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The Corner Office¹ by Steve Toback **10 Rules for Managing Conflict**

Steve Toback was recently interviewed for a story related to Conan O'Brien's departure from NBC. The situation got Toback thinking: we hear a lot about bosses who are jerks, but what about employees who are jerks? What about public displays of vehement disagreement bordering on insubordination? When and how is it okay to disagree with the boss? Is it always okay to speak your mind? Is it ever a good idea to disparage your management, as Conan did?

To answer these and other thorny questions, Toback came up with a set of rules.

1. **Stay calm.** Never react in anger or blow your stack. If you are so mad that you cannot trust yourself to be calm, then go away and come back when you can. The workplace is no place for that kind of behavior, period.
2. **Attack the problem, not the person.** When you criticize or attack someone personally, you risk burning a bridge. Focus on the real issues at hand. You know, what the company actually pays you to do.
3. **Be open and honest.** The second you grit your teeth, cross your arms, and close your mind, you give in to stubborn childish behavior. But if you remain open and keep your wits about you, you'll manage to do the right thing in a tough situation.
4. **Don't lose perspective.** Try to remember that you're being paid to do a job, not to fight a war. The workplace is about business. You know, customers, products, that sort of thing. It's not about you ... or him.

¹ The Corner Office is a blog authored by Steve Toback that appears on BNET; a website that provides working professionals with tools and advice for the business challenges they face.

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What Facilitative Mediation Has to Offer

by Diane Cohen

Facilitative mediation (as I know it and practice it) is the only process I know of which helps parties think about how to work through difficulties and toward a resolution of their own making without outside pressure.* *In my experience, mediators who do not use facilitative mediation, or who are not highly trained or experienced in the process will often engage in strategies – sometimes even despite the mediator's intentions -- that will pressure the parties to come to a resolution that the mediator believes is appropriate, and such belief may be founded on little other than gut feeling.* For individuals who want to find a solution of their own making -- to their disagreements, disputes, conflicts or litigation, there is no better process. Indeed, well-trained facilitative mediators are skilled at helping parties with their own dilemmas as well as with their disagreements. The following is a list of practices -- and the theories behind them ---which I believe comprise facilitative mediation:

(1) **Self-determination by the parties.** Self-determination is the primary guiding light in the practice of mediation. It is what distinguishes it from litigation and arbitration. In the practice of facilitative mediation, the mediator takes pains to allow the parties to raise the concerns that are important to them, to have a dialogue that the parties believe is helpful to them, and to come to a resolution that the parties have come to on their own as a result of negotiations, clarifications, improved communication, and new understanding with the other party, free of influence by the mediator.

(2) **Neutrality by the mediator as to the issues -- and the parties -- involved.** The mediator must not only be free from bias and partiality toward either party, but must also not hold a view as to how the issues involved should be resolved. During a mediation, mediators who are skilled at facilitative mediation will be automatically reminding themselves – even subconsciously – that they do not know everything there is to know about the parties or their situation, that the parties have a right to resolve it any way they wish even if the mediator would resolve matters differently in his own life, and regardless of what is accepted wisdom or common practice.

(3) **Respect by the mediator.** The mediator must not only show politeness toward the parties, but must also convey a sense of respect for their opinions, their styles, their beliefs, their feelings, and every other facet of who they are. Respect does not mean agreement. It simply means that the mediator accepts the motivations of each party without dismissing anything that he does not feel is appropriate or justified. By displaying that kind of acceptance, each party has the opportunity to discuss all his thoughts and feelings. *The parties will feel understood when their thoughts and feelings are aired and some of these thoughts and feelings will become important matters for discussion, while others will fall by the wayside as the parties decide they do not require further discussion. This is the road to understanding and agreement.*

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(4) **Helping the parties think things through.** A hallmark of facilitative mediation is the ability of the mediator to help parties organize their thoughts and to take their own thoughts and desires seriously. This analytical ability helps parties think things through and also helps parties talk to one another in an organized way, which gets to the heart of the matter at hand. In addition, facilitative mediators give parties space and time to think about what they want to say. The mediator also prompts them to come up with ideas without exerting pressure to speak and without suggesting what direction the discussion should take. At the same time, the mediator reminds the parties about the concerns the parties have raised and gives them the opportunity to decide whether to address these concerns, decide they are not important, re-think them or re-prioritize them. The mediator may also help the parties think about the context of their disagreement and remind them to consider any alternative they have to coming to an agreement. The mediator will endeavor to do this in a way that reminds the parties to think about this, without pressuring the parties to come to a resolution.

(5) **Putting control of the process in the hands of the parties.** Facilitative mediators follow the parties' lead on what the issues for discussion are. Some mediators like to create an agenda for the discussion once they know what the issues are, but these mediators will allow the parties to change the agenda if they so desire. In essence, facilitative mediators follow the parties' joint desires, and mediate any disagreements that the parties have that relate to process or substance. Facilitative mediators are highly attuned to hearing requests, objections, concerns and questions from the parties, even when they have not formulated them clearly or overtly. The mediator will often follow up by asking if the parties are happy with how things are going in the mediation, and whether they have any concerns. Parties will then speak up and express any concerns they have, and the mediator will respond to any expression of concern by changing his practice – or if the other party disagrees – by facilitating a discussion between the parties on the issue raised.

