

# It's Not Business, It's Personal

By Amy Lieberman

Ask anyone who has had a lawsuit filed against them whether it is something they take in stride, or personally. As one who works with business executives to resolve conflict, I can tell you: it's personal. Even when the company is footing the bill for defense and they have an excellent lawyer – it's *still* personal. When someone is named as a defendant, they lose sleep. Blood pressure soars. And they become angry.

Litigation is like a dark cloud. Even when the executive knows he didn't do anything wrong, he has to *prove* it. This effort consumes valuable time, energy and financial resources and creates tension.

Believe it or not, the same is true for people who file lawsuits. Plaintiffs, too, lose sleep over their cases. At the time suit is filed, they do not know the huge toll exacted by the process of seeking justice. Consider this statement from a sales representative when he sued his former employer:

*"They did me wrong! They took away my business and they need to make it right!"*

Two years later, his righteousness was followed by his pained expression of the unanticipated toll litigation was having on his life: *"I had no idea it would drag on like this. I'm 68. I do not need this in my life!"*

Ever hear this statement? *"We need to keep the emotion out of it, and just focus on the legal issues."*

Statements like this are often made in the beginning of mediation. There is danger, though, in ignoring the underlying emotions and the impact that conflict has on a party personally. Deep frustrations, stemming from anger, anxiety, resentment, and/or fears about the future, can block resolution if they are not addressed.

The primary task of a mediator is to help the parties to analyze their conflict from another perspective, so that they may more fully evaluate whether it makes good business sense to take a different position to resolve the dispute. To aid the parties in reaching an informed decision, full disclosure of information, at least to the mediator, is a necessary pre-requisite. This is because people resolve conflict based on a variety of reasons: legal analysis of risk and fiscal impact, to be sure, but also the strength of beliefs which affect their motivation to fight, and their emotional stamina for dealing with the stress of litigation.

*When business is personal, the mediator needs to know what that means to the parties.*

The secondary task of the mediator is to assist when very real feelings of anger, betrayal, or resentment cause parties to take antagonistic positions that may not be in their best business interest. Listening to, validating and addressing those personal

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reactions is essential to successful resolution of business conflict.

Consider the case of two former partners who dissolved their joint business venture. Several years later, one partner sued the other for breach of a "non-compete" agreement.

In mediation, the lawyers were reluctant to let their clients



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**Clarence Calvin, III**, a Certified Family Law Specialist per the Arizona Board of Legal Specialization, has joined the firm. "Cal" has managed all aspects of family law matters from complex custody cases to high net worth/business valuation divorces. He will continue to do so while heading the Cantor Law Group's Family Law Practice.

**Jared Sandler**, a graduate of James E. Rogers College of Law - University of Arizona, has joined the firm. He was previously an associate with a boutique Family Law firm in Phoenix. He will join "Cal" in the Cantor Law Group's Family Law Practice.

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talk for fear they would say something harmful to the case if it did not resolve. They were also concerned that the clients might take things personally, and get so upset that their emotion would inhibit the ability to resolve the case.

These fears are legitimate. Lawyers are paid to be protective of their clients. However, two important pieces of information provide assurance that allowing clients to speak will not be detrimental to resolution. First, most cases resolve in mediation. In my experience about 90% of cases will settle in mediation, or shortly thereafter. Second, even if the case does not resolve, everything said in mediation is confidential, pursuant to law and a signed mediation agreement. So, the risk of future harm is a small one.

Knowing that the case will likely settle, the time at mediation is equivalent to the client's day in court. In terms of the strong emotions, this is the client's chance to speak, to tell their story, and to explain why they take it personally. The fact is that we feel better when we can "vent" and say our piece.

In order to truly obtain the peace that comes with resolution, we need to be heard, and to be convinced the other side understands where we are coming from and why. They don't need to agree – and most likely will never agree – but they need to know.

*Lawyers are wise to know that it's not just business, it's personal.*

Lawyers are paid to advocate – but also to achieve a result that is in their client's best interests. That means doing whatever it takes to get the client there, to settle the matter, the way they should from a business perspective, without letting their emotions get in the way. It does not mean doing so WITHOUT EMOTION. It means doing so WITHOUT EMOTION PREVENTING RESOLUTION. It means not letting personal feelings impact the best business solution.

Listen to what the former partner said in the above case:

*"We had a long relationship. We worked together, and played golf together once a week for over ten years. We went on vacation together! The fact that he would SUE me, and wouldn't just pick up the phone to work this out, is unreal. We shouldn't even BE here. I can't believe this."*

The partner had a difficult time accepting the fact that he was hauled into court when they'd had what he believed to be a close friendship for many years. He took it personally, and was not able or willing to focus on resolution until he understood why his partner filed a lawsuit.

Meeting the expression of emotion with calmness, empathy, patience and, when needed, answers to questions, provides acceptance and dignity. This, in turn, allows the parties to redirect themselves and shift the focus forward, toward resolution.

The partner learned that his former partner had in fact tried to contact him, but then became overwhelmed due to recent death

of his father. When he did not receive a prompt response, he felt compelled to file suit, to honor his father, who had been part of the business. Hearing that, the partner was able to come terms with it, and then felt able to move forward and resolve the case.

*"We have never been sued before. We are a good company! We take it personally and are not going to cave just because a lawsuit was filed. We intend to fight this all the way!"*

This makes sense – as long as the company understands its risks, the potential exposure in terms of damages if they lose, and the costs of defense. Often, the passionate expression of conviction dissipates once the mediator or the lawyer explains these costs. Principle has an inverse relationship to principal: the longer the fight for "principle", the less "principal" there is for ultimate settlement or other business purposes.

It's ALWAYS personal. And that's okay – we can still get down to business and get it resolved.



Amy Lieberman is the Executive Director of Insight Employment Mediation LLC and Insight Mediation Group LLC. She has been listed in "Best Lawyers in America" for Alternative Dispute Resolution since 2004. Amy can be reached at (480) 246-3366, or amy@insightemployment.com.



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