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Emotions in mediation

Creating an environment where participants can express their emotions in constructive ways

BY NANCY NEAL YEEND

People have a wide range of emotions, which can extend along a continuum from happiness to anger to fear to depression. Too much of any emotion can become destructive, while some emotions can be positive. As Daniel Goleman¹ wrote, “When in control, the emotional mind harnesses the rational mind to its purpose, thus distorting past memories and current realities.”

High emotion can impede information processing. Erik Fisher and Steven Sharp considered both psychological and

sociological factors, and concluded that “... emotions move us into playing one of the classic roles in conflict: Victim, Persecutor, Instigator or Rescuer.”² According to author Gabriele Taylor, often what stimulates emotions are pride, shame and guilt.³

The mediator – and counsel – has an opportunity to create an environment where participants can express their emotions in constructive ways. This aspect of the process is important, since emotions often are fueling the conflict. Plaintiff counsel needs to understand that emotional process in order to support the mediator’s efforts.

Understanding emotions

According to William Goldman, “...neuroscience suggests that in even the simplest of situations, our decision-making is unavoidably formed by emotion.”⁴ It is important to remember that intense emotions often produce equally intense emotional responses.

Mediators need to appreciate that participants may not only have emotional struggles with one another, but they also may have internal emotional struggles. Some mediation participants vacillate between “I want to settle” and “I don’t want to settle.”



Before trying to understand the emotions of the participants, a mediator must be in touch with his/her own emotions. Does the mediator have the ability to identify his/her emotions at any given moment?

Many individuals avoid dealing directly with emotions in mediation, assuming it is therapy or just too “touchy feely” and has no place in the process. Family history, gender and culture are all factors that influence a person’s beliefs about emotions. “The mediator’s comfort level with emotions will often dictate the level of emotional expression that is allowed, and thus may limit or expand opportunities for resolution.”⁵

Mediators need to be aware and thus able to make appropriate process management decisions:

- Prior to the first mediation session does the mediator anticipate if the participants will experience any significant emotions?
- During mediation does the mediator consciously deal with emotions, or merely react to them?

Some researchers suggest that positive emotions encourage innovation and action, while negative emotions foster self-centered behavior. Understanding emotions, both the mediator’s and the participants’, and then having the ability to deal effectively with the emotions is referred to as *emotional literacy*.

Others have referred to a mediator’s ability to recognize his/her emotions as well as the emotions of the participants as *Emotional Intelligence*⁶ or *Emotional Quotient* – EQ. Attributes of a person with a high EQ include self-awareness, self-management, empathy, social awareness and social skills.⁷ All are important attributes for a mediator who can constructively work with emotional participants.

Working with emotions

The intensity of the emotion is directly proportional to the importance of the topic. Determining which topics generate the most fear, shame, humiliation or other negative feelings, will aid

the mediator in determining how to address the related emotion of resentment, anger and outright hatred.

Ignoring or attempting to dampen emotions should be avoided, as this typically just increases emotions and escalates the conflict. People are not able to immediately drop a negative emotion. It takes time. Initially anything done or said just reinforces the negative feelings that a person has about another or of a situation. Mediators can initially help the parties deal with their emotions during intake by using empathetic listening and establishing trust. It is helpful if a mediator slightly slows their rate of speech and consistently uses a calm tone.

Everyone has basic human needs: acknowledgment, validation, recognition, etc. These needs are unspoken. Disputants have an additional need: to be heard. For a mediator, this means having the ability to summarize both content and emotion of the speaker – demonstrating that the mediator is listening and engaged.

In addition, there are a number of techniques that can be used during mediation to help mitigate participants’ emotions. Begin the mediation with a warm welcome and compliment the parties for participating in the process. Parties must be psychologically invested in the process if there is to be any chance for settlement. It should be remembered that a variety of chemicals⁸ influence a person’s level of pleasure, trust or anxiety. Emotions impact behavior; therefore if a mediator simply has a warm handshake, smiles and offers some food at the start of a mediation, some of the chemical levels that influence emotion are reduced.

