

MANAGING CLIENT EMOTIONS HOW A MEDIATOR CAN HELP

By L. Therese White & Bill White

L. Therese White is a mediator specializing in diversity-related employment disputes and conflict resolution training. She is an American Arbitration Association panelist in Los Angeles. She may be reached at theresewhite@yahoo.com.

Bill White is an Associate Professor of Marketing at California State University, Los Angeles. He may be reached at wwwhite@calstatela.edu.

More often than not, disputants are angry and emotional. Unfortunately, their lawyers and advocates are not always equipped to handle such raw emotions. This is when the use of a mediator may be necessary before the party and its attorney or advocate can continue dealing with their opponent. In this article, Therese White and Bill White show some examples of how mediation effectively addresses emotional issues, provides reality checks, and generally paves the way for the resolution of disputes.

Anger. Sadness. Fear. Disgust. Shame. As you well know, disputes are often full of powerful, negative emotions on both sides. Sadly, these emotions can overwhelm good judgment and damage attorney/client relations, thereby reducing the possibility of a timely and successful out-of-court resolution. Sometimes, they even force an otherwise risky and unnecessary trial.

This article is about helping attorneys and other professional conflict managers reestablish order after the client's emotional brain has overpowered his thinking brain. It's also about the effective use of mediators to accomplish this task.

When Emotions Take Over

In his book, *Emotional Intelligence*, Dan Goleman says, "(emotions) are self-justifying, with a set of perceptions and proofs all their own ... When in control, the emotional mind harnesses the rational mind to its purpose, thus distorting past memories and current realities." What matters is what seems to be rather than what is, what is desired rather than what can be reasonably expected, and what is demanded rather than what can be negotiated.

An emotion is defined as a feeling and its distinctive thoughts, psychological and biological states, and propensities to act. There are hundreds of emotions—good and bad. Emotions have their own variations and nuances, not to mention the ability to blend with other emotions.

Some people manifest their negative emotions in outbursts, others through quiet storms. But one thing for sure is that when people are acting on an emotion (be it for a split second or for a lifetime), they *honestly* feel it is the best thing to do, no matter how stupid it may appear later.

Most people act out because they prefer a conflict they know to the resolutions they cannot completely imagine. People also use emotion to keep from getting at the core of the conflict, which may be too painful to face head-on. In any event, emotional overreactions and under-reactions are merely attempts to gain or regain control.

Experience has shown that given their left-hemisphere mindset, attorneys sometimes have great difficulty dealing with the emotions of their clients. Having been trained in the logic-driven rigors of fact-finding, analysis, and debate, it can become impossible to properly address highly charged matters of the heart and spirit. For that matter, attorneys often unwittingly feed the emotional fires of their clients. Here's how.

Conventional wisdom demands getting a "good, tough lawyer to protect your interests." Knowing this, some attorneys feel it's their duty to play that role to the extreme. The issues between the disputants then

become subordinated to the increasingly complicated litigation process, and the “winner-take-all” battle between the attorneys.

Feeling overwhelmed, the clients are forced to hide behind their attorneys, and relinquish all control over the outcome. At this point, according to mediator Chip Rose in his Web site, “effective communication between the (parties) has been all but eliminated, and...the parties undoubtedly feel more not less fearful and experience greater not less anxiety.”

This is where the talents of a good mediator and the benefits of the mediation process can put the attorney and client on the same page. This is how it is done.

Emotions Must Be Expressed

Like it or not, there is no official place for emotions in the litigation process. This is unfortunate in that a simple clearing of the air can move numerous conflicts to resolution. Only then can the unseen emotional complexities surrounding a case surface. This is especially true in situations involving diversity, persons with disabilities, the family, discrimination, and harassment.

One of the authors of this article recently mediated a seemingly impossible employment conflict pitting a “facts-only” corporate attorney against an abrasive, highly emotional plaintiff. The breakthrough finally came in caucus when the mediator validated the plaintiff’s frustrations and asked her what could be done to make the process easier. That is when she confided that she had a mental disability (unbeknownst even to her attorney) that interfered with her ability to communicate civilly under stress. The mediator then decided to keep the two sides apart and to translate their respective points of view in a manner each could respect. That important finding made all the difference for a variety of logical and emotional reasons. The case settled quickly because the plaintiff finally felt heard and understood. And the defending attorney was able to appreciate the validity of the plaintiff’s position.

Reality Checks

In an article in the March 8, 2000, issue of the *Los Angeles Daily Journal* (entitled “Is That All?”), mediator Jeff Kichaven gave some examples of what he calls the “climactic question.” These are questions such as, “Is that all they’re willing to offer, after all I’ve been through?” or “Why should we give that [expletive deleted] a dime?” It is the defining question that attorneys know will arise sooner or later, and that they had better be prepared to answer with conviction. Otherwise, cases that should settle won’t, and the attorney is stuck with a continuing lawsuit and a client or boss with serious doubts about the attorney’s effectiveness.

When faced with these and other troublesome situations, attorneys should take advantage of a good mediator’s ability to safely deliver bad news to difficult, inflexible clients by expanding their perspectives.

Take, for example, a case mediated by one of the writers of this article. A delusional client wouldn’t back off the “optimistic figure” his attorney quoted well before unexpected discovery suggested far less. The attorney feared to further press the issue with the client; so she pursued mediation.

The opposition agreed, and mediation followed. As it turned out, the mediator had done exactly as the attorney in question had anticipated. That is, the mediator presented (in caucus) the more modest outcomes of similar cases, talked about the inherent risks of a trial, and then invited them to re-evaluate their original position. Not surprisingly, the client quickly adjusted his stance, and was very happy accepting a more reasonable figure.

Non-Monetary Solutions

“When they say it’s not the money, it’s the money—*but not every time.*” That old saying has been modified to recognize the fact that emotions aren’t always driven by money alone. Mediation unlike litigation is excellent at finding the pivotal, nonmonetary needs that can sabotage an agreement. This is because skilled mediators are equally adept at dealing with the interests of the parties as well as the facts of the case. Getting away from win-lose debates over which side has the higher quality facts and moving toward creative, collaborative solutions are at the heart of the mediation process.

Think how often you’ve heard this statement or its equivalent from a distraught disputant: “I just don’t ever want this to happen to anyone else.” Concern for others is as much an emotional interest/need as are safety, greed, and revenge. Accordingly, a defending employer’s offer to introduce a diversity-awareness and sensitivity training program might be just the thing to end a stalemate.

Sadly, if attorneys aren’t truly sensitive to the significance of such seemingly innocuous statements, they miss out on the opportunity to really satisfy their most difficult clients.

Apprehension/despair, embarrassment/humiliation, and wonderment/shock are just a few of the numerous other misread, emotional deal-killers. Good mediators know how to identify them even in their most subtle forms, and then help discover effective solutions. And these solutions may have little to do with money. Sometimes nothing more is needed to make it all go away than a sincere apology and an enforceable promise to change.

In summary, this article explained how attorneys could use mediation as a tool to manage client emotions and to efficiently resolve more cases. When working at its best, the mediation process allows emotions to be expressed, provides reality checks, and addresses emotional needs that may not require a totally monetary solution.

Can mediation rein in every client with runaway emotions? No. But it’s probably a better alternative than “just dealing with the facts.”

Cite as: *Dispute Resolution Journal* 2001 Vol. 56, no. 4 pages 15-19