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Trending@RWU Law: Professor Bruce Kogan's Post: Why Mediation?

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Professor Bruce Kogan's Post

Why Mediation?

Posted by Bruce Kogan on 07/08/2015 at 08:08 AM

"Why do you do this?" is a question that I am often asked in the midst of a contentious mediation.

When two people (or two groups of people) are experiencing significant differences – significant enough that their dispute has either found its way into court or has risen to the level that both sides recognize that they are stuck in a conflict spiraling out of their own control – it is only then that a judge may refer them to mediation (or that the parties or their counsel request that a mediator get involved).

This is where I come in. My job is to try to see if my intervention as a neutral might help the parties come to view the situation in a way that is sufficiently reframed that common ground can be reached. There are many potential underlying causes for conflict – competition for limited financial resources; perception that one is being disrespected; a sense that one's autonomy is being impinged upon; interference with significant relationships; a history of negative past dealings; lack of trust; a breakdown in communications; etc.

Whatever the reasons for the conflict, or the myriad of issues that may be involved – at some point in certain particularly intense mediations, the parties will turn to me and ask me why I spend my time and effort listening to their bickering with or even shouting at each other. This is a really good question and one that I have often asked myself over my now 30 years of mediating.

My answer to that question makes me focus on both the work and worth of mediation. Mediating is not easy work. It requires you to be comfortable in the middle of other people's conflicts. It takes complete focus and the ability to process in real-time everything that is occurring in an already complex and rapidly changing interpersonal dynamic. It requires patience, persistence, objectivity and creativity to help guide antagonists away from focusing on the past bad history to the possibilities for their future. As my late friend Kathy Birt said: "It is not about how you got into this mess, but rather how you get out of it."

Whether the parties are able to come to enough common ground to reach a settlement (which happens most of the time) or not, I can see the worth or value of mediation for myself and for them. They have had

the opportunity to talk to and listen to each other and to try to solve their own problem, rather than have a judge impose a solution on them.

I have done my best to create that opportunity – and it really feels good when they settle