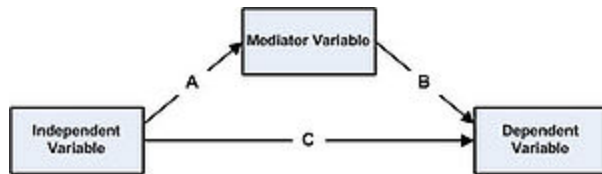


Mediation Musings From the Trenches



As I [posted quite a while ago](#), I have been going through the Virginia Supreme Court mediation certification training. Part of that training is a series of co-mediations where I get to

essentially mediate a dispute with the supervision of a trained and experienced mentor helping smooth the edges. This past week, I was able to act as a mediator for a dispute and take it from start to finish (albeit with "training wheels").

This was the first time that I was able to start with explaining the process (confidential, mediator there to facilitate, etc.) and move through the process to the drafting of a final agreement. While I'd been through the training process and [observed mediations before](#) (in both a passive and active role), this experience was an eye opener. The parties were emotional about the facts and issues between them, but were willing to listen when I spoke. There were points during the process where it looked as if one or both sides would walk. However, in the end, the initial instinct of the parties that mediation would be better than awaiting a trial date won over and an agreement was reached. While it was the definition of compromise (neither party was totally happy), the parties walked out with a plan and an answer that they came up with.

During the points of conflict, I had to take off my advocacy hat, take a deep breath, and work hard not to confront either party with what I firmly believe to be true, i. e. [that any mediated agreement is likely to be more satisfactory to both of the parties](#) than any court result. Trying to swallow the construction litigator and advocate that I've been trained to let run free was and will continue to be a difficult thing. However, as a [construction attorney](#) representing one side in numerous ultimately successful mediations, I knew that pushing through the [somewhat exhausting process](#) was the best way to go. This knowledge helped me to let the parties speak, and occasionally vent, secure in the knowledge that none of what was said in that room would see the light of day.

At the end, I could tell that the parties were grateful for the efforts that I (and my mentor in the process) made on their behalf. The presence of a mediator helped them to keep on track and focus on the future, not the past. Both sides seemed to feel that they'd had a voice in the process and some control of the final outcome. Control that they would not have had in Court.

My take away from this experience is that now, more than ever, I am an advocate for the mediation process. Looking at this process from another perspective made me realize that parties which chose mediation are usually ready to come to a solution, even if getting there is not a straight line and may involve some angst. Facilitating, instead of advocating, opened my eyes to the strength of the process, i. e. that control which is absent in arbitration or trial. Helping parties craft a solution was very gratifying and I hope to spend more time in mediation, both as an attorney and as a mediator.

I would love to hear your thoughts on mediation.

Image via [Wikipedia](#)

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.