

Confessions of a Trial Lawyer

Kluwer Mediation Blog
March 1, 2015

Geoff Sharp (Brick Court Chambers / Clifton Chambers)

Please refer to this post as: Geoff Sharp, 'Confessions of a Trial Lawyer', Kluwer Mediation Blog, March 1 2015, <http://mediationblog.kluwerarbitration.com/2015/03/01/confessions-of-a-trial-lawyer/>



We got off on the wrong foot right from the start.

It was a boat building case and the detail was overwhelming. Too many gudgeons, pintles and bulwarks and by the time we got to a 3 day hearing, it had become the most toxic professional relationship with a counterpart lawyer of my young career.

A day and a half into the trial, partly because of the mindless detail, partly because the judge had bigger fish to fry, counsel were told to go away and settle. I looked blankly at the Judge, avoided the stare of my counterpart, and packed up my papers spread across the Bar table. Since opposite counsel was from out of town, we made our way separately to my firm's boardroom five minutes up the road with clients in tow.

When we sat down around the table we each threw our papers, wigs and gowns aside, eager for the recriminations to begin.

With no semblance of a relationship between counsel (even less between litigants) and no one there to help us, the discussion quickly deteriorated. Thirty minutes in, they stormed out.

We stayed - after all it was our patch and where to storm to?

Shortly after, I received a curt message requiring me to pack up and courier out-of-town counsel's wig and gown left behind during her dramatic exit.

I declined. More accurately, I refused.

Someone duly arrived at reception and collected them the next day. Of all the words that come to mind, I think churlish is the most apt. Although, the client thought it was great sport.

Actually, they should have sacked me.

Decades later, with out-of-town-counsel now an in-town-judge and me a seasoned commercial mediator, I look back at that refusal as a low point of my trial practice and an unforgivable failure of a client who deserved better.

So, when I see mediation lawyers who don't get on - who aren't just competitive, but really have something personal - who decline the usual professional courtesies, who never pick up the phone prior to mediation, who won't even pour the other a glass of water at the table, I recognise the dynamic.

While litigation might be different (and that's debatable), if only mediation counsel knew that *one of the most effective moves* they can make as mediation advocates is to develop a good relationship with each other. You might get away with it in the courtroom, but you won't in most mediation rooms. But I admit, it's not easy and the age old dilemma remains - how and at what level to be competitive and advance one's individual interests, at the same time bringing the necessary degree of cooperation to the discussion to learn what's jointly possible.

Good relations with opposite counsel breeds trust, which in turn means more appetite for risk. That delivers a whole bunch of good things your way - a better handle on where they are *really* coming from and want to get to.