

Mediator's Corner

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Why Emotional Outbursts Are Your Friends

by Stephen H. Sulmeyer

In most cases that I have mediated there are at least *two* disputes: the surface-level dispute, which is the one framed by the pleadings, and the underlying emotional dispute, which is the one no one wants to talk about but which is where the parties' energy is usually invested. Emotional outbursts are the attempts of this underlying dispute to emerge to the surface. Why does this happen? Because it's what the parties really care more about, consciously or unconsciously. They might feel wronged, insulted, slighted, betrayed, or a million other things that have nothing to do with the so-called merits of the case. Such feelings might count for nothing at trial, but in mediation they can make the difference between settlement and impasse.

Many lawyers and mediators tend to think that if they address these underlying feelings it will impede if not completely derail the negotiations. I have found that the opposite is true. It is when such feelings are *unaddressed* that they tend to hinder the mediation. When the "real" dispute is allowed to come to the surface and is squarely engaged, it tends to lead to a clarification and catharsis from which both parties emerge with more knowledge, strength and openness. When the underlying emotional dispute has been addressed in some manner, the parties almost always are able to turn their attention in a more rational and businesslike way to the legal and practical aspects of the case, and are therefore much more likely to reach a settlement.

To mediate in this way we have to acknowledge that dealing with the parties' emotions can be terribly uncomfortable. What's the trick then? The trick is not *minding* that it's uncomfortable. That is, we have to be able to sit in a state of discomfort without losing our own centeredness, and while maintaining our ability to think clearly and ask questions of ourselves and the participants.

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