



Sotomayor Law

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Mediation & Arbitration Services

Asking “Why” and then Letting Go in Settlement

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Disputes and lawsuits are based on the belief that others have caused an injury, loss, breach, damage, and countless other “consequences.” The litigated or arbitrated process of resolving the dispute results in a finding of responsibility, or, “who caused what to happen.”

At the heart of the litigation or arbitration process is the need for someone to determine “why” something happened, a search for “truth.” We all know that may be the ideal, but it is far from reality.

Litigating civil disputes to search for the “truth” is more like a game. So many things can happen during the process that can make a determination of “truth” impossible. Enter the standards of “preponderance of the evidence” or “clear and convincing evidence.” The search for “truth” in litigation and arbitration is thus more of a gamble than an exercise in justice. But, our system does the best that it can.

In mediation, asking “why” performs a completely different function. The reasons for parties’ and attorneys’ positions must be explored because those reasons in fact are the interests which the solution must address. This is entirely different from coming to a conclusion about who is right and who is wrong, and to what degree.

As psychologist Lois Holzman writes in her article “Why Ask Why?” in Psychology Today, <http://www.psychologytoday.com/blog/conceptual-revolution/201410/why-ask-why>, holding on to the need to find the cause of the way one feels can exacerbate emotional pain. On the other hand, suggesting different ways of looking at a problem or examining pain or loss can be productive and helpful.

Take a personal injury case for example. The plaintiff’s car was hit by another vehicle. The plaintiff brought suit against the other driver and claimed physical injuries, pain and suffering. She insists that the defendant is completely responsible for these losses and has ruined her life. Under Lois Holzman’s analysis, the plaintiff’s intractable belief that the defendant caused her problems only makes her pain and sense of “ruin” worse.

What else does the plaintiff need? The ability to express her loss directly to the defendant? An apology? Treatment with a therapist about other aspects of her life that might be causing pain and a sense of ruin?

Mediation presents an opportunity to obtain more than a monetary settlement. It is a process in which the parties can conclude a dispute over legal causation, but then be able to move beyond the blame game. Letting go of “why,” ending disputes, and coming to terms on moving forward lead to enormous emotional, not to mention financial, relief.

Contact us for your ADR needs today.

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