

Mediator's Corner



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The Hopeless Case

by Michael P. Carbone

When approaching a mediation parties should think about what lies beneath the surface. What is the other side thinking that they haven't disclosed yet? Are the numbers artificially high or low? The answer is usually yes.

The common refrains about being too far apart explain why mediation is needed. If the two sides were close, they would probably settle the case on their own. The reason why they need a mediator is that they are polarized.

What are some of the signs that the other side is ready to "get real?" First would be the fact that they have agreed to spend a reasonable amount of time negotiating. Another good sign would be that key players are there. These would include the persons who have authority to settle, or at least the persons who could get the authority.

Demeanor and approach are also important. Unlike a trial mediation is not a search for the truth. It is a "settlement event," and a search for a mutually acceptable solution. The sense that both sides are fully engaged in this search should alleviate the hopelessness that often prevails when parties have been litigating.

In most cases the parties start the day at opposite ends of the spectrum. When the numbers are put on the table, the initial offer sounds like a token response to the demand. And there can be strong emotions at work.

The successful mediator will not allow the parties to give up hope. (S)he will keep the parties engaged until both sides feel that they have been fully heard and are ready to make a deal.

Mediators are not miracle workers, and the secret of their success is not found in a "bag of tricks." It is in knowing that "too far apart" is usually a fallacy.

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