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Settlement Week offers chance to explore mediators' differing styles

A number of Cook County mediators are suspending their usual rates and offering their services for a \$250 charitable donation during the upcoming Settlement Week — Monday through April 11 — in an effort to promote mediation in Cook County.

Given the price and the non-binding nature of mediation, the Settlement Week program (more at chicagosettlementweek.com) is an excellent opportunity for attorneys to consider the mediation styles employed by various mediators and to perhaps give more thought to matching particular mediators to particular disputes.

Because building trust is so important in mediation, many attorneys repeatedly use the same mediators and have little experience with mediator styles and how certain styles might be useful for particular cases.

The first question to ask when selecting both the dispute resolution process and the mediator is whether an ongoing relationship exists.

Does the case involve an injury where the parties had a one-time interaction and will never see each other again? Perhaps a mediator who views the dispute as limited to the legal case, is primarily focused on the lawyers, gives evaluations and uses an all-caucus style of mediation would be the appropriate mediator.

Does the case involve a family dispute over an estate, a closely held business, a longtime supplier relationship or other ongoing business or personal relationships?

A mediator who is willing to let the discussion encompass more than legal arguments, encourages

client involvement and is comfortable facilitating conversations in joint conference — thereby helping them to exchange information, generate creative options and work out future communications — would be a good choice.

One key difference among mediators is the process of evaluation.

Some mediators always evaluate the case, others believe their role is to help the parties come up with their own solutions and will only give an evaluation when the parties are at an impasse and have consented. Some mediators use a model where no evaluation is given.

According to Michael Young in “Rethinking Mediation: A New and Better Path to Neutral Selection,” it is important to match the mediator’s strengths with the true cause of the underlying conflict.

He tells the story of a mediation that was unsuccessful because the mediator was good at evaluating

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legal cases involving a certain substantive area of law but had no ability to handle the personal and emotional issues behind that particular lawsuit.

The case involved a design patent, but the drivers of the dispute were a history of business conflicts, personal slights, cultural issues and financial realities. In that case, a mediator with strong skills in dealing with emotions and the relationship between the parties would have been a better choice.

BEYOND DISPUTE



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Sometimes, of course, knowing the case is about more than a difference of opinion on the legal merits ahead of time is difficult. I remember a particular case where after being informed by counsel in the pre-mediation conference that “this case really is only about the money,” a participant mentioned during the mediation session that he

felt the dispute went back to a 100-year-old vendetta between the two sides of the family originating in “the old country.”

Besides asking colleagues and checking references, due diligence in mediator selection can also include finding out the professional background of the mediator and learning something about his or her training.

A Center for Conflict Resolution-trained mediator, for example, is more likely to resemble the second type of mediator mentioned above than a former judge who was trained in a caucus or shuttle model of mediation where the two sides part after opening presentations.

Of course, these are generalizations, and many mediators evolve over time, adopting styles that depart from original training and incorporating a variety of skills.

The best way to find out how a particular mediator will handle a dispute, of course, is to ask him or her or, in the case of an ADR institution, to ask the case manager.

Professor Harold Abramson suggests in “Mediation Representation: Advocating as a Problem-Solver” that lawyers interview potential mediators to find out their default approaches.

Although experienced mediators will use different tools throughout a mediation, they usually have a comfort zone where they will do most of their mediating. Mediator interviews are also a good time to find out if tools such as pre-mediation conferences will be used and if the mediator plans to give an evaluation.

The Illinois chapter of the Association of Attorney Mediators is spearheading the Settlement Week effort, but any mediator certified to mediate in Cook County Circuit Court may volunteer to participate in the program.

The Settlement Week website contains the names, background and the schedule availability of the mediators who are participating in the program for each day of Settlement Week. If the parties cannot agree on a mediator, the Settlement Week administrator will assign one.

Settlement Week is for civil cases pending in Cook County Circuit Court. Disputes that might end up as Cook County lawsuits are also eligible. The mediations will last half a day (unless it is determined a full day is necessary) and the parties can agree to a location.