

Settle Up!

Settlement Newsletter



August 2018

Speak For Yourself – Or Don't

As a young man I worked at many different jobs. For example, many years ago I became a member of the Iron and Steel Workers Union and I worked on a blast furnace belonging to United States Steel. I've worked as a roughneck in the Wyoming oilfields, been a rough carpenter, driven a 10-wheel dump truck for an excavation company, and been a small engine mechanic. And I served as a music director for a small theater company in Jackson Hole, Wyoming.

But I never spoke for another person until I became a lawyer.

Now in the field of legal representation I regularly speak for people –in fact, I do it almost every day. Sometimes it's in court. Often it's on the phone, or through a letter. I am a warrior. I'm a strategist. A river guide. And a counselor.

It's an unusual thing when examined closely. All of us speak for ourselves all day long. We read, we write, we talk. We rarely have someone else talk for us – until it comes to legal things. When we work with lawyers, we often have them talk for us. But if we all speak for ourselves every day, then why hire a lawyer? Why not just talk for ourselves?

Because we wouldn't know what to say,

and we wouldn't know how to say it. We also want the power that stands behind a lawyer, and the respect that lawyers get. (This is true notwithstanding all of the lawyer jokes.) Unless we're a lawyer, or a student of political law and theory, most of us don't even know our own legal rights. We hire someone else (a lawyer) to tell us what they are – and then pursue them.

So there are good reasons for paying someone else to speak for us.

Mediation adds another layer to this concept. As a mediator I work closely with lawyers, and when I move between parties, I speak for those lawyers. It's a remarkable thing! Each room has a client – the "real party in interest." And most of those clients have lawyers with them – people they pay to speak for them. But instead of speaking to each other, these lawyers pay a neutral third party – a mediator – to speak for them. When I speak to the other side, my comments are two steps removed from the client.

Why do such a thing? Why add another layer of cost and complexity to a legal system that's already far too complex?

Because it works. Litigation is based on distrust. Settlement is founded on trust.

In order to be effective (and protective) in the world of litigation, a lawyer must

embrace distrust, caution and/or suspicion so as not to get blindsided.

Enter the mediator, who is a person without a dog in the fight. The mediator isn't tied to either party. The mediator doesn't really care who wins or who loses,

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or who has a great case and who doesn't. The mediator is solely focused on one thing: consensus. Above all else a mediator strives to build consensus.

It's not easily done. A mediator must listen and be persuasive. They must have an understanding heart - and above all they must be patient and respectful. If a mediator can legitimately and honestly earn the trust of the parties (and their counsel) then a mediator is in a unique position to help the parties check their own realities, review their values, and evaluate their priorities. In short, the mediator can help parties see things in a new light - and this can lead to settlement more quickly than almost anything else.

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Could attorneys do this themselves? Of course. Cases are settled everyday without mediation. But when emotions are high, or when there's strong distrust, or when somebody just doesn't have a good grip on the risks, realities and costs

of litigation, then a skillful mediator will speak for the other side and sometimes achieve something that may not happen otherwise.

The foregoing article is provided for general informational purposes and should not be used in connection with any specific legal matter. Persons with legal issues or matters should consult competent legal counsel.

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