

Mediation Update

Volume IV

How to Handle Conflict, A practical approach

By Deri Joy Ronis, Ph.D.*



What Conflict Is

Conflict has several definitions. One meaning is to live in a state of perpetual disharmony which is brought on by having to deal with mental struggles. These struggles are the result of opposing needs and wishes. While you need air to live, wishing for it won't ensure your survival. You know that you need to live in an environment that provides enough oxygen. For example, if you are not used to living in high altitudes, your lungs will either have to adjust or you'll have to move. Breathing is a rather natural occurrence that requires very little thought on our part. Our ability to breathe is a natural function of our autonomic nervous system.

On the other hand, one can argue that they don't need love to survive. Some would suggest that they could live without it, although the quality of their life is affected by the absence of it. Others may tell you they are fine without love. While we need oxygen to live, needing love may not be as crucial to our physical survival as it is to our psychological well being. However, many studies indicate that our ability to give and receive love determines and increases our desire to live. Needs and wishes are different.

Conflict is also brought on by your internal and external demands. You can readily see this at work. Consider how your own needs determine and affect your perception and experience of conflict. For example, if you can accept that other's values and beliefs will differ from your own, you won't need them to agree with your thinking; you will, however, want their respect. You will no longer expect people to respond to you in the way you thought they would or should have in the past.

As indicated earlier, the more you know about yourself, the easier it will be to understand others, if for no other reason than that we are all human. One main difference between us is found in how we were taught to respond to conflict. For the sake of simplifying this text, I refer to ideas as pre or post conscious awareness. If you continue to act the same way you were taught, even if this behavior is of little benefit to yourself or others, it could be said that your awareness is pre-conscious. Robot-like behavior is done automatically; it is a habit and we're not usually aware of why we do what we do.

Your conscious awareness allows you to see that there's always more than one way to view what bothers you. Limiting your options only prolongs your suffering. When you choose to change the way you respond, you

exhibit a post-conscious awareness; you are doing something different compared to what you usually do and this causes you to feel better about yourself. I recall Father Leo Booth in a seminar where he asked the audience to snap their fingers in different locations; above the head, to the side, and with hands down as they repeated the following words, "STOP, LOOK, CHANGE!" The purpose was to create new neural pathways in the brain which cause us to make behavioral changes by doing something different.

As long as we are alive, we can expect that conflict will exist because it provides us with opportunities from which to learn, although we may not like the lessons. What you want to minimize, (if not do away with completely) is destructive conflict. Most of us have been taught to fear or avoid conflict. We associated it with confrontation, rapid heartbeats, and feeling downright uncomfortable! You can change your mind set about this behavior. As you learn to adopt new ways of thinking, it becomes easier to feel safe in being HONEST. One outcome is in collective growth, fed by encouraging each other to share your fears. Remove the word "confrontation," and replace it with "communication." Practice feeling comfortable in being honest.

While many of us may have been taught to tell the truth as children, we may have experienced negative consequences in doing so and thus learned to lie. There is a familiar saying, "the only thing to fear is fear itself." Always ask yourself what the worst case scenario could be. I have found that if we can look our fears in the face and imagine what the worst possible outcome is, we'll accept that life continues despite crisis. We may not like to imagine the worst, or even wish not to know the truth, however, ask yourself if you would you rather live with lies.

Problem solving is a collaborative effort that requires the willingness of all parties to choose to work towards some kind of resolution. Notice that "choose" is underlined. It really is a choice to work together versus thinking you can solve problems that concern others without their input. Everyone's feelings and needs have to be taken into consideration. Regard emerging conflicts as a learning process, guiding you to communicate in more authentic, less threatening ways. Consider the impact of sending mixed messages. If you are confused and don't know what you want, let others know that you need some time to process your options and try to give them a timeline. We all deserve respect.

Our lives are transformed minute by minute; sometimes more than at other times. It takes time to learn to think along with others whose decisions affect your life. Creating "win-win" situations in your personal and professional life helps everyone achieve something; although you may not get what you want, you get honesty. Cooperation vs. competition is the mindset of the 21st Century. You know that you can't force anyone into a decision. You can only make those choices that you think will be most conducive to your emotional, physical and spiritual wellbeing.

