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Breaking Bread Can Help Avoid Broken Relationships

By Maxine Graff Goodman

I am a mediation convert! This transformation took place several years before "mediation" was "in vogue" in Michigan. Back then we had "mediation", now known as "case evaluation", but that was part of the litigation process mandated by the court rules. All cases went through the process with little expectation of resolution. Clients did not choose it as an alternative for resolving legal disputes.

I became a convert to and advocate of mediation because I realized that not all disputes can or should be decided in the courts. At the time, I had about twenty years of experience (I am years beyond that now) as a labor and employment attorney. As counsel for two Fortune 100 companies, I had practiced in state and federal courts throughout the country and in multiple administrative tribunals. I had arbitrated cases and I had also worked in a federal agency.

As in-house counsel during a time of deep pockets and prosperity, the legal departments in which I worked were busy. Although I enjoyed great success as a litigator, what opened my eyes, and then my mind, to the possibility that there was another way to approach employment disputes, was a case involving two employees, in their early sixties, both employed as tax specialists.

The two men had worked together for at least twenty-five years and in the course of that work relationship had developed a deep friendship. Although one ultimately supervised the department, the two co-workers formed an inseparable bond. They ate lunch together every day; often socialized after work with and without their spouses; played golf together; and vacationed as families…for years. They joked about being "old".

Shortly before the lawsuit was filed, one of the men decided to retire. At that time, long-standing employees who retired from positions that still needed their expertise were brought back as paid consultants. The contracts paid well and were often relied upon by these individuals to supplement their retirements. It was anticipated that the retiring employee would enter into a similar arrangement and a consulting contract was prepared for him to sign on his last day of work, a Friday.

On the Thursday before that last day, the department, as was customary at the time, threw a retirement party for the employee off the business premises. The event was attended by many current and past employees as well as several family members of the men. There was food and the alcohol was flowing. There was also a program during which the employee was both "roasted" and lauded. The retiring employee spoke too.

While most everybody at the party thought that the speeches and presentations were all in jest and celebration, though lacking in good taste, it became apparent that that was not the universal feeling. Comments made, though thought to be harmless, were taken as hurtful. The hurt turned to anger, which simmered all night, and the next day an unpleasant scene unfolded at the office. There was no farewell lunch and no consulting contract was signed.

The retiree cleaned out his desk, left the office and never returned. He also never spoke to his long-time friend again. Instead he filed a discrimination lawsuit claiming that he had not been called back to consult because of his age. He based his claim upon the remarks made at this retirement party.

Immediately upon being assigned the case I contacted the plaintiff's boss who was being sued individually along with the company. It quickly became apparent that what was masked as a discrimination claim was really a case of hurt feelings. That became even more evident during the depositions of these two once-friends. It was clear to me what the plaintiff was really looking for and I knew where my client's heart was, as well. No amount of damages would ever cure what ailed these men.

At the break, between the witnesses' testimony, I suggested to the plaintiff's attorney that rather then continuing with the depositions that we instead take our clients to lunch so they could talk to each other. Opposing counsel laughed at me, said he had a good case and that he was confident his client would prevail. He was "dug in" to the belief that harm had been done and for that harm his client was entitled to money damages. In response, I "dug in" to my position that the case was frivolous, should be dismissed and that all that would be accomplished was lost money, lost time and a lost friendship.

The case dragged on for seven years. Ultimately the parties chose an arbitrator to decide it. When it was finally over, little money changed hands and the two former friends could not even remember what had created the whole debacle. Years had passed; money and time had been spent; emotions had been tested; tears had been shed; a friendship was over; and none of those involved were still employed by the company. Had plaintiff's counsel been willing to let the two meet and talk early on, it is likely that the case would have been voluntarily dismissed; the retiree would have been called to consult; and the friendship would have found a way to heal itself.

While the lunch idea I presented was not formally "mediation" it was an opportunity, with counsel present, for the parties to speak directly to each other, as is the case in facilitative mediation. My experience as a labor and employment attorney has been that 95% of the cases brought by an employee against an employer would not have been filed if the parties had been given the chance to talk to each other, face to face, about the true problem. Typically, most employment disputes arise because of a lack of communication and misunderstanding. I am a true believer that open dialog, whether with a trained neutral or trained managerial employees, is an insurance policy against most litigation and its attendant costs. I am a mediation convert!

Maxine Graff Goodman is a Partner with The Goodman Law Group. She is an accomplished labor and employment attorney with extensive experience handling complex matters. Her excellent writing and oral advocacy skills have led to a high level of success in the courts and administrative tribunals. She is licensed to practice in all Michigan courts, the Eastern District of Michigan and the Sixth Circuit Court of Appeals. Maxine is a Certified Civil Mediator actively mediating and arbitrating through American Settlement Centers, Inc. of Farmington Hills, Michigan. She may be contacted at 248-865-3904.