Next recognize that emotions need to be expressed; however, care must be taken to be sure that venting is incremental; otherwise, the emotions will escalate. Empowering the participants to describe the impact of the event will help the speaker to let go of some emotion. This can be accomplished by encouraging the participants to use “I” messages: “I felt angry when I was fired.” or “I became

depressed when I was not recognized for my contributions to the project.”

Another technique that can help reduce emotional outbursts is to ask questions that will require a positive response. For example, “When you first began working for Mr. Johnson, it sounded like you were very excited for the new opportunity. Is that right?” Another question might be, “What were the top two reasons you joined the firm?”

Reframing is one of the more powerful skills in a mediator’s toolbox. Getting the parties to reframe value-laden statements help the participants tone down the emotions. The two key points of focus when reframing are vocabulary and perspective. For example, if one person shouts, “They can’t be trusted!” the mediator might reframe the statement by saying something like, “It sounds like you have a concern about their fulfilling the terms of a settlement.” In another instance, a party might utter an angry statement like, “She never notified us when the report was completed, and then the bad publicity started.” When this happens, the mediator might reframe the comment and say, “You are frustrated that, since you were not notified when the report was completed, you did not have an opportunity to review or verify the findings before it was released to the public.” Reframing may not be easy; however, during intake many participants often express strong emotions or counsel may indicate how strongly the client feels about a given topic. With this early information the mediator can have a bit of time to prepare for meeting the reframe challenges that could occur during the mediation session.

Fostering goal-setting helps parties to see that there is a way to end the dispute or situation. It also helps people focus on the future, and not dwell on the past, which is often a source of much emotion. When people have goals, it is easier to get them to design the steps needed to reach their objective.

Pausing and taking a break is another way to help calm emotions. Sometimes



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just standing up and moving around or getting a drink of water will help. Other times, when emotions are high, taking a walk when caucusing with one of the participants is helpful. Getting outside, especially in the sunshine, can work miracles. While caucusing with one party, give an assignment to the other participant that helps keep them focused on settlement. Assignments could even include relaxation techniques.

Having the participants physically change location at the mediation table is a very powerful technique that helps parties change their perspective. This form of musical chairs, or shoe-switching, can be accomplished by asking the parties to actually change their location at the table, by directing the parties to a different seat when they return from a caucus, or have the mediator move to the opposite end of the table.

Conclusion

Mediators who begin the process with a compliment, and then help the participants to create goals, focus on the future, and do not rush the process, may well improve the potential for settlement. When mediation participants are in a more positive



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frame of mind, they are less likely to display emotional extremes.

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Endnotes

- ¹ Goleman, Daniel J., *Emotional Intelligence*, Bantam, New York, NY, 2012. Goleman is also a two-time Pulitzer Prize winner, and is a prolific writer on psychology and related topics.
- ² Fisher, Erik and Sharp, Steven, *The Art of Managing Everyday Conflict*, Praeger Publishers, Westport, CT, 2004.
- ³ Taylor, Gabriele, *Pride, Shame, and Guilt: Emotions of Self-Assessment*, Oxford University Press, Oxford, England, 1985.
- ⁴ Goldman, William, *Mediation, Multiple Minds, and Managing the Negotiation Within*, Harvard Negotiation Law Review, Spring, 2011.
- ⁵ Eileen Barker, *Emotional Literacy For Mediators*, mediate.com, 2003.
- ⁶ Salovey, Peter and Mayer, John D., *Emotional Intelligence, Imagination, Cognition and Personality*, vol 9., 1990. The term "emotional intelligence" was first coined in this article.
- ⁷ For a more detailed discussion on Emotional Intelligence refer to Bowling, D. and Hoffmann, D., Eds, *Bridging Peace in the Room*, San Francisco, CA: Jossey Bass, 2003.
- ⁸ Dopamine, oxytocin and cortisol are chemicals, which trigger and increase emotions.