



Laboring Results

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WHITE POLICE OFFICERS' REVERSE DISCRIMINATION CASES AGAINST THE CITY OF INGLEWOOD: INSIGHTS FROM ITS MEDIATOR

A few weeks ago, we all read about the \$2.4 million verdict that a jury awarded to two white officers for reverse discrimination, because of the termination/discipline of the officers as a result of an alleged beating of a black teenager. The Jury's award has been the talk of the Community because of an alleged unjust verdict and of the Southern California law enforcement community on how to deal with officers accused of excessive force. How could this action have any success at mediation when faced with such an explosive climate and external barriers? However, sometimes mediation becomes a dual purpose tool.

The barriers presented in Morse and Darivsh v. City of Inglewood were beyond my control, as the mediator. As we have read in the newspaper that following the videotaped arrest, the Community was outraged at the actions of the white officers and compared it to the Rodney King beating and demanded action against the officers. U.S. Attorney General John Ashcroft was so troubled by the incident that he dispatched his civil rights lawyers to investigate it. But over the next three years, two juries deadlocked on whether the videotaped images of Officer Morse constituted a crime. Officer Darvish was acquitted of all criminal charges. With the alleged beating came a Civil Rights action by the black teenage victim, which is still pending. We had the City of Inglewood standing by its actions on how it disciplined its officers accused of excessive force.

Since the incident was so well publicized, I was aware of these barriers before the commencement of the mediation. However, I did not make a predetermination that these barriers would automatically result in a fruitless mediation. Usually, parties engage in good faith negotiations to settle the action, but when it appears that settlement will not be achieved,

the parties will use mediation for other purposes. This is when mediation becomes a dual purpose tool and parties use mediation for reasons, other than resolving the action. Here are some examples as to when mediation becomes a dual purpose tool:

Assess the client's credibility: Attorneys use mediation to assess the personableness and credibility of their clients before the mediator. If the client cannot speak coherently and look the mediator in the eye when speaking, the client will not do any better in a formal setting such as trial.

Discovery Technique: Even though the parties have conducted discovery, there is always information that the parties had not discovered that may bear on the success or failure of their action. Since both sides want to move toward a settlement, they will reveal additional facts that had not been discovered or identify additional witnesses. When settlement is fruitless, attorneys will shift gears to the discovery mode which may alleviate the need of conducting formal discovery.

Assess Jury appeal: Mediators are invariably asked, 'Assuming that you are a member of the jury, how do the facts of the case appeal to you.' This evaluation is not based upon legal issues but on the mediator's role of wearing a juror's hat and taking into account the biases of people to determine where the jurors' sympathies would lie.

Mediator's Evaluation: Mediators wait to offer their own evaluation or what 'the case is worth' until they see no other way to achieve progress toward a settlement. Evaluation carries a great risk, primarily, that the party on the negative side of the evaluation will no longer view the mediator as neutral or for being very smart. The 'winning' party in the evaluation, of course, will think the mediator is brilliant. A mediator's evaluation will only come after it is disclosed to the parties, the effect that the evaluation will have on the mediation progress. Many times a mediator's evaluation may not settle the case on that day, but will push the parties toward a settlement in the future.

In the end, the political and social external barriers that existed, Darvish and Morse v. City of Inglewood could have only been resolved by a jury. However, the parties walked away from the mediation with insight as to their clients' credibility when appearing before the mediator, the strengths and weaknesses of their respective cases, a jury appeal assessment and finally, they understood each other's position more fully. Mediation became a dual purpose tool: a neutral's evaluation of the action.

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