

Why Emotions Can't Be Ignored One Minute Longer in Litigated Mediation Cases!

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It wasn't until my last semester of law school in 1997 when I first started mediating. I cut my teeth in the Dispute Resolution Office of the City Attorney. Misdemeanors that involved relationships or that the City Attorney deemed unworthy to prosecute were funneled to the Dispute Resolution Office.

As my first exposure to the concept of mediation, I was fascinated that an alleged victim could or would sit down with the alleged perpetrator to work through issues that had caused a conflict so severe that it led to an arrest. My job was to interview both parties and see whether they would be amenable to sitting down together to talk and see how they could move forward. During the case intake I was able to see firsthand how circumstances, emotions, and expectations created the perfect storm of choices and reactions that led to the conflict. Giving individuals space to express their anger, regret, shame, embarrassment, and sadness, I was able to witness the cathartic release and subsequent healing that evolved from exchanging information, clarifying their intent, and expressing how the situation impacted them. These were conversations in which the individuals, despite great anger, frustration and fear were able to hear and understand the perspective of the other individual and, from this space, let go and move on.

This experience had a profound impact on me both personally and professionally. While law school taught me how to analyze a case, apply the rules of law and zealously argue my position, it failed to create any sense of understanding, mutual satisfaction and resolution for the individuals involved. Mediation, on the other hand seemed to be a perfect antidote to all shortcomings of the legal system.

Fast forward 25 years, my experience as a mediator is radically different from those early days in the Dispute Resolution Office. Increasingly, instead of using the opportunity to advocate and create space for the client to really hear and understand the perspective and emotional impact directly, attorneys often prevent direct involvement between their client and the opposing party. The unfortunate result is that true reconciliation and healing is often lost in the process.

While this is not to suggest that mediations today fail in their purpose of achieving a settlement. On the contrary, mediation is successfully being utilized as a highly effective tool to help with the ever-increasing backlog of cases and move the process along. Rather, the question is how mediators can incorporate clients' emotions more in order to achieve higher levels of satisfaction, reconciliation and resolution for those directly impacted by the conflict.

One step toward overcoming this hurdle is to welcome and embrace emotions that the individuals experience. When clients express strong emotions based on unmet needs for respect, appreciation, or recognition, this is a perfect opportunity for mediators to help them feel seen, heard, acknowledged and understood. Indeed,

embracing the emotional aspect of the conflict and its impact on clients is exactly why mediation is so transformative.

A precursor to this initial step is to appreciate the value expressed emotions contribute to a mediation. Instead of perceiving them as unnecessary and cumbersome obstacles, or worse, something to avoid at all costs, consider instead that the emotions are an invaluable tool to leverage in order to create a more meaningful and authentic resolution. The ability of a mediator to recognize the relief and release one experiences when given the opportunity to express strong (and unresolved) emotions *and* to be heard and understood by the other party is without parallel. The ability to create deeper understanding and appreciation of another person's perspective and experience creates, in turn more willingness to engage in conflict resolution and an authentic pathway to healing and repair.

When attorneys and mediators see the value added by embracing emotions in litigated cases, not only are their clients better served, but the more fulfilling and satisfying the resolution is. Failure to do so is at the peril of all involved. If the mediation results in a settlement that effectively "ends" the conflict for all legal purposes but leaves the clients in a static state of anger, frustration, or feeling unheard, misunderstood, or devalued, then the legally binding agreement seems to be undermined by the fact that there is no meaningful closure to the conflict. And, if this is the result, has the conflict been resolved at all?



West Coast Resolution Group mediator, Julie Cobalt, has over 25 years' experience as a mediator, transformation coach, consultant, educator, conflict resolution expert, and lawyer. She is passionate about helping people with simple life transitions to some of the most challenging moments in their lives. Her experience and training have helped clients transform their lives, situations, and relationships and allowed them to let go and move on with more clarity, insights, and understanding. To contact Julie, email her at [jacobalt@westcoastresolution.com](mailto:jcobalt@westcoastresolution.com).