

Kluwer Mediation Blog

The Things You Can Achieve in Mediation: A Day in the Life of a University Lecturer

Greg Bond (Bond & Bond Mediation / University of Wildau) · Saturday, June 24th, 2017

Imagine you are a university lecturer, teaching courses in negotiation and mediation. Imagine you are also teaching a course in legal English for non-native speakers, which closely shadows a course in English private law, taught by a professor of law. One of the things you do in the latter class is support the students in understanding difficult cases and being able to talk law in a foreign language. This is part of your daily work.

Some students are enrolled in a degree programme in international commercial law. They are in both your legal English class and the class on negotiation and mediation, and they are also taking the class in English law taught by your colleague. You have reached a point in the negotiation and mediation class where you have started to work on ADR and the students know some of the basic principles.

One of the highlights of the legal English class is a moot court, which the students diligently prepare. It is now imminent. The case is complex – Great Peace v. Tsavlis, a case involving a maritime salvage contract that helped to clarify the law of mistake in English contract law. Your students have prepared it thoroughly, reading the full judgment, discussing the law in their law class, and discussing the language in the legal English class. They have written comprehensive skeleton arguments, which you have edited and returned to them. The moot court date arrives, and you are in attendance with the professor of English private law and another teacher colleague, acting as the general public at the hearing. The moot court is seen as an essential part of this course. You are ready and expectant with the skeleton arguments printed out.

The hearing begins. The counsel for the defendant stands up and says to the judge:

“Your Lordship, may I request permission to give you this letter?”

The judge accepts, studies the document, and then says: “If I understand this right, the parties have come to agreement in mediation and the claimant is withdrawing the claim?”

“Yes, that is correct, Your Lordship,” replies the counsel.

The judge turns to the counsel for the claimant. “Is this also a satisfactory conclusion for you?”

“Yes, Your Lordship.”

“The terms of the agreement are that the respondent will pay the claimant half of the sum claimed, that the costs will be shared equally, and that the respondent agrees to request salvage services from the claimant in future.”

“That is correct.”

“In that case, these proceedings are closed.”

A moot court planned to last some two hours has finished in just five minutes. The students are done. The judge has no ruling to write. Class seems to be over. The valuable practice of the moot court has not taken place.

How do you react? Do you (multiple answers possible)?

1. Tell the students it was a nice ploy to get out of class and avoid the hard work of a moot court but you expect them to now conduct the moot court as planned, as their grades are at stake.
2. Get angry because they have not done what you wanted and what was planned.
3. Praise them for their creative work on process options and their use of mediation.
4. Feel very satisfied that they have learned the lesson on mediation that you have been trying to teach them.
5. Get rather embarrassed and explain to the law professor that you are very sorry about this and for wasting his time.
6. Ask them to submit their mediation agreement in writing.
7. Cancel the rest of the class, as their out-of-court (and out-of-class) mediation has made the class superfluous.
8. Say to them that this is all very nice, but they will miss an opportunity to practise their English if class does not continue today.
9. Ask yourself if on this basis you can give them top grades for the exams.
10. Take the students for an ice cream.

I won't tell you what I actually did, but I did say to the students that I would have liked to have been present at the mediation. One of the students answered: “I am afraid that would not have been possible. One of the advantages of mediation is that it is confidential.”

I wonder if the real Great Peace and Tsavliris considered mediation? If not, why not? And if they did, why didn't they give it a go?

There is a lot you can achieve in mediation, and when teaching and studying it.

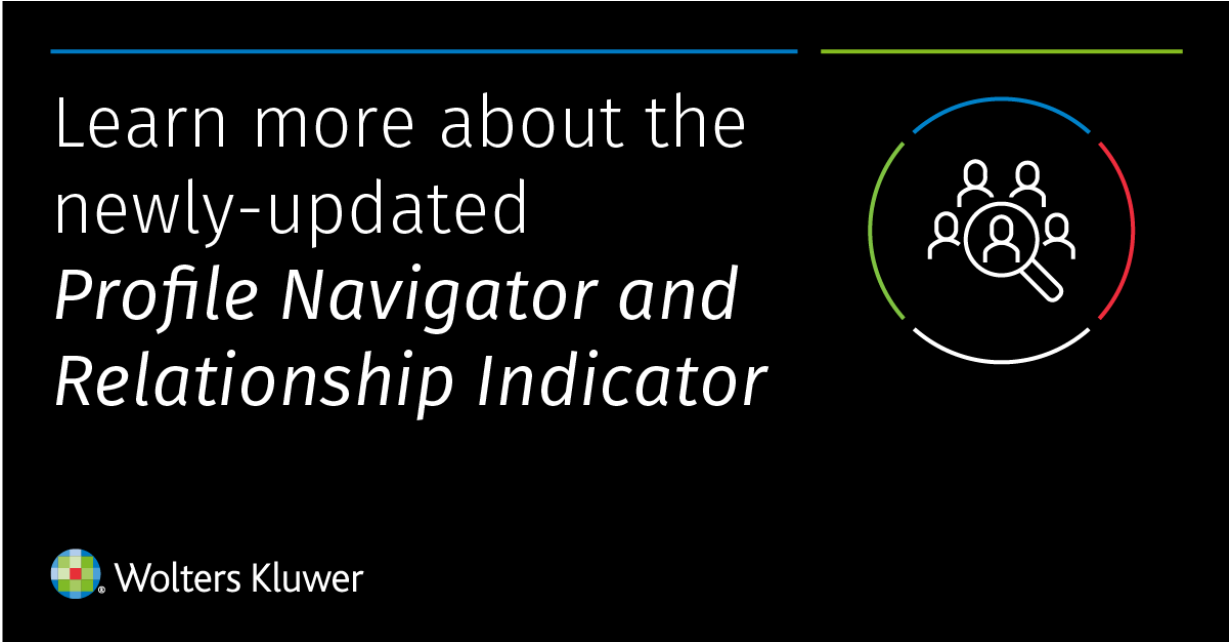
With thanks to my students: Conrad, Juliana, Nils, Rebecca and Yannick

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