



And So It Goes!

A Quarterly Newsletter from David M. Zacks, Esq.

We've all heard the saying "Honesty is the best policy." I guess I'm about to find out if that's true. In this issue, I will discuss why I believe MEDIATION IS THE HOLY GRAIL. Many of my colleagues would disagree, but after trying cases for most of my career and having served as a full-time neutral for the past five years, I'm convinced it's the best option for resolving cases while keeping your clients' best interests in mind. Think for a moment about how many issues could be avoided when facing a trial or arbitration if counsel were to focus on reaching a fair resolution for their clients. Mediation works. At an annual meeting of the American College of Civil Trial Mediators, I learned that, according to statistics, a vast majority of cases are resolved at mediation even when it is court-ordered.

Here are some factors to consider regarding mediation:

1. Mediation can eliminate the stress and emotional toll associated with going to trial or participating in an arbitration.
2. Mediation can result in finality. It usually produces a fair resolution, at which point the case can be dismissed in court.
3. Mediation works. As the data suggests, mediation gets results, i.e., closure.
4. Mediation allows you to control your destiny rather than leaving it in the hands of a jury, judge or arbitrator(s).
5. Mediation is confidential.
6. Mediation is faster and less expensive than litigation or arbitration, saving considerable time and money.

So there you have it. I am a neutral who unabashedly advocates for and promotes mediation.

On the "QT"

"Almost anything is easier to get into than to get out of."

– Agnes Allen

Going from Better to Best

Rebecca Hiers is a mediator who deals with Native American tribal issues. Here she shares an anecdote that can teach us about the importance of meaningful communication:

When I worked for the Confederated Tribes of the Umatilla Indian Reservation, I remember one of the elders telling a story about another tribe. That tribe had depended upon moose for food, clothing, and the like since time immemorial; and the people had a deep bond with moose. The moose population had begun to drop drastically, affecting tribal livelihood.

Year after year, the state game agency would come and meet with tribal leaders, and would urge them to stop hunting moose. And year after year, tribal leaders would talk about the special importance of moose to their people, and would

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urge the state game agency to stop killing and otherwise removing beavers. Everyone felt frustrated, and discussions were stuck going nowhere.

After about a decade, one of the representatives of the state game agency asked, why do you keep talking about beavers, when we're here to talk about moose populations? Tribal leaders replied that the beaver, when they built their beaver ponds, created vast wetlands. These wetlands, in turn, grew most of the plants that the moose feed upon. The removal of beaver had led to the disappearance of these wetlands; and the moose were starving to death.

As mediators, we know that asking the right question—and in the right way—can be key to opening up meaningful communication.

The Last Word

If you have been on my mailing list for a while, you might have noticed that the spring edition always contains something related to the Masters Golf Tournament. It is truly a rite of spring for my family. Although this year's Masters has been postponed, I am reminded of a wonderful quote from Bobby Jones, one of the all-time great golfers: "I never learned anything in victory; I learned only in defeat."

JAMS is open for business and is conducting mediations and arbitrations using a variety of videoconferencing options based on case size and complexity. We are here to assist you now, just as we have been in the past.

Stay healthy.