



So, You Want to Be a Mediator

By Michael J. Moran

I was lucky to have embarked upon my career as a mediator at the “dawn” of the mediation era, circa 1989. In those days I was often referenced as a “mediator.” Now, I have other descriptors people often employ which are usually one word adjectives or nouns.

I have attended hundreds of hours of mediation – negotiation trainings and seminars over the years. All of these, some excellent and some average, attempt to assure the trainee that they will have unique insight into the mediation process, which will give them the skills to succeed. In point of fact, however, very few trainees reach any degree of success.

So – what does it take? I am questioned on this almost daily by other “mature” lawyers, who want to “switch gears” from the practice of law to becoming a mediator of some import.

Here is my view of the fundamental characteristics needed to develop a meaningful venture into becoming a desired mediator:

TENACITY: The tenacious pursuit of case settlement during and, if necessary, after the session has been identified in surveys as the hallmark of an exceptional mediator. Refusing to take “no” as an answer and refusing to accept the prospect of failure short of full resolution of the dispute is the foremost trait of an exceptional neutral.

CONFIDENCE: A mediator who has been appropriately trained and brings a developed skillset to the mediation will exhibit assuredness to the participants that he or she has the ability to resolve the dispute. This confidence must be tangible and evident to the disputants.

HUMOR: Coupled with confidence comes the ability to inject levity into what is sometimes a heated and awkward dispute. Some successful mediators have a ready inventory of jokes and some have been known to employ published comics to disarm and relax the participants.

LIKABLE: Google will tell you that a synonym for the adjective “likable” is:

“pleasant, nice, friendly, agreeable, affable, genial, personable, charming, popular, good-natured, engaging, appealing, endearing, convivial, congenial, simpatico, winning, delightful, enchanting, lovable, adorable, sweet”

I would add that if a “mature” lawyer seeking to become a mediator can say that they have conducted their career in a professional, ethical and likable manner, they can possibly check this box as a prospector of their success.

STORY TELLER: A large part of a successful mediator’s “toolbox” is taken up by stories that can be weaved into the fabric of the mediation. They can use these “stories,” along with appropriate analogies and metaphors, to distill and diffuse some of the substance of the dispute. From this they oftentimes will be able to create options for resolution that never occurred to the participants before the session.

GOOD LISTENER: Academics who study human communication will tell you that a large part of effective personal communication between and among human beings is based upon a participant’s ability to “actively listen”. This involves being quiet (difficult for lawyers) and making all the appropriate eye contact together with a display of body language to “prove” to the person talking that their message is being heard. Expert “active listeners” will often “mirror” the speaker’s message to exhibit and confirm to the speaker their full understanding of the actual words spoken.

These are the core predictors of a practitioner becoming a successful mediator. There are certainly others. A complete discussion would render this piece far too lengthy.

If you feel comfortable with these basics, then prepare for rigorous training that will leverage off your considerable real world legal experience and knowledge.

Finally, prepare to “focus” on your development of reputation as a mediator – not legal practitioner. A litmus test to evaluate your level of focus will be whether you peddle your lawyer card or your mediator card at your next cocktail party.

Michael J. Moran, JD (Loyola 72')

Partner – Mediation Arbitration Professional Systems (maps®)

Adjunct – Tulane University Law School

3850 N. Causeway Blvd.

Suite 400

Metairie, LA 70002

Main: 504-831-2141

Cell: 504-453-1315

Fax: 504-837-2566

mmoran@maps-adr.com

www.maps-adr.com

