

Making Mediation Music: I'm Singing This Tune

Article By:

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Jeff Kichaven, a widely respected and experienced mediator, hit the perfect note in his recent article, "[Understanding Mediation's 'Apex Conversation'](#)." My own perspective, as both a participant in mediations and as a neutral, reflects Jeff's point in underscoring the *process* as much as the substance of dispute resolution. First, after going through a day or two of "the dance," the clients must face the reality that "if the case indeed is to settle, the client must change her point of view, and consider new options." The mettle of the effective mediator is tested by knowing when the timing is right and how to articulate an alternative route to resolution.

The second point that Jeff makes, and one that I have long advocated, is to do away with "yesterday's" version of the joint session. There is very little efficacy in having each side reiterate inflammatory arguments in order to impress his or her clients. I heartily agree that a different approach to the joint session is required, and one that does not require rehashing old arguments.

As Jeff says, one approach is to allow "each side [to] give and receive complete, often new, information about each other's stance on the rubber-meets-the-road issues, interests, needs and values." Another option is to allow each lawyer to articulate the other side's position as a means to reflect that they, in fact, understand each other's argument.

All in all, I believe the way forward to dispute resolution is giving the mediator the role of a conductor, helping each side to play their own parts and eventually bring the parties to an understanding that resolution is better than the alternatives.

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