Recommended Books:

Dauer, Edward A. *Manual of Dispute Resolution: ADR Law and Practice, Vol. 1.* Colorado Springs, CO: McGraw-Hill, Inc., May 1994.

This provides "the practitioner with a broad and accessible treatment of the law and the practice of dispute resolution. Its principal subject matter is alternative dispute resolution (ADR), a term that covers a large variety of procedures useful for resolving clients' problems within the law. The manual's primary focus is on the representation of clients through the use of those procedures... [This is] a guide to the selection of the process, to the representation of clients within the chosen process, and to the most common and practical legal considerations that may be encountered along the way" (Dauer, 1994, pp. 1-1--1-2). (Newer 2000 edition also in print.)

Atlas, Nancy F., Steven K. Huber and E. Wendy Trachte-Huber, eds.

***Alternative Dispute Resolution: The Litigator's Handbook.* American Bar Association Publishing, February 1, 2000.** This work, written for litigators, is a guide to the variety of practices that make up alternative dispute resolution and the issues that surround them. The book was written by experienced trial lawyers and third-party neutrals and thus provides the reader with the information needed to evaluate each technique and successfully apply them to their cases, when appropriate.

Costello, Edward J. *Controlling Conflict: Alternative Dispute Resolution for Business.* Chicago: CCH, 1996.

This is a straight-forward description of ways in which mediation, arbitration, and other forms of ADR can be used to help resolve business disputes.

Banish your Demons...

Thus far, we have explored the theory that behavior is learned. We grew up in households replete with models from previous generations which taught our grandparents and their parents how to respond to life and conflict in their day. Of what benefit is it to blame others for their behavior? We all need to recognize that people do the best they can with the information they know at the time. That is not to say that all of the information is correct. Consider the legality of domestic violence for centuries; until laws were made to prevent it because of the number of women who were seriously injured or murdered. This change is known as an evolution of consciousness. It is much like the Hundredth Monkey Theory espoused by Ken Keyes. The theory was based on a study of monkeys in the South Pacific who learned to wash their yams in water instead of sand. The phenomena of this story is that the monkeys lived on different islands, Through whatever method they used, eventually, all the monkeys began doing the same thing because they realized that yams tasted better in water than sand. Similarly, we'll have to answer for our actions eventually

Chances are, if your family members were shown alternatives that worked better, they would have made every attempt to change what was harmful. We ask ourselves, what about normal families? Are there any? There is a funny comic strip showing a sign hanging in an auditorium. It says, "Welcome to the Annual Convention of Adult Children of Normal Parents." In the audience is one man seated next to hundreds of empty seats; and it says, "Even he's in denial!"

In the last two decades, we have been inundated with articles and books dealing with a variety of issues surrounding conflict. Some of them have been alluded to previously. They range from adult children of alcoholics, incest survivors, child abuse, gamblers anonymous, to co-dependency, credit card spenders and perverts. There are just as many support groups for people who come from dysfunctional families. Hopefully, that's a good thing. I suppose only time will tell if our prisons house less inmates in the future and our homes have more harmony and less divorce. These long sleeping demons must be brought out of the closet into the light of day in order to heal. Otherwise, they fester in darkness and breed more of the same. Once they are dealt with, they can be transformed. As long as initial patterns repeat themselves, we will have chronic conflict. Society has sought to hide its mess for a long time. There is no more room left to sweep it under the rug!

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* Dr. Ronis has been conducting innovative seminars and courses in a wide variety of settings ranging from schools to hospitals, and mediating conflicts in both the private and public sector from corporations to families. Her unique blend in the practice of conflict resolution has resulted in over two decades of service. Two sections of her book, [How to Handle Conflict, A practical approach](#), are reproduced here with permission. This book also addresses:

- Anatomy of Conflict
- Empowering Relationships
- Play a Role
- Quiet the Noise
- Get the Facts
- Thin the Worst and Discount It
- Understanding How Your Brain Works
- False Beliefs
- Taking Responsibility
- Owning Our Own Message Means . . .
- Stop the Drama
- Banish Your Demons
- Compassion for Others
- Try New Feelings
- It's Not Over Yet

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Meet the Board:



Christine L. Harter, Esq., is a member of the Board of Directors of the Mediation Institute. She has been working and residing in the Ocala area for the past 19 years. She is a certified Mediator, Arbitrator and Neutral Evaluator for County, Circuit Civil, Foreclosure, 5th DCA and Northern & Middle District Federal cases. Her motto is: "Resolution is the best solution!" "Let's attempt to get your case resolved, and behind you, before you experience the expensive and unknown outcome of the Trial process."

