

Kluwer Mediation Blog

The 'Divorce' Notification in Commercial Partnership Conflicts: Conflict Diagnosis Needed Before Curing the Problem

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Problems in group practices of medical group practices or commercial partnerships between lawyers, advisers, accountants, consultants are very common. My mediation practice consists for about 50% of group-mediations concerning cooperation-problems between partners in lawyer-firms, doctors-cooperations and other commercial partnerships.

One of the major issues seems to be that clear communication about what is really the matter seems almost impossible between partners who have been working together for sometimes more than 20 years. It is not only a question of losing face by admitting there are serious problems; a bigger issue is to really address those problems in a way that both contributes to resolve the problems and honours the long-standing relationship. As the conflict style in such partnerships is often not to talk with the conflict-partners about the problems, but instead to talk with others about the one who no longer seems to fulfil his partnership very well, the outcome is often that the real problem cannot be addressed but by starting a big row or an ice-cold conflict. And then faces are lost, relationships are sometimes unnecessarily broken, and long lasting personal conflicts seem unavoidable.

When those partners come at the mediation table, together with their lawyers, the first task is to make a diagnosis of what is really the matter. Is the partnership repairable or is it time to say goodbye in a manner that preserves personal relationships as well as addressing the financial and other issues at stake.

In cooperation problems the conflict issues at stake can be the following (source: Prof. Carsten de Dreu, Bang voor conflict? Psychologie van conlicten in organisaties [Afraid of conflict? Psychology of conflicts in organizations], 2005):

- Conflicts of interests on scarce resources
- Operational conflicts
- Vision or value conflicts
- Identity or relational conflicts
- Metaconflicts: there is a conflict about what is really the conflict.

It is of great help to clarify, in a joint session, or many times better in caucus, what is really at stake here. And it has happened many times that there is a shared vision between all partners minus one

that the other one is no longer fulfilling his task properly due to seemingly differing opinions about operational matters. Digging into the issue often brings to light that there are really other problems at stake, mostly value conflicts about how to best serve clients' interests on the one hand and a fear of harming the reputation of the firm, of themselves or of the partner they have problems with on the other hand, often combined with the fear of losing a long-standing personal relationship amongst themselves and/or their spouses.

The perceived dysfunctional partner on the other hand often feels victimized, his professional functioning left in doubt.

In mediations where it turns out that the point of no return has passed it is crucial to bring the "divorce-notification" to the table. This means that the end of the cooperation can only be addressed in a proper way if the reasons for the "divorce" are established and out in the open, but in a clear and respectful manner. Without this the mediation will last endlessly or end in not resolving the problems at all, which of course is neither effective nor efficient.

And that is ultimately a difficult task for people who are not used to being clear and friendly at the same time. My own experience is that many professionals find it hard to be unequivocally clear about disfunctionality or about no longer wanting to work together and to be respectful at the same time. The challenge for the mediator is to prepare a notification with all partners involved, defining and clarifying the issues at hand, sometimes even including apologies.

If successful, this will allow the mediation to take off for earnest, paving the way for the dissolution of the partnership in an acceptable manner. For this reason I have included the "divorce-notification" as part of the training on labour mediation for mediators specialised in these types of cases.

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