

# ***How Can I Tell If The Mediator Will Be On My Side?***

*By Laurel G. Kaufer*

Your mediator is neither your friend nor foe! All too many parties come into mediation anticipating that they will “win over” the mediator or that the mediator will advocate on their behalf. Often when this fails to happen, and it should fail to happen, they treat the mediator as an adversary. This does not help them reach resolution and often creates a situation where the entire process is undermined, preventing resolution even where one is possible.

Your mediator is a NEUTRAL. This means that while your mediator may see both sides of the dispute, and may, for many reasons, develop a professional opinion or gut instinct as to the reasonableness of the positions and the likely outcome of potential litigation, your mediator should have no stake in the outcome and should not be on your side or any other. The only way your mediator can continue to be an effective problem solver with you and for you is by maintaining credibility and objectivity through neutrality. Help your mediator by understanding this and supporting his/her position of neutrality. Not only will this help your mediator so resolve your dispute, but doing so will help you to understand and trust the motive of the mediator in giving an opinion, regardless of whether it is favorable or not, and to gain confidence in the information your mediator is bringing to you, both of which will ultimately lead to higher satisfaction with the resolution chosen.

***I've been in mediation and there was so much conflict that nothing got done. Wouldn't I be better off just letting a lawyer take care of that for me?***

Maybe, but you may not resolve your dispute. Mediation is not about coming to the table as friends to avoid conflict and confrontation, as many professionals would have you believe. It's about resolving disputes. Inherent in the concept of “dispute” is conflict and without confrontation of that conflict head-on, there may be settlement, but there may be no true resolution.

In some disputes, settlement itself may be enough, but in most, in addition to the economic or performance related issues, there is an undercurrent of emotion, and both sides often perceive themselves as a “victim” in the dispute. Those complaining of a wrong see themselves as the aggrieved party. Those responding, because they often believe they are involved in the dispute needlessly, feel abused by the claimant and the dispute process, particularly when facing the burdens of litigation.

You may wish to avoid confrontation at the outset but may find, as the process continues, that you want to express yourself to other parties. Make sure your

mediator is willing to allow this flexibility and is comfortable handling confrontation. In a truly meaningful mediation, in addition to providing valuable information to you about the dispute, your mediator will guide you safely through confrontation of the conflict to resolution.

*I want to resolve the dispute, but the other party's demands are unreasonable. How can I respond?*

Don't let yourself get stuck refusing to make what you believe is a reasonable settlement offer or demand based on your opinion that the opposing party has made an unreasonable one! Instead, attempt to resolve disputes based on your reasonable evaluation. It is a mediator's job to assess, based on all the information presented, "the realm of the reasonable" in the context of potential resolution of each specific dispute and to bring the parties to that range.

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*Broker Agent Magazine, San Fernando/Santa Clarita Edition, Issue 1, (2004) p. 6.*