
Kluwer Mediation Blog

Reflections on Three Failed Mediations

Rick Weiler (Weiler ADR Inc.) · Thursday, November 22nd, 2012

I recently had three mediations in a row that failed to reach settlement. After a couple of days contemplating running away with the circus and other lateral career moves, I started focussing on what I might have done differently and what might yet be done to advance resolution. Counsel and parties look for perseverance in their mediators and, as I've detailed in an [earlier post](#), there's much a mediator can do to accelerate ripeness for resolution. Even after a failed mediation mediators can follow up by phone and email. My own experience has been that in many cases the parties just need a little time to reflect on what actually happened at the mediation and then an emailed mediator proposal can provide the catalyst to achieving settlement.

At the same time, I firmly believe that there's a limit to what mediators can do to help the parties achieve settlement and for a mediator to believe otherwise can lead to a significant mediator workplace health and safety issue, also known as burnout or meltdown. I've seen the impact this can have on mediators and have come to think of this as a form of "compassion fatigue", a condition that is attracting ever-increasing awareness. See, for example, [The Compassion Fatigue Awareness Project](#).

The timing of my three unsuccessful mediations roughly coincided with Geoff Sharp's thought-provoking post elsewhere on this Blog entitled, [The Claims We Make](#) highlighting the competitive marketplace in which commercial mediators ply their trade. This high pressure market, in which a mediator is perceived to only be as good as his last mediation, combined with the solitary and confidential nature of the commercial mediators's work make it critically important that mediators actively seek assistance in gaining insight into the impact on their well-being of the inevitable ups and downs of their practice.

I always remember the good advice of a wise mediation trainer I crossed paths with more than 20 years ago. He said, "If the mediator is the one working the hardest to achieve settlement, something is badly wrong." I urge mediators reading this blog to keep that in mind as they go from case to case.

And by the way, I try never to speak in terms of a failed mediation. Rather, as parties and counsel are packing their bags to go I sometimes leave them with this paraphrase of [Edison](#), "We have not failed today. Rather we have successfully identified one approach to settlement that will not work."

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The image shows a promotional graphic for Kluwer Arbitration Practice Plus. It features a blue background with a white checkmark icon and the text 'Explore Practice Plus'. Below this, there are two overlapping screenshots of the software interface. The top screenshot shows a profile for 'Gary S. Bore' with a photo, name, and various statistics. The bottom screenshot shows a 'Relationship Indicator' section with three circular charts and a list of results based on cases within Kluwer. At the bottom of the graphic, there is a dark blue bar with the text 'Kluwer Arbitration' on the left and the 'Wolters Kluwer' logo on the right.

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