

Consider a Problem-Solving Approach to Conflict.....

By Heather Gilchrist

I once sat on a jury where for a full week, day after day, I listened to painstakingly detailed and boring testimony regarding a construction renovation gone wrong. My fellow jury members and I debated for less than 2 hours at the conclusion of the rather lengthy testimony, and unanimously concluded that both the owner and the contractor were at fault. The awards we granted to each of them almost zeroed out. Both sides had their day in court, but at what cost?

The civil court system exists to help us resolve our conflicts. But have we come to depend on it too much? Shouldn't we be taking some responsibility for our actions and trying to resolve our own conflicts first? With seemingly increasing conflict in the world, have we lost the desire, or foresight to try and compromise, or resolve our own disputes? In a conflict, all too often our knee-jerk reaction is to say "see you in court". Unfortunately, courts are now inundated with litigants seeking justice, and sadly, the result of many court actions is anything but justice.

Luckily, several forms of alternative dispute resolution are now becoming mainstream, and the public needs to be aware of these alternatives. It is now typical for real estate purchase agreements and employment contracts to require arbitration if there is a dispute over its terms; E-bay hosts an online dispute resolution system; and most county and civil courts order mediation at some stage of the process.

Mediation, which is typically facilitated negotiation, has enjoyed increasing popularity over the past decade, and should be a mainstream option available to the public for any conflict. It is a cooperative problem-solving approach to conflict resolution. In mediation, the parties themselves maintain control of the ultimate outcome. Due to their active engagement in the process, participants report higher satisfaction with mediation results. Studies show increased compliance with court orders issued after mediation in contrast to judicial orders issued without mediation. The informality of the process and absence of complex procedural rules often results in a quicker resolution at a cost-savings. And mediation is particularly helpful in circumstances where the litigants need to have an ongoing relationship long after the court order is issued, such as a small business partnership or family dispute.

In many disputes, there is no one wrong party, rather several parties might be partially at fault. In mediation everyone involved can be brought to the same table to discuss all of the causes of the dispute, and under the guidance of a skilled mediator, reach a solution that a court might not consider. The informal mediation process allows the parties involved to explore more creative solutions to disputes that cannot typically be considered in a classic judicial setting. And many participants are more comfortable discussing their problems in a confidential mediation session as opposed to a public open court proceeding.

Although I advocate for the mediation process, I do not believe mediation should or can be used to resolve every dispute. For example, cases involving potentially violent participants or cases that can establish legal precedent require the oversight of our traditional judicial process. And perhaps now more than ever, with so much conflict present in our lives, our civil court system is a necessary and important institution, helping keep the rule of law and resolving countless civil disputes. But

increasingly over the past decade, mediation has proven to be a viable helpful and valuable form of alternative dispute resolution.

If you are in the unfortunate position of being involved in a conflict you cannot resolve on your own, consider mediation. Be amenable to the process whether it be by court order or on your own initiative. Private mediators can easily be found through online resources, and most civil court administrators maintain lists of trained and sometimes certified mediators in their jurisdiction. A collaborative approach to dispute resolution, with a skilled mediator, may well be a more effective and satisfying method of resolving your conflict.

About Heather Gilchrist, Esq.

Heather has been licensed as an attorney since 1983 and as a mediator in Florida since 2014. After graduating from Valparaiso University where she was Executive Editor of the Law Review, she started her legal practice with Sidley Austin in Chicago, and later practiced in her own law firm based in Naples, specializing in real estate, estate planning, probate and business issues. She has been admitted to the bar in Indiana, Illinois, Ohio, Florida and Kentucky. Her experience in the legal profession over the years has encompassed both corporate and individual clients, as well as teaching law, and now mediating real estate, construction, trust and estate contests, and other contract-based disputes at MacGil Lane Mediation, LLC.