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Have you ever noticed that whatever you avoid follows you? That's because "it" is trying to get your attention. When you can embrace what irritates you - it disappears. Dr. Carl Jung recommends that individuals embrace their shadow side, because if you don't, you'll never be free. By getting rid of your fears, you overcome them and they will no longer haunt or immobilize you. Your feelings that are denied or repressed can only stay submerged for so long. Eventually, they'll erupt, and in ways you don't like. I am reminded of a story in a class I gave on Dream Interpretation. An elderly man shared an ongoing dream he had for many years in which he woke up in a sweat, with his heart pounding and very fearful. He shared that he and his brother had been estranged from one another for years due to an argument. In the dream he would be on an elevator with his brother. The elevator would go up and down without ever stopping at a floor, so neither of them could get off. After asking him to do some free association by making a circle and writing ideas related to the dream on lines in the circle, he realized that because he had never made peace with his brother, the elevator represented the ongoing drama. In Jewish mysticism, known as the Kabbalah, there is a saying, "A dream is an unopened letter to yourself." This gentleman finally decided to contact his brother after all those silent years. Soon after, he never had the dream again. Is it any wonder why?

I am reminded of another saying, "Handle with care, human life is fragile." This statement suggests that we need to learn how to interact with each other on a gentler basis. One would think that it is easy to be kind. However, when you hold on in anger to things that happened years ago or days ago that you don't resolve, you create more hostility. While being kind or gentle is far from easy, it affords us an opportunity to learn more about ourselves. How do you want to live your life? If other people are not willing to resolve conflicts, ask yourself what the benefit is by holding on? What is in your best interest in order to let go of the demons? We have to let go of them within. There is strong evidence today which suggests that our emotional conflicts wreak havoc on our bodies resulting in illness. For this reason alone, we must strive for greater understanding, which will hopefully create more compassion in the world.

Institutional Health Care Mediation (IHCM)

By Stephen Marsh, Esq.*



Hospital staffs, HMOs, clinic practices and other groups are institutions that use mediation to help resolve internal problems. In many ways, institutional mediation functions like a branch of a Human Relations office, but it involves policy makers and resolves internal conflicts rather than involving staffers dealing with employee complaints.

An institutional mediator can mediate "inside conflicts between groups." They can also mediate "individual conflicts" between an individual and a group or another individual. This essay describes how Institutional mediation mediates "inside" conflicts between groups and has three useful functions.

First, IHCM helps explore the models used by each group to define reality.

Institutional conflicts often arise because of three kinds of common problems with the models or images groups use to see the world. These problems are: metaphor problems, perception problems, linkage problems.

A. Metaphor Problems. Most people use metaphors to interpret the world or issues around them. Organizations are seen in metaphors and there are often problems created by the metaphor that is chosen to interpret the world. If one side sees a hospital as a ship and the other sees it as a football game, there is a real distance. A ship has one captain and one crew. A football game has a number of sides. Each side has more than one captain. Understanding the metaphors being used often helps to resolve conflicts. While it is not a magic solution, understanding metaphor conflicts allows both sides to start working on the same solution.

B. Perception Problems. After metaphor problems, conflicts in institutions often come from different perceptions of what the truth is. This is a perception problem when neither side is engaged in falsehood, but both see the "truth" or facts differently. A common perception problem occurs when one group sees itself as generating revenue and the other side sees that group as a revenue drain. Such a conflict may underlie a decision on whether or not to make substantial "investments" or "expenditures" on additional equipment for the group perceived differently.

Another common perception problem often occurs when decisions are made on the location of break rooms or staffing levels or where offices are placed. Are break rooms a luxury or are they a legal requirement of the law? Both? Neither?

Approaching an issue like break rooms from the standpoint that they are a wasted luxury will produce a completely different viewpoint (and approach to a solution -- if any) than will setting up break rooms as a requirement of OSHA or when one is following a Human Resources Specialist attempting to improve efficiency.

