

OBSERVING A MEDIATION AS A WAY OF LEARNING HOW TO MEDIATE

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The feeling that one has when is about to witness something he has been studying and listening about for a long time, is a mixture of stress (have I learned it well?), anxiety (how is it going to look like?) and enthusiasm (will it leave up to my expectations?). The older we get, the less we tend to taste such sentiments, since experience on the one hand provides you with self-confidence but on the other hand gradually deprives you from such beginner's feelings.

Participating in mediation courses of the Chartered Institute of Arbitrators after having worked for more than a decade as a attorney, was a procedure that made me first of all feel as a student again; and it is always good to feel as a beginner once in a while. Moreover, having tried in the past in many of my clients' cases to find an amicable solution to their problem, it was revealing to realise that, what I was doing up to then in a amateur way, was something more than a science; it was an art. However, through proper training it became evident that mediation has certain rules; even when intentionally some times you violate them. This is when I also realised that a skilled mediator has to be familiar to at least some basic negotiating and communication skills, since mediation deals with people (usually in a tensed situation) with strong sentiments that sometimes even circumvent logic and need to be handled with. In the beginning I was also circumspect with the extensive use of role plays in mediation training, being more accustomed to academic training that mostly entail theoretical feedback.

After finishing the mediation accreditation course, I was really curious to see how mediation process really works, especially in commercial disputes, with which I am more familiar to. Since in Greek jurisdiction mediation is still on the way, without any actual mediation process having officially taken place in Greece by local mediators, I searched for mediations taking place abroad. It was then when Amanda Bucklow, my trainer in mediation, was generous enough to offer me the chance to participate as an observer in a real mediation process in London. It was then when I felt that beginner's mixed feeling of anxiety, stress and enthusiasm that I mentioned earlier, when you are about to experience something new, for which you have been long preparing for. And I will always be grateful to her for that.

It was a mediation that would take place in London, between two families with foreign origin, being shareholders of the same company, once being friends and now feeling rather hostile towards each other. It was a mixture of commercial and family dispute, since the parties not only were partners, but they also used to be friends for years.

While watching the mediation taking place, I first of all felt as when I come to see a film for which I have previously read many extensive previous and critics. It was more or less the procedure I had been thoroughly prepared to see. And yes, role plays, which I was up to then undermining, actually do help. Especially when they are conducted by trainers with experience and communication skills as the ones I had. I realised how crucial it was when I was being prepared through extensive and hardly prepared role playing to experience real life situations. Many time during training role plays contained sentimental explosions. I often wondered if such extreme situations actually take place in mediation. However, while



observing one real mediation process I was persuaded that it is all there: different and sometime extreme attitudes by different people with completely different educational and emotional background accompanied by lawyers that were using all kind of ways to succeed a successful outcome, from threatening the other side to always coming up with different solutions. This is where what was emphasised to me during my training, become evident, i.e. that a mediator has to know in depth and apply emotional intelligence skills and interpersonal qualifications in order to handle such complex and emotionally burdened situations.

In the particular case observed, there was a commercial dispute between parties that had been friends for years, before becoming real enemies. So, it was mixture of commercial and family mediation. It is also crucial that mediation was ordered by court. In order to build rapport, I realised that the mediator had been working hard for several days before the actual mediation. Through many previous phone contacts and exchange of information, the mediator tried to coach parties and had extensive talks about the different issues of the case, in order to gradually build rapport. During the mediation the mediator constantly but discreetly tried to build up trust using step by step all kind of means available (for instance speaking to the parties in their native language in order to make them feel loose). In the actual day of the mediation, although there was a lot of hostility in the air, parties were already persuaded that they had chosen a mediator that was rather informed, not biased and trustful. This enabled the mediator, especially during the caucuses, to try to point out to the parties that they had to go beyond their wants and see what their actual needs were. And you could see that it actually worked! It was evident that the mediator's voice was being heard by parties that have been fighting for years, had not seen each other for a long time and before the mediation day had only one thing in mind: to destroy the other party.

Mediation process also proved to be rather flexible in practice, giving the mediator many alternatives that are not available during court proceedings. For instance, the mediator, when realised the extreme hostility of the parties, asked to speak in private with their lawyers. I was afraid that such a claim could be interpreted in a wrong way by the parties. However, the mediator achieved to speak with the lawyers using the voice of logic and highlighting the issue of future legal costs that was rather essential and could destroy both parties. Both lawyers agreed that a solution had to be achieved, since the overall costs would far exceed the price of the subject matter of the dispute and provoke the parties' financial disaster. Soon after this private meeting the attorneys clearly started to encourage their own clients to resolve their dispute, since the mediator had made it clear through the process that the pending court proceedings would eventually harm them both,. Legal costs, as a reason to resolve a dispute, was rather extensively used as an argument by the mediator, who showed to the parties rather clearly that court proceedings could easily harm them both. It was presented to them in such a sincere manner that even the lawyers had to openly agree with the mediator in a way that it was evident that they were pushing their clients to finish with the dispute.

Despite the hard work of the mediator and the parties' lawyers, the parties did not eventually accept to solve their case...for the time being. I am sure that the parties for the first time really understood deep inside how much the ongoing court proceedings could harm their life and interests. In the particular case, when court proceedings actually begin and parties come to realise that they actually jeopardise their actual future, they will come to wonder why this chance that was given to them through mediation, was lost. Mediation revealed to the parties, maybe for the first time, their weaknesses. They also presented to them all possible solutions; even those that cannot be a part of a judgement. It was clear even to the more hostile party, that it was simply poisoned by its emotions and its wish to simply destroy the



other party. However, I believe that the mediator by constantly trying to make parties realise their needs and the possible danger of a future court process, made them start doubting for the first time about their choice to be aggressive and stubborn. Wisely enough, the mediator firstly let the parties say to each other what they had to say (something that proved that they needed to do) and then made them realise the harmful consequences of their hostile behaviour. In this particular case, parties simply proved not to be emotionally ready to come to a solution. However, I strongly believe that the mediation procedure may result to a dispute resolution soon or even long after the mediation day is officially terminated. In the end, a skilled mediator helped parties take actual responsibility for the choices they make by assisting them realise what the consequences would be if they decide not to solve their dispute and insist in court proceedings. It is rather likely that when court proceedings do start and dead ends become more evident and costs start augmenting even more, then parties will themselves go once again to mediation, in order to solve their dispute and probable save their financial future.

After attending a twelve hour mediation many of my questions had been answered. Many new ones came up. However, I realised how much an adequate training is a supply for life.