(6) **Capacity; informed decision-making, time to think.** Facilitative mediators believe that parties should only come to an agreement if they want to, if they are happy with the terms, if they have had adequate time to consider the terms, and if they have all the information and expert advice they want to get before agreeing. Thus, a facilitative mediator should not pressure the parties to sign, should repeatedly confirm that the parties are comfortable with the agreement before signing, and should give them the opportunity to consult with an attorney and/or an expert of some kind if they wish. In addition, facilitative mediators may sometimes feel that a party is not fully informed and may refuse to proceed to the final agreement under those conditions. Such mediators would not want to participate in a process that may be unfair or may take advantage of an uninformed party.

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(7) **Training.** Facilitative mediation is not something that comes naturally to most people and so it requires a good deal of training as well as a good deal of practice, with a determination to “figure out” how to do it, how to have the appropriate “mindset,” and how to come to a place of true neutrality, respect and belief in self-determination. It is not something that everyone can do. Some individuals are simply prone to judging other people and do not believe they should suspend judgment when they mediate. Those individuals may be fine upstanding citizens, and may be good arbitrators, judges, attorneys or other professionals, but they do not serve the practice of facilitative mediation.

(8) **Other professions.** Most mediators have another profession from which they gradually gravitated toward mediation. The most common of these professions are the legal profession and the mental health professions. There is no rule of thumb as to which professions produce the “best” facilitative mediators. It depends mostly upon commitment, interest, training, experience and personality. Individuals from either profession or any other profession who are not adequately trained in facilitative mediation or who are not dedicated to its practice may rely on skills they developed in their original professions. This does not serve the goals of facilitative mediation.

(9) **Lofty goals.** The description of facilitative mediation set forth in this article is an ideal. Most of the time, highly experienced facilitative mediators feel that they come close to this ideal. But much of this work is difficult and mediators need to think quickly. Thus, we aim for perfection, but being human we fall short. Nevertheless, even in its less than perfect state, facilitative mediation is a wonderful process and one that yields many rewards which are unavailable in any other process.

End Note

Transformative mediation and other styles, such as the Understanding Model, are variations or subcategories which fall under the larger heading of facilitative mediation for purposes of this article. An analysis of the interplay between these styles is beyond the scope of this writing.

Conflict Management and ADR Training for VA Senior Leaders

Twelve VA Senior Leaders Recently Attended Conflict Management and ADR Training: A Transformation 21 Initiative.



As part of VA's Transformation into the 21st century (T-21), conflict management and ADR training is being provided for Senior Leaders. One session was held in early March with twelve VHA facility directors and managers participating. Additional three-day trainings are being coordinated and future course offerings will be communicated to all administrations and staff offices.

Dear Mediator

During a mediation, an employee raised an issue of reasonable accommodation. The mediation did not result in an agreement and nothing was done regarding the reasonable accommodation request. The supervisor believed that since the issue was first raised in mediation, confidentiality applied; therefore, nothing could be said or done about it. Was this the correct course of action?

Answer

A manager must act when made aware of a request for reasonable accommodation even if the information was first learned in mediation. The agency policies and laws regarding management's responsibilities in reasonable accommodation cannot be nullified because the information was gained in mediation. In these cases, managers should seek subject matter expertise before ending mediation with no action or get an agreement from the employee regarding what they want done or not done with the information. With reasonable accommodation, the employee can change their mind regarding what they want the agency to or not to do as long as it is documented.

Also see Confidentiality and the Mediator article in the Winter 2008 ADR Newsletter (Oct/Nov/Dec 2008).



Workplace ADR Program

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Mediation:
A Solution to Workplace Disputes

The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purpose of the newsletter is to communicate information relating to the use of ADR in workplace disputes and serve as a resource for those interested in learning more about ADR and its application within VA. We invite you to submit ideas and articles for the newsletter through your respective administrations: VHA to Rita Reese (10A2E), VBA to Johnny Logan (20M2), NCA to Nicole Maldon (40A), VACO staff offices to your VACO ADR Liaison, and labor organizations to your ADR Council Representative. We are looking for ideas and articles on ADR-related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA. For more information, visit our website at:

<http://vaww1.va.gov/adr/page.cfm?pg=86>

10 Rules for Managing Conflict Continued

5. **Try to be empathetic.** Put yourself in her shoes and try to understand her perspective. If you can't or you're not sure what it is, then ask; you're assumptions may be wrong. If she does the same, next thing you know, you have detente.
6. **Take the high road.** That doesn't mean be quiet when something needs to be said. It means say it at a time and place and in a manner that's reasonable and respectful of all present. If you kick yourself afterwards, then you probably didn't do it right.
7. **Have faith in yourself.** The workplace is no place for yes-men. You were hired for a reason, and it's not to blindly march along with the pack. If that's what management wants, you work for a crappy company.
8. **Don't go at it in public.** If you do, be prepared to apologize in public and, worst case, be fired for insubordination. Accomplished managers and executives really do not like to be publicly eviscerated. Would you?
9. **Then let them have it.** As long as you follow the preceding eight rules, then it's okay to go for it. Just try to be civilized.
10. **Disagree and commit.** This comes from **Andy Grove's Intel**. Keeping your mouth shut when you disagree isn't being a good soldier. But disagreeing, losing the fight, and committing to help the winning plan succeed, now *that's* being a good soldier.