C. Linkage Problems. Finally, many perceptions are seen as linked to each other when they are really separate. I.e. the location of an OSHA mandated break room is not related to shift assignments for nurses or the decoration budget or the number of doctors on a rotation or the policies used to determine who is allowed credentials. It often helps to unbundle problems and to resolve them one at a time.

Second, once the preconceptions of the groups and the models they use for reality are understood, IHCM can help find guidelines that both sides can use to verify and define reality and to connect the models.

Often finding guidelines is a matter of agreeing and using outside rules and tools that everyone agrees are neutral. For example, in settling the perception difference as to whether a center generates a profit or a loss, there are standard accounting methods that can be applied by a certified public accountant. Just as you don't want your attorney to perform your heart surgery, your heart surgeon isn't the person to perform your audit (or your CPA the guy to represent you in court).

Bringing in a CPA (or other outside neutral who finds facts according to set, neutral guidelines) prevents institutions from being like the man who sold widgets he bought at \$1.00 an item for \$.50 an item -- but was going to make up the losses by selling a in volume or the hot dog business that cut its costs down so far it had nothing left to sell (no cost, but no profit either).

Again, for room use and placement, principles can often be agreed on and then applied to determine what is "fair" rather than each side continuing to assert that the solution they want is the "fairest." There are standard ergonomic design rules.

Further, on room use, whether or not there are fixed limits can be explored and accepted. For example, if State law or OSHA sets a certain minimum size, no matter how "fair" a smaller size may be, it is not within the limits of the situation.

Third, IHCM Mediators Educate.

That is, once the starting points of the conflict are identified, and the rules for constructing a fair model are determined, an institutional mediator aids in helping both sides work logically from the model on one problem at a time until the current problems are on their way to resolution.

The mediator unbundles the issues as appropriate and then aids the parties in working towards solutions one at a time until the next problem arises.

In an institutional setting, mediation requires aiding "sides" to identify each other by their shared interests (so that there are groups that can negotiate), tutoring individuals in the elements of negotiation



(rather than allowing them to continue in the habit of inflexible demands) and educating entities in the concept and application of living resolutions.

A. Shared Interests. Finding and identifying often creates the groups that can act together to resolve a problem. Many professional institutions (e.g. Hospitals) have a number of loosely aligned groups delineated by profession or specialty affiliation and not by interest. Such groups can (and often do) fail to find one voice inside of themselves. By helping the parties identify their interests and the interest group they belong to, the process of working towards a solution is often aided.

B. Negotiation tutoring. Many professionals practice in a setting where they do not compromise and do not acknowledge outside limits. Often they need to learn the elements of compromise and cooperation, by example and by practice. An institutional mediator needs to be alert to the need to train and educate as to these matters.

C. Living resolutions. A solution that leads to immediate conflict is not a solution. Thus most lawyers realize that a settlement that one side cannot abide does nothing but set the framework for the next law suit. Most union negotiators realize that settlements management cannot pay for will result in breaches and most managers realize that Pyrrhic victories over a union guarantee nothing more than a bitter strike "next time."

Too often those who work inside institutions do not realize that the same principles apply. The long absence of traditional market forces have insulated many institutions so that their history gives them no guidelines as to reaching resolutions that are living -- ones that form the basis for an enduring and healthy relationship -- rather than resolutions that lead only to more strife.

This is also an area where a mediator can be worth their weight in gold in educating, training and teaching the parties about elements they need to find and remain aware of in resolving their conflicts.

Conclusion

In conclusion IHCM is under appreciated and often not understood, but it offers substantial improvements in competitive edge and quality of life for those institutions that take advantage of it and those mediators who serve them.

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* Stephen Marsh holds a Juris Doctor degree and formerly both practiced law and performed alternative dispute resolution services. He maintains one of the most thorough and intriguing website on alternative dispute resolution which we have found. Both the variety and quality of articles which can be accessed from there is exceptional.

Visit Mr. Marsh's www.adrr.com

“It's tough to make predictions, especially about the future.”

Yogi Berra

“For everything you have missed, you have gained something else, and for everything you gain, you lose something else.”

Ralph Waldo Emerson

“Compromise. Such an adjustment of conflicting interests as gives each adversary the satisfaction of thinking he has got what he ought not to have, and is deprived of nothing except what was justly his due.

