

By Louise Phipps Senft

The negotiating table

Turning problems into opportunities

Mediation . . . The Future

Based on what has occurred during the past decade, one can only expect significant growth in mediation and related activities during the next decade. What are some of the things that have occurred during the past decade? For one thing, the courts have increasingly seen mediation as a better way for parties to settle many conflicts than for the parties to experience the inevitably difficult process of trial. While the parties receive a ruling on a specific dispute when they go to court, it is more often the case that the parties are left less able to deal with those with whom they had the dispute. This is a significant consideration where the parties remain in a family, work environment, contractual relationship, neighborhood, association or other personal or business relationship. Mediation on the other hand offers the parties both the opportunity to resolve a situation on their terms and also to leave more confident about the quality of the interaction both in the mediation and for the future interactions. It is no wonder why there has been an explosion of the use of mediation in our courts. Indeed, while mediation has helped to clear hundreds of thousands of cases from the nations' courts' dockets, the more important outcome has been that mediation has transformed many otherwise bitter and difficult situations into civil if not palatable interactions.

Another happening during the past decade has been the change in the legal community. For those attorneys who are trained and experienced in handling matters for their clients regarding traditional settlement options and procedures, the acceptance and understanding of mediation as a new complement to their practice has taken time, but has happened. Attorneys now realize that mediation can be a unique opportunity for resolution, and for a settlement that is more accepted by their clients because it has been fashioned by the clients. They also understand that mediation does not amount to throwing their client's wealth and welfare into the hands of someone who may decide against them, for this is not ever what a mediator does. The mediator is neutral and does not advocate any particular outcome. Thus, parties and counsel can settle on terms that they want, often including matters in addition to monetary amounts, but important to the clients. Parties of course retain the right not to settle as well, without waiving any rights to pursue other settlement efforts or to litigate. It is very much a no lose situation and clients often welcome their counsel recommending mediation, and indeed are often perplexed when they learn of the process later and their attorneys had not told them or recommended it. These instances however are a changing.

The Alternative Conflict Resolution field has expanded to include such things as community mediation as well as community conferencing where incidents related to schools, neighborhoods, and juvenile justice are addressed in gatherings including perpetrators, victims and others affected by whatever happened, supporters of people in each category, and representatives of schools, neighborhood associations and law enforcement. As in any kind of mediation, solutions and results more attractive to all parties involved are available. These can include better understanding, restitution, expressions of regret, safeguards for the future and other options that can come to light at the conference, remedies of benefit to all parties.

An area to be mentioned for future expansion has to be dealing with employee and other internal conflicts in businesses and institutions. It is expected that business and institutional managers will increasingly see the advantages of having in-house procedures to address disputes and misunderstandings. People involved in this process may include human relations personnel having in-house mediation as part of their job description. Introduction of such a program can include training of management, supervisors, employees and employee representatives into the opportunities of mediation and what mediation is and is not. Some personnel can also receive training in becoming mediators and complete the training by co-mediating some conflicts with an experienced mediator. Now that mediators are governed and guided by Mediator Standards of Practice both

nationally for private practitioners and on a state wide basis for court appointed mediators, parties can be assured in of a mediator's duty to ensure the opportunity for full and informed decision making. With the rules covering confidentiality and voluntariness, there is actually not a great deal of risk for businesses and institutions, individually or in conjunction with other businesses and institutions, trying and using mediation. Little risk, and a potential for big reward in handling conflicts early before feelings and positions harden, and for saving expense and employee time spent in litigation or other hearing procedures, is now a large incentive and contributing to the growth of mediation use by businesses and organizations. It is projected that businesses and institutions of all sizes will think seriously about mediation in the decade ahead, individually or in cooperation with each other or with trade associations.

We have been entering a new era in resolving conflicts. I wish I had a time machine to go forward ten years and see what changes will have come about. I expect I would be excited and both surprised and not surprised since I am a believer in Better process...better outcome.

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