

Mediation/Arbitration

“Mediate, Like Water My Friend – Reflecting on Bruce Lee”

By Stanley Zamor

The Defense and the Plaintiff’s attorneys exchanged smiles and pleasantries while the agreement was being signed, then someone stated, “How did we get here. I never settle these cases so early...”. I immediately interjected, “Well, it’s because we mediated like *water*. And from the orientation (opening statement) forward, you allowed the process to be what it needed to be for the litigants”. I asked the Defense’s attorney, why was his first offer much higher than what they anticipated? Then, I asked the Plaintiff’s attorney, you said the Defense lost their Summary Judgement Motion which would have ended the case before the trial, you have a stronger case, and your 3 recent trial wins mirrors this case exactly. Why demand so much less when you said you are due so much more? They seemed more attentive, and I continued; you both expressed a choice to negotiate differently, so we did. Although we initially went through the merits of your case, how much time did we spend debating the usual arguments showcasing your strengths and highlighting the others weakness? Not much. With this case there was no need to mimic the evaluative style mediators/neutrals use; its mundane, often unethical, and very limiting. You did not need that, so I played the role I was supposed to and encouraged creative negotiations. Instead of it being only about who is a better lawyer, whose case is stronger, it became about what solutions can work today. I mediated like water my friends.

"Empty your mind, be formless. Shapeless, like water. If you put water into a cup, it becomes the cup. You put water into a bottle, and it becomes the bottle. You put it in a teapot, it becomes the teapot. Now, water can flow, or it can crash. Be water, my friend."

-- Bruce Lee

The Promise of Mediation

Mediation is a unique process with subtle nuances; it is not a court event. And when facilitated with process-knowledge and a command of varying negotiation techniques the parties can craft/achieve solutions that the court cannot offer. Mediators who remain tied to their litigation roots often neglect the *promise of mediation, for the profit of mediation*. They rarely invest in expanding their skills/techniques or becoming “comfortably-uncomfortable”, an advanced state. Participants can get more out of mediation if they understand the possibilities of mediation.

“Conflict/Mediation is Constructive...”

Bruce Lee’s words were about resilience. I find them far deeper and use them as a metaphor and as an approach for creating unique solutions that encourages flexibility, creativity, empowerment, barrier reducing communication, relationship-building, and self-determination.

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