Ambrose Bierce



FAMILY BUSINESS MEDIATION Anatomy of the Process



by John J. Upchurch, Rodney A. Max and Stephen G. Fischer

The term “family business mediation” has a number of connotations from parents mediating issues between/among their children, to circuit court mediators mediating issues among trustees (and other professionals) and family members (including siblings, parents, aunts, uncles, cousins, nephews, nieces). This article is intended to address the latter issue leaving the former to medical and family law practitioners.

Family business mediation is unique in the field of circuit court mediation in that the relationship between mediating participants is a crucial ingredient to the process from beginning to resolution and beyond. In a personal injury or wrongful death case (as tragic as it may be) the relationships are initiated at the moment of the accident. In contractual disputes relationships begin at or around the commencement of the contract. Stockholder or partnership disputes commence with the creation of those business relationships. In family disputes, however, the relationships date back to births, which may descend and ascend through generations.

Those relationships span not only time, but they also span enumerable chapters of life cycle events. Accordingly, family issues must be understood both in the context of the substantive issues as well as those family relationships that may be the motivation behind said issues. For a mediator to assemble parties in a room for the traditional opening session without knowing, understanding, or appreciating the role of these relationships among the family participants, can be a formula for disastrous results. On the other hand, thoroughly understanding the procedural and substantive issues together with the family relationships (and histories behind them) can assist the mediator and the process in bringing the right people together at the right time over the right issues. The family business mediation process is, therefore, divided into three segments:

I. Pre-Mediation-Consultation with counsel and other relevant professionals and family members involved in issues

For purposes of this article it is assumed that family members are represented by counsel or other professionals. Whoever those professionals are, it is best to begin with them. Those discussions include the following:

- (a) Identification of the family members and their relationships (including those in leadership roles); and
- (b) Identification of the problem and issues;
- (c) Identifications of reasonable options for achieving resolution (concepts as to the means of achieving said options).

In initiating pre-mediation calls to professionals, there should always be an effort to achieve mutuality. That is to say, whenever a discussion occurs with one counsel, there should be an effort to contact the other counsel. These conversations can be held jointly and/or separately (there is nothing wrong with ex parte communications in mediation). Separate conversations with counsel can lead to separate conversations with other professionals with the guidance of counsel.

Ultimately, the mediator will acquire sufficient information to bring the professionals together, collectively. Collective conversations can occur either by phone or in person. Bringing the

Web Resources

The Mediation Institute has a website
<http://mediationinstitute.webs.com>

To find a mediator in Florida
www.floridamediators.org/

For an overview of ADR, with definitions and advice, see **Krivis, Jeffrey. *Desktop Guide to Alternative Dispute Resolution***. Available at:
<http://www.firstmediation.com/desktopguide/index.htm>.

A summary of Edward A. Dauer's, *Manual of Dispute Resolution: ADR Law and Practice*. This is a resource tool and guidance.
"Manual of Dispute Resolution: ADR Law and Practice - Book Summary."
University of Colorado: Conflict Research Consortium.
Available at:
<http://www.beyondintractability.org/booksummary/10157/>.

A view into the strengths of arbitration as a dispute resolution tool. **Grant, Leslie. "What is Arbitration?."**
Available at:
<http://www.mediate.com/articles/grant.cfm>.

Learn more about the annual conference at
<http://www.fwciweb.org/Conference.ht>

"Family Business," continued from P. 8.

Professionals together collectively can assist in establishing some professional rapport between them prior to bringing all the family members together. Exchanging questions, concerns or ideas may be helpful to the professionals in properly leading their clients in the right direction.

The pre-mediation work with professionals will lead to pre-mediation work with the family members and other relevant participants. At times it is helpful for the family members to meet with the mediator privately before the mediation (with counsel or other professionals). In this way, they can "break the ice" in engaging the process and get comfortable with the professionalism of the mediator while obtaining some context into the mediation process.

Such pre-mediation communication with the family members and the mediator can also give the family participants an opportunity to "vent." Understanding where the family member is coming from (and why) is helpful to the mediator in ultimately designing the right process for all the parties. It also gives the parties confidence in who the mediator is and what the mediator is attempting to accomplish. The mediator can also use the pre-mediation opportunity with family members to help establish ground rules for the mediation.

