

The Detroit Bankruptcy: The Power of Mediation
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Program Description: The City of Detroit has emerged from the largest municipal bankruptcy in US history as a model of urban renewal and an example of the power of mediation. The City's bankruptcy proceedings may also be a model for municipalities in current difficulty. Retired Judges Steve Rhodes and Jerry Rosen—best known for their roles in presiding over and mediating Detroit's 2013 bankruptcy—will explore key issues in that case together with David Heiman, lead counsel for the City, with a focus on how mediation enabled creative problem solving and resulted in an agreed upon plan of adjustment in record time.

In many ways, the Detroit Bankruptcy mediation epitomizes the capacity of dispute resolution to answer the dilemmas of complex times - synchronous with the overarching theme of this year's ABA DR Section conference. On July 18, 2013, the city of Detroit, Michigan, filed for Chapter 9 bankruptcy. The Detroit filing was the largest municipal bankruptcy in U.S. history when measured in terms of actual debt, estimated between \$18–20 billion. Additionally, the city lacked revenue and any assets except its world-renowned art collection.

The panel was moderated by Mr. Kevyn D. Orr, Managing Partner of Jones Day, Washington, DC who was appointed as the emergency manager of the City of Detroit during the period of the bankruptcy. He was joined on the panel by Mr. David G. Heiman, the lead counsel for Detroit, Hon. Steven Rhodes (Ret.) the bankruptcy judge, and Hon. Gerald E. Rosen (Ret.), the lead mediator.

Given the size and scale of the mediation that was needed to address the complexity of the Detroit bankruptcy, the panel's discussion focused on the overarching importance of custom process design. It also iterated the need for flexibility in the implementation of that process, in particular to respond to the critical needs of the persons involved in the process.

In terms of mediation process there were some key lessons learned from the perspective of each of the panel participants.

Gerald E. Rosen explained his 4 essential **C's** that made a successful outcome possible in the Detroit Bankruptcy:

1. **Candor** – Parties needed to move past denial so as to be candid with the mediator, other parties, and themselves.

2. **Cooperation** – There were decades of scar tissue which the parties needed to ventilate and remove to get to the core interests. Once parties focus on the interests they get past the hatred and are able to cooperate.

3. **Creativity** – Every serious dispute, especially disputes as complex as the Detroit Bankruptcy case require thinking outside the box, but within the law. At two pivotal junctures in the mediation creative solutions were generated – “The grand bargain” and “the hair cut at the haircut” – that allowed the process to continue and made eventual resolution achievable.

4. **Courage** – It is vital that there is a point where parties in the process are willing to overcome rigidity and come forward and move for the betterment of the whole.

From the perspective of the judge, the Hon. Steven Rhodes (Ret.) underscored the importance of understanding the “ping-pong” between litigation and mediation, since managing this inter-relationship, especially with respect to information flow and timings, can be essential to making a settlement in mediation possible.

Running the city as emergency manager, Mr. Orr realized that you must always think about the people and remember the people involved in the process. He said that “Never in a mediation was there a crisis about people as there was in Detroit.” However, the “people [came] together [in mediation] to save a great city.”

From the perspective of lead counsel, Mr. Heiman recognized the importance of relationships in making successful mediation outcomes possible.

The success of Detroit is clearly one of the best examples of how mediation can go beyond the limited options present in the bankruptcy courtroom to solve complex problems in modern times and revitalize Detroit into “the Brooklyn of the Midwest.”

In his closing remarks, Judge Rosen encapsulated the power of mediation: “There were higher authorities at work to make this happen. People call it the miracle of Detroit. I think we could call it the miracle of mediation.”