Fostering the 3Rs of Relational Practice

*Respect, Recognition and Reflection*

By Sharon B. Eckstein

We have all heard of the 3 Rs – reading, writing and ’rithmetic – which are commonly seen as the foundation of a basic education. Effective mediation skills must similarly be based on three fundamentals. I propose that mediation is most effective and simultaneously most meaningful and satisfying for disputants when the 3 Rs of respect, recognition, and reflection are fostered and modeled by the mediator.

All conflicts, the simple, the complex or the intractable, involve people. And all people share similar needs; we all want to feel connected, to be accepted, and to be seen and validated for who we are, what we do and what we say. For conflicts to be resolved, disputants move off of their stated positions and become willing to let go of “getting it all”: mediation enables needs and interests to be uncovered and then met. When a mediator comprehends that the relational aspect of conflict, the way the parties interact and engage with each other, frequently drives the conflict, the mediator understands that the focus must be on the relational if resolution is to occur.

Respect, when fostered between parties and the mediator, helps to create an opportunity for all present to recognize the humanity in each other. When a mediator treats all disputants similarly and in a balanced way, respect is established as a core principle of the mediation. When the mediator listens, remains curious rather than judgmental, doesn’t interrupt and ensures that all will be afforded uninterrupted time to speak, respect enters the room. And once respect enters the room because of mediator actions, and remains in the room because of interventions to protect the respect of all who are present, those involved in the conflict begin to engage with each other and to view the dispute differently. This enables conversation to flow, solutions to emerge and the possibility that positions will be softened.

Recognition requires empathy. We don’t want to be ignored, to have our opinions or perspectives disregarded, or to have our experiences discredited. We want to be attended to with receptivity and have our communicated experiences acknowledged and recognized. If the mediator cultivates the parties’ ability to recognize other viewpoints, all feel understood and have their perspective validated. Recognition does not mean agreement: it means allowing for the possibility of different experiences and being open to understanding them.

Caucus is a useful and important mediator tool and can be used to support the 3Rs. However, a mediation that relies exclusively on caucus cannot meet the critical need for respect and recognition. Cases can settle in caucus based/ shuttle diplomacy mediations, but I believe that a satisfying resolution for disputants is not likely.

Reflection includes both the willingness for mediator self-reflection as well as mediator cultivation of disputants’ willingness to engage in their own reflection. Mediator self-reflection is critical; self-awareness and self-assessment enable skills development and professional growth. Including time for reflection when preparing for a mediation centers the mediator and promotes being a responsive, rather than reactive, presence who can engage relationally with all. The more self-aware a mediator can be,
knowing what behaviors are especially challenging, what dispute scenarios are more demanding emotionally, and which conflict styles are less difficult to respond to, the more effective. Mediator self-reflection can be translated into invitations to parties to self-assess if they so choose. Mediators support parties’ reflection by choosing questions that open the door for disputants to engage in this process:

“How else could you have handled this situation?”
“What was the impact of your action on the situation?”
“Now that you have heard how your words/actions were understood, are you willing to reflect upon...?”

Mediators can also support the parties’ self-reflection by modelling their own self-awareness with open communication:

“I find it difficult to facilitate the process when I observe….”

Focusing on relational aspects is not comfortable for all parties or attorneys; it is also not available to all mediators since many have frequently chosen to respond to parties’ and counsel’s fear of the relational by acquiescing to avoid the human aspect of the conflict. Unfortunately, this discomfort leads to discrediting a relational focus as “unnecessary,” “a waste of time,” or “too peace oriented” (all phrases that I have heard attorneys tell me). Mediators can and must adapt to the needs of the parties, as well as to their comfort and ability. However, my experiences as a mediator strongly support that when a mediation session addresses the human relationship component of the dispute, these cases not only resolve, but resolve in more satisfying ways for all involved, often with more creative and all-encompassing resolutions.

As attorneys who are ADR practitioners, we may forget that we are also people. If we forget to bring our humanity into the mediation room we not only reduce the odds of settlement, we also deny all present the chance to obtain what is at least a partial cause of the conflict, the emotional and psychological harm experienced by the parties. Mediation can be a process which acknowledges the human aspect of litigation, something that is often forgotten in the courtroom, thus improving the lives of the parties while also enabling them the opportunity to craft better resolutions.

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