

The Mediator as Negotiation Coach

*O how they cling and wrangle, some who claim
For preacher and monk the honored name!
For, quarreling, each to his view they cling,
Such folk see only one side of a thing.¹*

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One of my favorite allegories is the blind men and the elephant.

It conveys the wisdom that the nature of the human condition is that each individual has a unique perspective of every problem.

Different versions of this story appear in many traditions: Hindu, Buddhist, Sufi, even 19th Century American poetry. Taking a bit of license, here is my version:

In an ancient land, far away, four tribes seethed with seemingly irresolvable cultural differences.

Coincidentally, each tribe had a wise, blind sage who preached various dogmatic doctrines.

The king of this land invited each of the blind sages to his castle.

Because each was blind, he had never seen an elephant.

Once there, the king sent them into a room with an elephant.

The king's minions led each one to the elephant and had him hold one of the animal's parts.

The blind men then returned to the king who told them that they had just experienced an elephant.

¹ Wang, Randy. "[The Blind Men and the Elephant](#)". Retrieved 2006-08-29.

“Based upon your experience, how would you describe this thing we call an elephant?”

The sage who had the elephant tail proudly announced that it was surely a rope.

The one holding the leg said that, no, it was most certainly a pillar.

The one holding the ear scoffed at both and said that it was absolutely a fan.

Finally, the last sage who had felt the side of the elephant stated that he had done a thorough scientific analysis of the problem, had been in similar situations many times before, and that, he was 94.6% certain that it was simply a wall.

They were all correct, based solely on their individual experiences, but, ultimately, and, perhaps paradoxically, they were all wrong.

In mediations, disputants are often like the blind men, perceiving a dispute only from their own point of view.

When considering how we might improve the mediation process, we are like blind men and women: we form our opinions based upon our personal experience of the elephant.

Having practiced mediation for 23 years, I have formed opinions about the nature of this particular elephant; but, humbled by the story of the arrogant blind men, I feel compelled to seek out other blind men and women to determine if the elephant is as I believe it to be.

If you are a mediator, and, if you could spare a few minutes, please consider the questions on Appendix “A” and email me your responses to tom@tnoblelaw.com.

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If we assess mediation, and, particularly, the skills of the negotiators who participate, obviously, we have many options for how we might improve them. The purpose of this brief paper is to explore one option: reframing the role of

mediator from simply “neutral professional” to “negotiation coach”. In doing so, I will discuss the following:

1. What is a negotiation coach, and how does it differ from the traditional role of mediator?
2. If a mediator acts as a negotiation coach, does that raise any ethical issues?
3. If we agree that mediators may enhance the mediation process by becoming better negotiation coaches, what is the best way to become a better negotiation coach?

What is a negotiation coach,
and how does it differ from the traditional role of mediator?

In 1982, a financial planner named Thomas J. Leonard was seeking a more holistic and effective methodology for helping his clients reach their goals and live more fulfilled lives. His solution was to reframe his role from financial planner to professional coach.

Six years later, Leonard founded Coach University.

Since then, coaching, as a profession, has taken a number of twists and turns.

Based upon my own experience as a professional “life coach” since 2011, I can report that, while there is no consensus on how to coach someone, there is some agreement.

Unlike athletic coaches and their players, for whom the coaching experience appears to be a top-down relationship, life coaches² strive for a collaborative relationship with clients, what some of them call “co-active”.

² The role of professional coach has splintered into a myriad of variations. Coaching courses encourage students to “find a niche” and tend to be weighted as much on marketing advice as skill development. For purposes of brevity and to avoid confusion, all variations of professional coaches, whether an “executive coach” or a “divorce recovery coach” will be referred to as “life coach.”

A life coach's job is to: (1) assist in setting goals, (2) identify problems and obstacles; (3) brainstorm options; (4) develop plans; and (5) address monitoring and accountability.

Life coaches tend to be highly Socratic, valuing questions over advice, and acting as mid-wife to the client's thoughts, probing and challenging until goals are reached and problems are solved.

In coaching, the client sets the agenda, not the professional.

Coaching focuses primarily on the present and the future, rather than discovering and redressing past wrongs.

I see considerable overlap in the skills required for effective coaching and those required for effective mediation.

Both coaches and mediators develop skills such as active listening, intuition, building trust, and delivering harsh truths in a gentle manner.

Both operate in a confidential environment in which the rules clearly state that the client is fully empowered.

Coaching is a professional service providing clients with feedback, insights, and guidance from an outside vantage point. The profession of coaching is similar to the practice of a physician, attorney, or psychologist. The major difference is that coaching is an on-going collaborative partnership built on taking action.