These pre-mediation communications are all intended to "design the mediation" ¹. While the mediator cannot control the ultimate result, he/she can control the process. Designing the mediation prior to the formal mediation session(s) can better control and manage the ultimate mediation process. For instance: where should the mediation take place (in a neutral place or in the venue/forum of one of the participants? How should the parties be grouped or organized?

Should there be an opening statement? When there are multiple issues, what issues should be addressed first and which should be saved for the end? Should there be one session that can go

into the evening or should there be multiple consecutive day sessions? Who are the leaders of each group, and should they be brought together outside of the larger group to meet initially or later on in the mediation process? Answering these questions prior to "getting to the table" can aid the ultimate mediation process. Not only will it help the mediator, but it will also help the other professionals who are attempting to lead the family participants.

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Finally, the pre-mediation sessions should be used to help establish options for resolution that should be endeavored during the course of the mediation. The pre-mediation sessions can establish what is available for discussion and what is not. Viable options will help keep the process on track, whereas non-viable options should be avoided (or at least their non-viability should be understood).

II. Mediation

Having properly “designed the mediation”, the mediator can lead the family participant into the process with some understanding of the day’s agenda. Where the family participants are relatively amicable, a joint session may be initially endeavored. However, where there are issues or concerns that are identified in pre-mediation, it is best to initiate the process by having the family participants in separate rooms. In this way, the mediator can give each family participant an opportunity to understand who the mediator is; how he/she will work through the day; what the general agenda will be (as identified through the pre-mediation discussions); and how their concerns or issues will be addressed. This will also give the family participants a comfort level that they can meet and talk to the mediator outside the presence of others.

Once the separate caucuses are concluded, the mediator may bring the family members together collectively. The mediator should be the first one to speak—primarily as to the process. The mediator should promote “trust of the process” explaining, collectively, how he/she is going to work for all involved (this may be repetitive of the separate initial caucuses, but it is appropriate to re-enforce that which has been said separately and confirm its validity in front of all family participants. The mediator will be in a position to acknowledge not only the process, generally, but also the agenda more specifically. Where there are differences, the mediator should generally acknowledge that “it is ok to disagree”. The very purpose of the mediation is to identify the differences and explore options to find common ground. The mediator should also use the opening session to acknowledge the professional leadership on each side so as to validate the role of the professionals who are duly leading them.

At the conclusion of the mediator’s opening, he/she may look to each side’s leadership to make whatever opening statements they deem appropriate (the pre-mediation discussions will have generally identified the extent and nature of the professionals’ opening statements). The mediator should stress open and objective listening by those family participants on the other side of an opening statement.

Before adjourning the opening session, and subject to the advice of counsel (or other professionals), the family participants may be given an opportunity to speak. (Through the premediation design as set forth in Section I above, it may be determined that such family participant statements will not be made.)

The opening session can be as long or as short as it is deemed appropriate with deference given to both the issues and the relationships. Often family participants can remain together in lengthy sessions. Sometimes joint opening sessions should be limited to a shorter time frame.²

It must be emphasized at this point that the use of the professionals, whether legal, financial, or otherwise, both in joint and private sessions can be invaluable to this process. Realizing that the relationships play a significant role, professional viewpoints on issues can lend significant objectivity to decision-making. There are certainly times when those professional decisions differ, but they can also be a “tool” to help the parties find common ground. Can the professionals do this in front of their clients or is it better for them to do it separately with the aid of the mediator? Ideally, a separate professional caucus should take place prior to the mediation day. The professionals should be encouraged to do all that is necessary and possible to explore means and methods of identifying common ground so as to aid the process while preserving their positions of professional leadership. If, and only if, those discussions breakdown should there be consideration of selecting an independent professional to assist them in resolving the particular issue in that area of expertise. For instance, should two certified public accountants be in irreconcilable conflict over methodology, it may be possible for them (with the consultation of their respective family participants) to select a neutral CPA to assist the mediator in a neutral facilitation. (Again, where the difference exist, it is best that they be identified prior to the mediation so that said independent professional can be in place at the time of the mediation).

