twice: once when I lost a lawsuit, and once when I won one." Francois-Marie Voltaire (French philosopher, novelist)

It's a familiar scenario. Party A comes to see you about [insert any conflict here]. He is hungry for justice against Party B, wants his day in court and asks you to file a lawsuit without delay. He doesn't care about the cost (at least not yet); he wants justice! You decide a good first step is to pick up the phone and call the attorney for Party B. As you talk, it becomes clear to both of you that if Party A and Party B could simply sit down together and hash things out, a lawsuit would likely be avoided. It's a novel idea - some discussion, and maybe even agreement, between the parties before a lawsuit is even filed. Now, if only there were a process for such a thing. Ah, but there is: mediation.

Let's face it, with all the texting, tweeting and Facebooking going on these days, we are losing the art of face to face conversation. Added to that is a litigation model that does not encourage discussion and is immediately adversarial. The result: people often feel the only way to resolve conflict is to fight it out

in court. It's important to recognize, however, that mediation is an alternative that can often result in a win for both parties.

So what exactly is mediation? Let's start with the basic definitions from Nevada's Rules Governing Alternative Dispute Resolution. "Mediation means a process whereby a neutral third person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives." Compare that to arbitration, which is defined as "a process whereby a neutral third person, called an arbitrator, considers the facts and arguments presented by the parties and renders a decision, which may be binding or nonbinding as provided in these rules."

Although both mediation and arbitration are alternatives to a court hearing, they are significantly different processes. Only mediation allows for the opportunity to suspend advocacy for a time and focus on constructively resolving a problem. It's not about testimony and evidence, it's about communicating and getting to the heart of the matter. It is also about letting parties decide how they want to resolve their own conflict, rather than someone else deciding that for them. As a mediator, I am consistently amazed at how hearing and understanding someone else's perspective can make such a difference. The process of dissecting a problem and probing at the interests behind people's positions can be infinitely productive. I have seen the process yield extraordinary results, such as mutual understanding, empathy and perhaps a solution that no one has thought of before.

As lawyers, we are often viewed as experts in conflict resolution. Yet we tend to focus on litigation as the only way of resolving disputes. Not only is litigation expensive, it is often destructive, time consuming and at times, heart wrenching. Voltaire had it right. Prevailing in a lawsuit doesn't always feel like winning. Perhaps if he'd sat down with the other party before resorting to court, he'd have felt differently. As conflict experts, we owe it to our clients to offer a variety of options for a fulfilling resolution.

This column will focus on the many facets of the mediation process. I look forward to exploring the complicated, and sometimes controversial, topic of mediation with

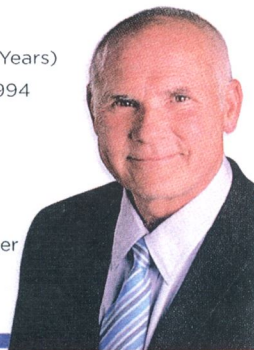
Margaret Crowley is an experienced mediator, Supreme Court Settlement Judge, EEOC Mediator, Second JD Custody & Dependency Mediation Panels, Pro Tem Family Court Master and mediationn instructor.



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- Washoe County Deputy Attorney (26 Years)
- Supervisor of felony trial team since 1994
- Co-authored sections of the Washoe County Seniors Guide
- Director-Senior Law Project
- Youth sports coach
- Washoe County School District Volunteer
- Married to Ann Osborne Hall & father of three children



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