



# Make the Most of Your Mediation – The Neighbor Dispute

By Hon. Lynn Duryee (Ret.)  
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Disputes between neighbors are among the most blistering battles in the courthouse. As one advocate observed during a break in Day 3 of *Hatfield v. McCoy*, “At least in a divorce, one of the parties moves out of the house.” Like a divorce, neighbor disputes are expensive, emotional, and greatly in need of skillful resolution. Here are five tools lawyers and neutrals can use to settle these quarrelsome cases.

## 1. Engage experts to generate practical solutions.

Regardless of whether the problem involves parking, property line encroachments, view obstructions, falling leaves or barking dogs, the right expert can help the parties focus on a fix rather than a fight. A design professional might come up with 50 solutions for a problem when a litigant sees only one. Even better, if the lawyers can manage to retain a joint expert, they can save their clients’ money – in shared expert costs – as well as grief. A respected joint expert can help the parties work together on finding a solution everyone

can live with, and if the parties cannot agree on one, perhaps they trust the expert enough to ask for their recommendation.

## 2. Conduct a site inspection.

Before the mediation, the participants should meet on site so that each neighbor can show the Neutral what the problem is and how they believe it can be solved. A site visit can help the Neutral understand what is most important to each party: Is it privacy, beauty, autonomy, peace? Is it parking, lighting, safety? The participants will be in a better position to negotiate solutions if everyone has a clear picture of the problems, site and potential solutions.

## 3. Help the parties trust the process.

Commonly, warring neighbors enter mediation with a belief that the problem is 100% the fault of the neighbor, that the other guy is acting in bad faith, and that unless the neighbor is willing to move, resolution is impossible. This outlook makes it hard for each side to hear a different point of view. Lawyers can help their clients by modeling respect during the mediation. When an offer is presented from

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the adversary, listen to it carefully instead of dismissing it reflexively. When the Neutral describes the risks of going forward, support the Neutral's concerns rather than taking issue with them. When the Neutral is comparing the last, best and final offer before going forward to trial, give the client a realistic assessment of the costs and risks of trial so that the client can choose wisely.

#### 4. Allow sufficient time to mediate.

When I teach mediation, I give students a hypo involving neighbors fighting over views and trees. In the hypo, the uphill neighbor hates the downhill neighbor's trees because they block his view. The downhill neighbor loves the trees because they protect her from the uphill neighbor's lights and noise. Students solve the problem in 5 minutes by agreeing to trim trees, move lights, and reduce noise. They are incredulous to learn that in real life, such a problem would likely take a day to settle. Why? Isn't the solution obvious? Maybe. But people don't like living their lives to suit their neighbors. They resent having to change something on their land to suit someone else. They are sometimes embarrassed to be involved in litigation over a problem they feel that they should have been able to settle without legal action. They feel like they are right and shouldn't have to compromise. Perhaps they have spent a small fortune in fees and feel that they should be getting more for their money. These issues take time and sensitivity to sort through. Fortunately, once these issues are identified and discussed, parties can then find solutions almost as easily as my mediation students.

#### 5. Be part of the solution.

The lawyers most likely to achieve settlement in these emotional cases have gone out of their way to cultivate a professional relationship with opposing party. They have been able to exchange and appreciate the strengths and weaknesses of their own case as well as their opponent's. They have counseled their clients on how stressful and expensive a trial will be and how unsatisfying its outcome is likely to seem. They have told their clients that what seems so important to them may not strike a judge or jury the same way. They approach mediation with a mind open to entertaining creative solutions. They keep discussions moving when discouragement creeps in. These are the lawyers whose clients are most likely to sign settlements and releases at the end of the day.

There are notorious neighbor cases that end in gunfire. There are sad ones that end with both parties selling their homes and moving elsewhere. Some go to trial and end up with a decision that seems to change nothing. And then there are those few that end with an agreement to trim the trees, try a little harder and maybe look the other way when the car is parked illegally.

They say that good fences make good neighbors. So too can good lawyers and mediations. ●

*Hon. Lynn Duryee (Ret.) is a JAMS neutral who joined after serving on the Marin County Superior Court for more than 20 years. She presided over and settled thousands of commercial, contract, and negligence cases, along with every other type of civil case filed. She can be reached at [lduryee@jamsadr.com](mailto:lduryee@jamsadr.com).*

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