

# The “Attorney Friendly” Mediator

by Jon Linden

One of the hottest topics in mediation currently involves the question of attorney versus non-attorney mediators. Specifically, the concern of attorneys in general, regards a potential loss of legal business to the practice of mediation, as opposed to the standard litigation process. Likewise, on the non-attorney mediator side of the controversy, is the concern that attorneys will move to lock non-attorneys out of the mediation marketplace, as they did with the practice of “arbitration” in the State of New York. If an individual is not an attorney, it is not legal for them to arbitrate in the State of New York. There is the same concern about mediation.

Both groups are misguided in their concerns with respect to mediation. Mediation currently embodies so many people who are not attorneys, that it seems virtually an impossibility to imagine a scenario where non-attorneys would be precluded from the practice. Not only that, but such a restriction would be a severe disservice to the industry. While there are many very competent and proficient attorney/mediators, in general, attorneys do not make the best mediators. Attorneys are predisposed to have an “advocacy” perspective on disputes. This should be expected, when working for a client, an attorney is paid to be an advocate. However, this is anathema to the practice of mediation. In mediation, the guiding principle is that the mediator is a “third party neutral” and is specifically NOT vested with powers of adjudication. Therefore, mediators who are not attorneys, have an initial advantage over attorney mediators with respect to this type of neutrality.

On the flip side, the notion that mediation will reduce the revenue of attorneys in general, is really a misguided position. In the vast majority of mediations, attorneys are used on either one side or both sides of the dispute. In fact, over 90% of mediated settlements are partially the result of attorney participation with respect to advising their client what the reasonable or proper settlement would be, with consideration to all factors. It is in reality, a problem for a mediator, when one or both disputants are “pro-se” disputants, because, a mediator is specifically not able to advise one side or the other what their best interest is, and it is inappropriate for a mediator to “characterize” any settlement offer. Thus, the mediator with pro se clients often finds himself in the position of constantly telling the disputant that they cannot tell them what to take, the disputant must tell the mediator what is “acceptable” to him or her.

Rather than allow the concept of trepidation on either the non-attorney mediator side, or the attorney side, it seems much more beneficial and productive for mediators and attorneys to form alliances. It is not a service to the public or to the mediation industry for a continued and protracted contest on this issue to continue. Rather, attorneys who wish to mediate, should get training to do so. And, non-attorneys who are mediators, should come to the understanding that it is not “attorneys” who are problematic in the process of mediation, rather they are their “best friend” in an active mediation most of the time. While it is true that once in a while, it is the attorney from one side or both, that prevents or interferes with a settlement, by and large, this is a rare condition.

Attorneys and Mediators should look to promote the practice of mediation as a “peaceful method” of resolving disputes, where disputants participate in the solution to the problem. In this

way, both groups would continue to serve the public and their needs in the most expeditious and appropriate manner. Once this alliance can be formed, all sides and all disputants will benefit. In most mediator organizations this fact is recognized and promoted. It is for society's benefit that this process of mutual integration, understanding and increased public awareness should be continued and promoted.

## **Biography**

**Jon Linden** is a Mediator, Trainer and Business Consultant. He holds an BS in biology and an MBA, both from Lehigh University in Bethlehem, PA. Jon spent 20 years in the Food Service Distribution business, where he was the COO and Sr. V-P of a Distribution Center of a major Fortune 500 company in the New York Metropolitan area, before becoming an independent consultant and Mediator. His responsibilities included Human Resources, Labor Relations and many other functions. He was the chairman of the company internal Ethics Committee for 6 years. Jon is a contract mediator for the Federal Equal Employment Opportunity Commission (EEOC) and mediates for the Superior Court system of the State of New Jersey, as well as for private clients. He is the President and Founder of Proactive Intervention, L.L.C. and an Accredited Professional Mediator (APM) for Civil/Commercial Mediation by the New Jersey Association of Professional Mediators.

Website: [www.mediate.com/proactive](http://www.mediate.com/proactive)