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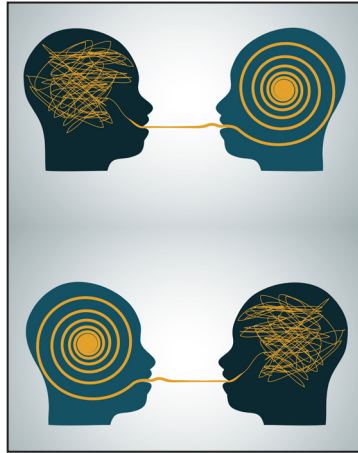
## Co-mediation: When 2 heads are better than 1

By Lynn Duryee and Jeane Struck

Who is the perfect mediator for your next case? Is it someone who can size up the room quickly and delve into the meat of the matter? Or perhaps this time you need an empathic listener who can give a wounded party his day in court while guiding the case to closure. Or maybe what you need is a neutral with a ton of experience in handling cases just like yours. Come to think of it, wouldn't it be great if you could find someone who is a perfect combination of the qualities you are seeking?

If so, consider the benefits of co-mediation. Sometimes the combination of retired judge and former attorney provides just the right medicine to get the job done. The judge-neutral may bring gravitas and risk experience to the process while the attorney-neutral may offer specialized legal knowledge and keen people skills. Co-mediation can often be done with little to no increase to the cost of the process, so why not mix it up and try a process that may well be more satisfying and productive for all?

Our experience shows us that two heads are often better than one. For example, in the typical multi-party, single-mediator case, participants sit in their separate rooms and wait for the mediator to finish the circuit and return to them. This long wait can lead to a lot of squirmy downtime and a perceived lack of progress. Two mediators can divide and conquer — each can be engaged in discussions with



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participants most responsive to their efforts. Provided that the neutrals are organized, compatible, and able to quickly keep one another current on the status of negotiations, two neutrals can be twice as efficient in creating momentum and moving the case towards resolution.

Another type of case suited to co-mediation is the complex insurance case. Where retired judges may lack subject matter expertise, a knowledgeable litigator can pick up the slack on thorny issues such as board reporting requirements; set-offs for employer negligence; the impact of the “per person” limit of an automobile liability policy on a loss of consortium claim; allocation of prior settlements; and a maze of tricky lien issues. Defense counsel and claims representatives are genuinely appreciative of a neutral who is fluent in the language of labyrinthine insurance matters.

The high-conflict, emotional case can also benefit by two neutrals. If there's a participant who needs a ton of attention or handholding, one neutral can be assigned that task while the

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co-mediator works on other matters; in that way, the needy party has her day in court, does not feel ignored or unimportant, and, perhaps most significantly to other participants, doesn't hold up progress. Other difficult cases may involve a litigant who is suspicious of the process or unwilling to work with the agreed-upon neutral. In such a case, a co-mediator can be paired with that litigant and progress can be achieved.

We like co-mediating because we find that as mediators, we step up our game as well. We are more apt to deploy our best skills — after all, we want to show our partner how proficient we are. We are more apt to remain mindful of the importance of maintaining neutrality and avoiding embroilment.

With two heads, we find that we are better able to assist participants in generating options for resolution. While listening to the parties, if one of us misses a key concept or clue to settlement, the other one will have captured it. “Didn't plaintiff say he just wants to buy a pickup? I wonder if that's what he needs to settle.” “Did you notice how sad the employer looked when he heard how tough things have been for his former

employee? Let's talk to him about that.” If one neutral shows signs of impatience, the other can gently kick her partner under the table.

The name of the game in mediation is overcoming impasse and achieving resolution. Here too, co-mediators can be effective in supercharging momentum. Whether working together in the same room or apart in separate caucuses, co-mediators can create a convincing chorus of optimism. If energy and enthusiasm begin to wane, one or both neutrals can swoop to the rescue to remind participants that progress has been made, that parties really do want to settle (despite the loud grumbling), and that we are so very close to the finish line that giving up is not an option.

When your mediation calls for double-duty, call in the co-mediators.

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