In this powerful alliance, clients find themselves:

- *Doing more than they would on their own.*
- *Taking themselves more seriously.*
- *Creating momentum and consistency.*
- *Taking more effective and focused actions.*
- *Becoming more balanced and fulfilled.*

People hire a coach when they are making a career transition, starting a new business, feeling dissatisfied, re-evaluating life choices, or simply looking for personal and professional breakthroughs.

Coaching is action oriented. It's also about moving forward, not dwelling on the past. It doesn't matter how clients got where they are or who is to "blame" for how they turned out. Coaching is about where an individual is right now and where they would like to be.

With a coach as their guide, clients are able to define their dreams, recognize what's holding them back, and move forward with great momentum and clarity of vision. ...

Coaching is an ongoing partnership between coach and client designed to improve and enhance the quality of life. Coaches are trained to listen, observe, and adapt their approach to individual client needs. They believe the answers to challenges are found within the client and support that client in discovering and implementing their own solutions. ...³

Since Leonard expanded the role of the professional coach from the athletic field to life in general, coaching has branched into a number of sub-specialties. You can now find a coach for just about anything, specializing in how to navigate the corporate ladder to how to get through a divorce.

That includes the role of negotiation coach.

What is a negotiation coach? I'm not sure that there is a well-settled definition, but a Google search will result in numerous listings for negotiation coaches (see, e.g. negotiatingcoach.com).

As I see it, if we (1) take the concept of coaching; (2) add a coach with some expertise in negotiation skills; and (3) add negotiation as the subject matter, we have a recipe for negotiation coaching.

What if we combine the role of negotiation coach with the role of mediator?

Do they overlap?

³ From "Exploring Coaching" (LearnMore Publishing, 2004-2005).

I suspect that many mediators routinely act in the role of negotiation coach without being aware of it.

They have learned that through OJT; doing so facilitates resolution of a dispute.

Rather than passively allowing the disputants to flounder and ramble, the mediator who also acts as a negotiation coach proactively works with all parties to: (a) help them analyze the underlying problems causing the dispute; (b) break down seemingly insurmountable problems into issues; (c) set goals; (d) brainstorm options; (e) formulate proposals; (f) develop constructive, conciliatory strategies; and (g) encourage and inspire the parties to resolve their dispute.

An effective mediator/negotiation coach does all of that while applying skills listed above, such as active listening.

The master mediator/negotiation coach knows which skills to apply and when to apply them.

If a mediator acts as a negotiation coach, does that raise any ethical issues?

The Texas Ethical Guidelines for Mediators defines mediation as “a private process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding.”⁴

The Comment to Rule 1 includes the following: “A mediator may make suggestions, but all settlement decisions are to be made by the parties themselves.”

Thus, just as coaches do not make decisions for their clients, mediators who act as negotiation coaches will not violate ethical guidelines so long as they suggest better ways to resolve the dispute and stay out of the decision making role.

⁴ Rule 1.

If we agree that mediators enhance the mediation process by becoming better negotiation coaches, what is the best way to become a better negotiation coach?

Courses are readily available to improve one's skills in mediation, negotiation, and coaching, as are books on negotiation theory. The Great Courses recently released "The Art of Negotiating the Best Deal", presented by Professor Seth Freeman at NYU.

In February, 2012, the Dallas Bar ADR Section offered another option: negotiation study groups.

Instead of a day or three of lecture and role play, negotiation study groups allow small groups to study negotiation theory and apply that theory to their real life situations.

There are currently three groups in the Dallas area, and mediators from other areas have come to Dallas to observe with the intent of setting up their own groups in other cities.

Each group is autonomous. It sets its own agenda. The only guiding principle is to do whatever works for the participants to improve their negotiation skills. Many of the participants are mediators but not all.

Examples of books studied include:

- *Getting to Yes*, Roger Fisher and William Ury (Penguin Books, 1991)
- *Influence: The Power of Persuasion*, Robert B. Cialdini (Collins Business, 2007)
- *Negotiate This!* Herb Cohen (Warner Business Books, 2003)
- *Getting More: How to Negotiate to Achieve Your Goals in the Real World*, Stuart Diamond (Crown Business, 2010)
- *Thinking, Fast and Slow*, Daniel Kahneman (Farrar, Straus and Giroux, 2011)

One thing that we have learned through this process is that negotiation is not a subject confined to one shelf. What makes it challenging and interesting is that it is a multi-disciplinary subject, covering such areas as:

- Negotiation theory
- Law
- Psychology
- Dispute resolution
- Problem solving
- History
- Wisdom
- Decision making
- Game theory

In addition to studying both classic and current books, we also cover current articles and topics ranging from anchoring to dealing with narcissistic people. Most importantly, perhaps, everyone has a good time.

Conclusion

Mediators would be well served to become better negotiation coaches.

Coaching may not be important in every case, but it will be a valuable addition to their toolkits.