

# Mediation: From Conflict to Collaboration

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When was the last time you heard a constructive conversation about a public or private controversy? In an increasingly bipolar world, we are drenched in destructive rhetoric and bullying behavior. It seems to be everywhere.

Disputes big and small feature finger-pointing debate, rather than collaboration. Whether the subject is off-leash dog parks, affordable housing, or the installation of public rest rooms, people are taking sides, rather than coming together. They draw lines in the sand. "Compromise" is scorned. "Take no prisoners" has become the rallying cry for action, on any subject.

Worst of all, most conflict is conducted by labeling people, judging them based on the label, then dealing with them accordingly. When we split the world into "winners" and "losers," or "them" and "us," divisions and alienation expand. We should build bridges, not blow them up. Progress depends on collaboration.

Our legal system reflects this sorry state of affairs. In fact, it broke down into perpetual warfare long ago. It's been 32 years since the Chief Justice of the US Supreme Court compared the American justice system to "ancient trial by battle and blood." He pleaded for innovation, as "the existing judicial system is too costly; too painful, too destructive, too inefficient, for a truly civilized people." That was in 1984.

Solutions are emerging. The Bay Area supports a fertile incubator of alternative dispute resolution choices. Among these, mediation is the most common tool for converting conflict into agreement.

Mediation consists of three basic elements. It is voluntary. It is private. And the participants decide the outcome. This last item distinguishes

mediation from other forms of dispute management. No judge. No jury. No arbitrator. The parties decide. Now *that's* freedom.

Here's how it works. A neutral facilitator (the mediator) creates a safe container so people can have difficult conversations. "Safe" means keeping things respectful and constructive. The mediation might happen in a room, with everyone around a table. Or it can be performed in installments, by shuttle negotiation, via Skype, telephone, and correspondence. Mediation can be customized to meet the needs of the parties, and the situation.

Mediation is resilient; it engenders creativity, compassion, and improvisation. The process often restores relationships while solving the problem at hand. Here are two brief examples, a business dispute and a family fracas.

## The Bank Job

A bank and its landlord were in a lawsuit over rent. The bank admitted it had under-paid \$500,000 over time, but claimed a technical lease error voided the obligation. The outraged landlord took steps to evict the bank, jeopardizing its flagship location. The bank's legal position was excellent, but the dispute was a public relations nightmare.

Bank and landlord had spent \$50,000 in legal wrangling, before trying mediation. Rather than focusing on the law or the contract documents, the mediator asked the parties about their business objectives and operating procedures. Instead of arguing positions, common interests and goals were examined. This shift quickly surfaced a solution, a new lease that repaid the past rent over time, with a little interest. The bank received additional lease term, protecting its market position.

Critically, the parties restored productive relations, leading to an expansion of the bank into the upper floors of the landlord's building. A \$500,000 loss was thus converted into a \$2,000,000 gain. Indeed, making peace instead of war can be profitable.

### A Family Crisis

During a holiday dinner with extended family, an argument erupted between college-aged siblings. It became physical. Law enforcement intervened. The incident made the local newspaper, unfavorably for some prominent family members.

A mediated family conversation was organized, in the hopes of preventing another episode. Everyone assumed that long-simmering resentments between the competitive siblings was the issue. But a series of private, one-on-one conversations with the mediator exposed complicated underlying problems.

It turned out the real conflict lay with the family's first generation. For years, the siblings' parents had permitted others to usurp their parental authority, causing corrosive rancor between them. Untreated addiction and related behavioral health challenges were also evident. The family was in denial about these things.

Over a series of several months, the mediated conversation realigned the family dynamic. Eventually a powerful group meeting took place, where every member was able to honestly express their feelings and concerns for the first time to the whole family.

The family mediation shifted the focus from siblings to the family system. It gave participants an authentic voice to speak their truth. Boundaries were established. Estranged relatives found healing. And while not all of their problems were solved, the family learned new tools to deal with them.

The common link between these very different cases is the privacy, flexibility, and empowerment mediation provides.

By safely ventilating emotions that lurk in every dispute, mediation can excavate objective, practical solutions. Mediators help parties listen to each other and fashion their own solutions. Mediation can transform conflict into opportunity. The experience can also inform responses to the next dispute or relational conflict. Mediating controversy shows people how to act their way into new ways of thinking.

Through mediation, debate ends and conversation begins. This is the gateway to collaboration, progress, and peace.

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