

# The Neutrality Tightrope

By Janet Rubin Fields

One of the most rewarding cases I have settled during my decade as a mediator occurred last year.

On paper, it involved a business litigation partnership dispute involving two married couples whom had worked together in various business ventures, including managing real estate properties and launching a restaurant franchise. Unhappy with the profitable results, the couples wished to dissolve the partnership and divide the business ventures.

But below the surface was a different story. And, as most experienced mediators know, it often is in the underlying emotional core of the situation that the true challenges emerge. This is the case where I often recite: "Our lives are not determined by what happens to us but by how we react to what happens." These are the types of cases in which I believe a mediator's skills can be the most beneficial.

Before the mediation, the lawyers provided me with briefs containing the usual finger pointing involving fiduciary obligations. But as I read on, I discovered that the allegations came about following the decision by the husband of one of the couples, to undergo a gender transformation from male Robert to female Roberta, described as "unorthodox."

As a mediator, I understand that comfort can be as important as confidentiality. So, I conducted independent pre-mediation conferences with counsel to assess the current climate and dynamics between the parties, as well as sensitive issues in the case. A skilled mediator utilizes the pre-mediation conference to afford the attorneys the opportunity to communicate their concerns out-

side the confines of paper and ink. The attorney for the transgender couple advised that Roberta had not completed the series of transformation procedures and cautioned that her physical appearance would reveal this. Both attorneys communicated their concerns regarding the mediation format.

**Our role is to explain to all parties ... how their actions had legal consequences and remind them that blame is not productive when dividing assets and liabilities.**

I also needed to ease my own concerns about maintaining scrutiny and counseled my office staff in advance of everyone's arrival, reminding them that neutrality is at the forefront of what we do. I wanted to ensure that both couples felt they were entering a safe, nonjudgmental and comfortable environment where their issues could be discussed and resolved.

Before the transformation, Robert, the husband of 30 years and father of two, was the coach of his son's baseball team and a very successful restaurant franchise owner, held in high regard within the industry. He and his wife met the other couple through business and developed a trusting friendship that ultimately led to the business partnerships, as well as sharing "guy" personal confidences along the way. Ray relied on Robert's experience with franchises to open their joint franchise, while Ray handled daily operations. Robert relied on Ray's real estate experience for managing the real property investments.

Ray contended that Roberta's transformation led her to ignore her franchise responsibilities, thereby contributing greatly to the restaurant's failure. Roberta's sexual transformation process was not only physical but also emotional. Meanwhile, Roberta's wife was put in the forefront of running their business affairs. Roberta countered that Ray's failure to perform significant management tasks agreed

on at the start of their business relationship affected the successful operation of the franchise, as well as the rental properties.

Underneath the disappointment of losing financially, both wives had their independent issues with their husbands' choices in business partners. It took hours for Ray's wife to release years of pent-up anger over their financial losses. It took the mediation journey for Ray to recognize his own frustrations in losing his guy buddy, now almost completely a woman, and in no longer being able to enjoy their male bonding experiences, let alone the irritation and loss of self-esteem and hardship.

Then there was Roberta's wife, who spent over half her lifetime being a dedicated wife and mother, sitting proudly next to her transformed husband while continuing her role. The entire family was finding new roles within their familial structure.

Needless to say, the abundance of disappointments potentially plagued and clouded the parties' abilities to focus on the merits of the dispute and to make informed business decisions. Finding common threads that brought these two families together, along with amicable distribution of assets and liabilities, was my goal.

Roberta's savvy, intelligent business sense and personal confidence as well as the mutual respect and love Roberta and her wife had for each other in their reinvested marriage were evident. Also apparent were the economic and marital struggles between Ray and his wife.

The business and personal relationships were interwoven and complex. My responsibility as a mediator is to acknowledge the zealous respected advocacy of the lawyers, while remaining neutral. I thought of how a jury might react to the notion of a transgender person on the witness stand accused of being distracted with identity and emotion. Would a jury of 12, the lawyers, and



the presiding judge, be capable of responding to Roberta's request of being referred to as a she? If someone were to inadvertently refer to now Roberta as he, what was the subconscious and/or conscious level of awareness or consequence that could arise?

Regardless of opinion, a mediator's duty is to remain unbiased and see what the hard evidence shows. As a neutral, the ability to give each party the opportunity to have the spotlight was and is crucial to getting resolution. Our role is to explain to all parties, and in this instance the two couples, how their actions had legal consequences and remind them that blame is not productive when dividing assets and liabilities; dissolving the partnership

is the primary goal.

Because of their dedication to the process, the parties and their lawyers were able to let go of buried frustrations and reunite in the room. The lawyers hammered out a settlement, and with their blessing and in my presence, the parties chose to take an anger hiatus, briefly communicating directly with each other by catching up on family news. The case was life-changing for each person involved and it reminded me why I became a mediator and why I continue to walk the tightrope of neutrality.

I respect the parties for their extensive trust in the mediation process and their willingness to take themselves on an uneasy journey, focusing on the issues with

the guidance of their dedicated counsel. Persistence and plain hard work paved the way for cumulative efforts to solve many problems in the room.

Every case has a truth to be discovered, and a lesson to be learned. On the surface, this case was about real estate, business litigation and partnership dissolution. But as a third-party neutral looking in, I realized it was about disappointment in relationships, forgiveness and recognizing the differences between emotionally driven accusations and hard evidence.

---

**Janet Rublin Fields** is a full time neutral with Judicate West and specializes in mediating all types of civil and commercial disputes.