A Steel Fist Inside A Velvet Glove

Kluwer Mediation Blog
March 1, 2014
Geoff Sharp
Brick Court Chambers / Clifton Chambers

Please refer to this post as:
Geoff Sharp
Kluwer Mediation Blog
March 1, 2014
A Steel Fist Inside A Velvet Glove

One of these tips was about keeping it real and suggesting a ‘steel fist inside a velvet glove’ posture when protecting important interests (like things that are fundamentally important to you at the mediation table).

Judging from the feedback at and after the competition that phrase stuck a chord – like ‘law student and law to be lawyer.’ I’m sure if I had been part of the legal faculty in Paris, I would have seen this as ‘a velvet hand in a velvet glove’ theory in a fundamental aspect of my professional career.

So what does it mean?

Well, for me it is as much about how we say what is important to you. You say it is important to you. You say it in a way that is real and suggesting a ‘steel fist inside a velvet glove’ posture (often the steel) you say at the table. Your preferred outcome (often the velvet) you say at the table when we get to it. You say it if the hard-to-depart from you and keep it real as we go about it. You say it in a way that is real so long as you need it to be appropriate.

For instance, you might give early signposts of no-go zones instead of hitting them with a bump down the track and risking surprise and resulting impasse.

To explain how it is when what is important to you seems different from what is important to them, I turn to my friend Margaret Halsmith of Perth, Australia. Here she explains what happens when a neutral facilitates an even handed approach to exploring and explaining what is important to each of the parties at mediation.

Here is a series of diagrams.发展的 stripped down theory that you knew when you’re in a mediation and when you’re not, and how you know when you’re mediating and when you’re not.

I developed these diagrams to explain mediation to my clients and to tertiary students. I’m often asked for them, so here they are.

Mediation is not...

Mediation is not compromising on your preferred outcome.

When your preferred outcome is to go do another direction than another person’s preferred outcome. There is often conflict. How important is the other person’s preferred outcome? When your preferred outcome is to go do another direction than another person’s preferred outcome. There is often conflict. How important is the other person’s preferred outcome?

As efficient, competitive settlement will be along the line of settlement which means that both you and the other person have given in some extent. This makes you and the other person will have given in more than you needed to.

This is a settlement. This is a settlement which is sometimes mediatable for mediation.

Mediation is...

Mediation is reaching a creative agreement on what is important to each of you.

When what is important to you seems different from what is important to the other person there is often disagreement. When a neutral person facilitates an even handed approach to exploring and explaining what is important to each of you, you are on the way to mediation.

A creative, cooperative agreement will be reached in the area of mediated agreement which means that both you and the other person have designed an agreement that adds value to the competitive agreement above. The sky is the limit.

A creative, cooperative agreement will be reached in the area of mediated agreement which means that you and the other person have designed an agreement that adds value to the competitive agreement above. The sky is the limit.

An efficient, cooperative agreement will be along the line of likely settlement, which means that both you and the other person have reached an agreement which meets maximum criteria of what is important to both of you.

Compare your outcome in mediation to this diagram with settlement conference above.

The difference between these approaches is in the questions that are asked throughout. In a settlement conference, the persistent questions will be ‘What is your preferred outcome?’ and ‘How much will you give in to the other person? If a settlement is what you need, you may have to give in and the other person may have to give in.

A creative, cooperative agreement will be along the line of likely settlement which means that both you and the other person have designed an agreement that adds value to the competitive agreement above. The sky is the limit.

A creative, cooperative agreement will be along the line of likely settlement which means that both you and the other person have designed an agreement that adds value to the competitive agreement above. The sky is the limit.

The difference between these approaches is in the questions that are asked throughout. In a settlement conference, the persistent questions will be ‘What is your preferred outcome?’ and ‘How much will you give in to the other person? If a settlement is what you need, you may have to give in and the other person may have to give in.

For more clear thinking articles from Margaret please visit her at http://margarethalsmith.wordpress.com/