The central part of the mediation is the development of procedural and substantive solutions both long-range and short-range. As to procedure, the family participants will attempt to establish the following:

- (1) Protocols for communications;
- (2) Means of dealing with one another;
- (3) Means of making decisions;
- (4) Allocation (of whatever the subject matter or issue is);
- (5) Alternative dispute resolution mechanism to resolve future disputes.

Establishment of these procedural solutions will help the family members work toward solutions on the substantive issue. Coming to an agreement on "how to get to yes" can be medicinal in achieving the ultimate agreement. While it has been suggested above that premediation communications can achieve the establishment of the procedural solutions, there is value to achieving these at the mediation as a part of the "bridge building" process by and among the family members themselves.

There will be an anxiety among the family participants to move on to substantive solutions. While ideally the substance should follow the procedures (for "bridge-building" purposes) moving into substantive negotiations is at the "heart" of the family business mediation process. Moving the parties through demands, offers, and counter-offers incorporates the traditional mode of mediation.

However, in family business mediation it is not merely moving numbers or positions back and forth. Rather, it is having a reason for whatever the proposition is, so that the other side knows what is being offered and why. The concept of "legitimacy" in negotiations is crucial to a family business mediation. Whether the issue is money; property; or allocation of assets or liabilities or authority, having a legitimate reason for a proposal is important between and among family members.

While the general mediation practice puts no limit on the number of offers and counteroffers between parties, family business mediation should encourage as few moves as is practicable. Fewer moves allow each to be more meaningful. When combined with a legitimate rationale, the negotiations tend to be more constructive.

During the course of negotiations, calling on family leadership in each room is also helpful. While professional leaders can help initiate the process, family leadership is helpful to the negotiation process. Parents, siblings, and other relatives who have mutual respect can bridge gaps. Bringing the right people together at the right time requires both knowing who the right people are, and when it is appropriate to bring them together. Such family leadership is certainly helpful in breaking impasse.

As the family participants move their negotiations from the initial stages to their respective goals, the question will be are those goals similar. To the extent that they are not, impasse-breaking techniques will need to be employed. In the family business mediation context, the question is, "who do they trust"? Do you call upon the professionals, the family leadership, or has the mediator obtained the level of trust to "broker" an agreement. Certainly, the professional and family leadership should be called on before the mediator offers his/her services to break the impasse. Leadership caucuses designed to explore common ground are best saved for this stage of the negotiation. Can that leadership develop compromise among them, by which they can return to their respective rooms to make a mutual recommendation for resolution? If not, can the mediator make such recommendation with the support of that leadership?

Thus, the report initiated in the preliminary pre-mediation design meetings and communications become crucial to the "deal making" stage of the negotiations. The more unanimous the professionals and family leaders are the better. To the extent that solutions, both procedural and substantive can be achieved, they should be codified in a mediation agreement or memorandum of understanding. The terms should be set forth with the expectation that a more detailed settlement agreement can be drafted and executed later. The mediation agreement or memorandum of understanding should be signed by all family participants.

III. Post Mediation

Should resolution not be achieved, the mediator should do everything in his/her power to avoid impasse among the family participants. Adjournment is acceptable, impasse is not. Sometimes "getting away from the table" is helpful.

An adjournment for re-evaluation purposes with a follow-up within a short period of time is a viable option. "Homework" or directions to look into certain aspects of unresolved issues may also be helpful. Subdividing some of the issues between professionals or family leaders may also allow for post-mediation dialogue and ultimate resolution or re-convening of the mediation to achieve such ultimate resolution. The mediator's goal is to keep families in dialogue and prevent families from getting involved in a "litigation war". This can be done by phone, by selective post mediation caucuses, or by subsequently re-convening all family participants.

IV. Conclusion

The courtroom is not a place for family issues. Long drawn out adversarial forums (outside of formal litigation) are also no places for families. Resolution of family business disputes in mediation helps families efficiently handle their internal family business matters discretely, privately and confidentially so they can keep their businesses in the family, and preserve their family wealth for generations to come. Mediation facilitation and dialogue can help families (no matter the degree of conflict) save stress, money, relationships, and opportunities of growth for all family participants. The earlier a family in conflict convenes a mediation process, the better the long term results. Families are "priceless" and so is the utilization of the mediation process for their use and benefit.

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