

Kluwer Mediation Blog

Exploring the value of a partisan in mediation - a case study.

Alan Limbury (Strategic Resolution) · Wednesday, December 15th, 2021



Setting the scene

Having participated in mediations only as a mediator, trying to be polite and respectful while appearing to be confident when actually terrified, I recently found myself participating in a mediation as a supporter of one of the parties, a friend of mine in a difficult situation.

Engaging with the mediator

The mediator was already in the Zoom room when I arrived and it turned out that no one had told the mediator that I had been invited. Nor had anyone sent me a confidentiality agreement to sign. So I had to leave until I had signed up and was then (reluctantly) allowed back in.

Experiencing the challenges of 'shuttle mediation'

I found myself in a room with my friend and my friend's lawyer and stayed there for the next 6 hours. The mediator came and went and occasionally took the lawyer to meet with the other party's lawyer. There were no sessions in which the disputants saw each other, heard each other or spoke to each other. To me, accustomed to holding opening discussions with all parties and their representatives present, hearing how the lawyers and their clients see things and encouraging them to ask questions in clarification, before choosing to meet with them separately as appropriate, this seemed very strange. However, given the animosity between the disputants, I came to the view, as the day developed, that keeping them apart was very sensible.

Exploring how to add value - and remembering I am NOT the mediator

My experience as a mediator had taught me that support persons can be disruptive and may need to be silenced or even expelled, so having managed to get back in after my initial encounter with the mediator, I did not speak while the mediator was in our room.

There was plenty of time for us to talk however, since at least half of the 6 hours was spent waiting alone together or with my friend's lawyer, who reported on the way the discussions with the other party's lawyer were going. This gave us both opportunities to discuss the dispute and how it might be resolved satisfactorily.

When the mediator did come in, the focus was on what my friend would offer and how my friend would respond to the offers from the other party.

Adding value

On reflection, my training and long practice as a mediator was a significant factor in adding value to the process for the party I was supporting. In particular, this was evident in:

- **Developing a mediation strategy - how mediation training helps a partisan**

The only discussion about my friend's interests, what might be some options for meeting them and what my friend could do if no agreement could be reached (identifying his alternatives and selecting his BATNA), took place between the two of us and, at times, my friend's lawyer.

- **Preparation prior to the mediation proves its value**

Prior to the mediation my friend had sent me each side's position paper, from which it was apparent that there was a wide divergence of view as between the lawyers and a long list of issues on which the disputants vehemently disagreed. However, it did appear to me that my friend's most important interest might be attainable, so my friend was able to stop thinking constantly about 'Who is right and who is wrong?' and instead focus on 'What's it going to take to fix it?'

A Good Outcome

In the end, the parties were able to reach a detailed agreement. The lawyers prepared Binding Heads of Agreement (which, as usual, took more than three times as long as they anticipated) and the parties signed it. I walked away reflecting on what was a most unusual role. I am so accustomed to maintaining neutrality and independence that it was a novel experience to guide my friend using my mediator's skills but taking care NOT to step into the mediator role. I value this experience of repertoire-building and it has given me new insights for how I will mediate in the future.

So the process which I witnessed from an unusual standpoint was a success in more ways than one!

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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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