

Kluwer Mediation Blog

Accelerating Ripeness in Mediation

Rick Weiler (Weiler ADR Inc.) · Sunday, July 22nd, 2012

Often when I'm mediating a difficult case; the parties, running hot, miles apart and showing no sign of movement, an inner voice whispers softly to me, "it's just not ripe for settlement."

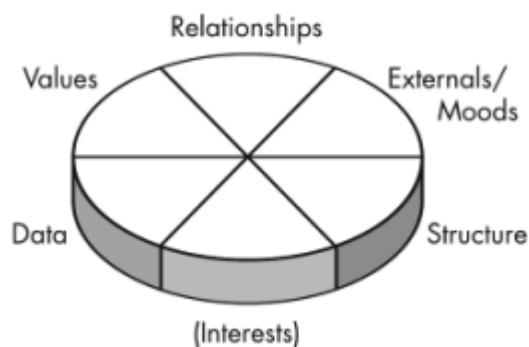
It's an attractive concept because it lets me off the hook. Nothing to be done here until the case ripens. I might as well call it and move on to the next one.

This facile approach to ripeness in mediation can be a [Siren song](#) that mediators (including this one) must resist. As usual in mediation the way forward is with questions: Why isn't this case ripe? What can be done now to ripen this case? If the case can't be settled today what's the right next step to move it towards resolution?

Mediators know that [parties value mediator perseverance](#), but HOW do we persevere in these situations? What do we actually do?

I know that for me, finding a quiet spot at the mediation facility where I can be on my own and reflect is often helpful. In those moments I try to organize my thoughts around three questions: (1) What's really driving this dispute?; (2) what are the barriers preventing settlement?; and (3) what's the right next step in this mediation?

For me, a useful framework for dealing with the first question has always been [The Circle of Conflict](#)



(the link is to Google Books – [The Conflict Resolution Toolbox: Models and Maps for Analyzing, Diagnosing and Resolving Conflict](#) by [Gary T. Furlong](#). Gary gives credit to [Chris Moore](#) and his seminal book, [The Mediation Process](#) for the Circle. I also believe [Bill Lincoln](#) should be given

some credit for the very early development of these concepts)

I've found this a highly effective tool for both analyzing what's driving a dispute and reminding me of the basic strategy for moving the matter towards resolution.

Turning to the question of Barriers I tend to go back to an excellent 2006 article by Joe and Sue Epstein, [The Top Ten Barriers To Dispute Resolution](#)

The top 10 barriers to dispute resolution identified by the authors are the following:

1. Inadequate Planning and Preparation;
2. False First Impressions and Perceptions;
3. Grief;
4. Systemic Distrust;
5. Failure to Communicate and Listen;
6. Insufficient Focus on Underlying Interests;
7. Partisan Perception, Judgmental Overconfidence, and Wrong Baselines;
8. Reactive Devaluation;
9. Misunderstanding the Loss/Risk Analysis;
10. Failure to give Opponents Face, Respect, and Dignity.

As to next steps, engaging the parties in this analysis can be helpful. Asking a party and their lawyer, in caucus, for their views on what's really driving the dispute (using the Circle of Conflict) and which of the barriers listed above are present can help shake up the mediation and move things forward.

It may be that a thorough canvassing of "drivers" and "barriers" will lead to the conclusion that matters beyond the mediator's control are standing in the way of settlement. Still, a mediator can provide value by highlighting what those matters are and suggesting steps to be taken to clear the way for resolution. I think the key is framing the questions around, "how do we move this matter forward to settlement?".

These are some of the approaches I've found helpful to accelerate the ripening of disputes in the mediation hot house.

P.S. (August 9, 2012) A [recent post](#) by Richard Shore on the Forbes Leadership Forum makes some helpful suggestions on this topic.

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