

Beyond Settlements

Highlights from Law Students' Mediations

By Martin I. Reisig

Every once in a while I find it nice to be reminded of the potential joy that can be found in mediation. Here are observations from law students who have served as mediators.¹ These students have begun to understand the value in settling disputes and the potential for restoring relationships. These examples may also remind more seasoned lawyers of the potential good that can come from a well-conducted mediation and the dramatic difference for the parties between a mediated settlement and a resolution by a judge or jury.

Dispute: A trusted aunt was asked by her niece to hold the niece's money for her. The aunt uses the money for herself and does not have the money when the niece asks for it to be returned.

During the mediation the aunt agrees to a repayment plan. More importantly the aunt and niece listened to each other and came to understand what led to the problem.

"The aunt then turned to her niece and called her by her nickname and told her she was sorry about it all. They hugged it out and then the waterworks began ... [Later in court] instead of each party sitting at the separate tables they stood before the judge side-by-side. It was *heartwarming* to see." (Daniela Thula, 36th District Court)

Dispute: Alleged overcharging for snowblowing services.

At first there was some rage by the accused party: "I'm fair and honest...." Then, within the safety of mediation, they calmed down and resolved the matter.

"When I went out in the hall to have them sign their agreement they were *laughing* and getting along well." (Joshua Andrews, 36th District Court)

Dispute: Money owed to a towing company.

"I was able to have the parties come up with their own solutions, each softening his/her stance a bit. I also used role reversal to get both sides thinking about the other side's viewpoint ... when they were done, I really felt good about how the mediation went because I helped the parties settle, and the defendant – who was quite upset at the onset – appeared to feel better at the end, considering he helped to determine the payment arrangements and results.

"The best part is, I LOVED IT!" (Al Elvin, 23rd District Court)

Dispute: The plaintiff was not paid for supplying waste bins to a contractor. The debt is now more than three years old.

This was a conversation that should have happened earlier but had not, which led to this lawsuit. The defendant admitted that money was owed and explained the financial problems he was having. The parties mutually reviewed the invoices and then agreed on a payment plan for a portion of the amount owing.

“When I was leaving the courthouse, I saw the parties walking out laughing. Seeing them walk out together sharing a moment (after an uncomfortable discussion and being in court) gave me a good feeling about what mediation can accomplish. If the parties had only the option of going to court, one of them (likely the defendant) would have left unhappy. Mediation gave them the opportunity to have a facilitated conversation, work out their differences, and *reconnect parts of their friendship*.” (Mylika Johnson, 33rd District Court)

Dispute: A decedent died intestate. The decedent’s mother had also died intestate and that estate was not resolved. The father/husband, who had not been seen for 50 years and had been thought to be dead, makes a claim; he had been found by an “heir finder” company. More than 30 relatives appear at the mediation. Core issue: the father/husband claims to be entitled to the entire estate. Has he abandoned any claims by his 50 years of absence?

Logistically there were numerous challenges that were really well-handled. Family members had a chance to let their emotions out and to plead their case. Attorneys met separately with the mediator and indicated their desire to resolve both estates’ issues. A trusted aunt was selected to represent the family in dealing directly with the father/husband.

“In the end, the aunt (personal representative) agreed to give the father/husband \$30,000 to settle claims against both estates. The parties seemed friendly. It was almost like a *small mend* was made, although 50 years of distance is a lot to overcome. On the way out, the giant family wanted to shake my hand and thank me. Everyone was happy even though their rights were mediated without them all being present. In the long run, everyone got something as opposed to the risk of getting nothing. A lot of money was saved by not having two rounds of litigation.” (Samantha Lytle, Wayne County Mediation Center)

Dispute: A probate dispute in which a deceased aunt left money in trust for her niece, to be managed by the niece’s father until niece turned 25. The aunt died when the niece was 17. The trust lost significant money and the niece thought it had been mismanaged by her father. The case had dragged on for a year and the lawyers were somewhat hostile toward each other. The niece’s attorney’s fees were exceeding the amount she could acquire. The attorneys agreed to leave the room and allow the mediators to conduct the rest of the mediation with just the father and his estranged daughter.

“This was a very emotional mediation, as both parties cried a lot and it was not because of the money at issue but rather because of the relationship ... Through the therapeutic open communication, the parties talked about a lot of things – about their past and the possibility of a future relationship...

“It seemed like these parties just needed to be in the same room together and talk things through. Although their relationship was not fixed, it did *start the process of healing old wounds* and a positive thought of a future relationship.” (Nargiz Nesimova, co-mediator, Wayne County Mediation Center)

Dispute: A plaintiff claimed that he was not paid for deed/title work done for a neighbor. The defendant neighbor claimed that the deed/title work had not been returned to him. The mediation session began with parties interrupting each other as if they were “an old married couple.” The mediator gently got them listening to each other.

“As a mediator, this was a particularly easy session, with the defendant accepting immediately that the money was owed in full (the deed was registered, but a copy had not been given to the defendant). The payment terms were basic and at the suggestion of the plaintiff. The reward as a mediator was that I was able to provide more than a forum for just resolving the money issue between them. By putting the focus on the friendship and the need to return their relationship to how it was prior to this court issue, the parties found

common ground to finally talk about this issue that they had been holding in for more than a year. I noted when they departed that it appeared *we all “won,” because they walked out with a stronger sense of friendship.*” (John P. Martin, 36th District Court)

Dispute: Guardianship for an 11-month-old baby girl. The 35-year-old grandmother had become the sole guardian because of the irresponsible lifestyle of the 19-year-old daughter/baby’s mother. The daughter would leave the baby with the grandmother as she disappeared for weeks without explanation. When the baby got sick the grandmother received an emergency guardianship. When the daughter returned, she filed to have the guardianship removed. In court there was reportedly a lot of anger, but prior to the mediation the mother and daughter had begun to improve their communication.

“The very young grandmother wanted to communicate her love for her daughter and granddaughter. Likewise, the daughter wanted to communicate the growth, regret and poor decisions she had made early in her child’s life. Through these communications, I saw the opportunity to build trust between them. That trust became the foundation for the parenting schedule, guardianship and caretaking resolution that we ultimately reached ... *They left with a feeling of certainty and contentment.*”

“When I left, they showed their gratitude and appreciation for my interest and clarity in their difficult situation. This mediation ended on a great note!” (Angelina Sulaka, Wayne County Mediation Center)

Conclusion

Skeptics may say that these are smaller cases, but can such joy and the possibility for restoring relationships be found in mediating what may be perceived as more difficult cases? When experienced mediators apply the same skill sets, the answer can be a resounding “yes.” For examples of the joy to be found even in the “bigger” cases, I recommend reading “Stories Mediators Tell” by Eric Galton and Lela Love (including a story by Michigan mediator Tracy Allen).²

Footnotes

- 1 University of Detroit Mercy School of Law, 2012 mediation clinic.
- 2 ABA Publishing, 2012.



Martin I. Reisig of Birmingham, after an extensive trial background, is a full-time mediator with American Settlement Centers, Inc. He is a past chair of the OCBA Alternative Dispute Resolution Committee and a past president of the Oakland Mediation Center. Marty has been selected a Michigan Super Lawyer and a Top Lawyer in Alternative Dispute Resolution and Detroit Area - 2013 Arbitration Lawyer of the Year by Best Lawyers. He has been a neutral case evaluator for many years in Oakland and Wayne counties. From 2002-2012, he was an adjunct professor of advanced mediation at the University of Detroit Mercy School of Law, and previously he was an adjunct professor of trial practice, evidence and legal ethics.