

# mediation with joe salama



San Rafael • San Francisco • Point Richmond  
Telephone: 415.948.9030 • Facsimile: 415.492.1595  
[www.salama.com](http://www.salama.com)

Facebook: [www.facebook.com/ConflictResolution](http://www.facebook.com/ConflictResolution)  
twitter @ <http://twitter.com/MediationJoe>  
Linkedn: <http://www.linkedin.com/in/JoeSalama>

The Vital Role of Information in Mediation– January 12, 2011  
by Joe Salama

In any conflict, there are at least two different points of view. For example, one party may be convinced that the other party took too large a portion of profits from their last joint venture. One party may be convinced that the other party is poorly managing their jointly-owned business. Or one party may be convinced that the other is hiding money or property from them.

There are several emotional factors that may be at work here, including lack of trust/fear of betrayal and ego. There are also economic factors that may be at work, such as a weakened dollar or a decline in the value of real estate. Regardless, in every case, there is a reason why each side to a conflict sees the problem differently.

Many disagreements are not really disagreements at all - just different points of view. Assuming the parties are rational actors, it stands to reason that if each party had access to the same information, they would reach the same conclusion and no longer have different points of view.

An effective mediation includes sharing of information to bridge this gap in perspectives. If one side is convinced that the other side took too large a portion of profits from their last joint venture, then a full accounting by an independent auditor would likely clear up the misunderstanding. If one side is convinced that the other side is poorly managing their jointly-owned business, perhaps a profit-loss statement that shows that the business is actually doing well, or an independent analysis of the negative effect of the economy on the business, would be appropriate. And if one side is convinced that the other side is hiding money or property from them, then a complete disclosure of assets and/or a comprehensive asset search would be informative.

Collaborative mediation is one example of using information to help bridge the gap in perspectives. Collaborative mediation is where the parties have access to different neutral expert professionals while they are in mediation to, for example, analyze the tax implications of different settlements, or assess the psychological

impact of different time-share arrangements on their children. In order for this to work, the parties need to agree in advance that they will accept whatever the independent expert says, even though it may not be what they want to hear. Collaborative mediation can be costly, but has the benefit of significantly increasing the chances that the case will settle.

Regardless of how the information is discovered, it is vital that it actually does, in fact, get discovered and communicated to both parties to help bring together their divergent points of view. If there is still a conflict after both sides have learned all they can about the issues in dispute, then it is likely that the disagreement is not based on rational factors at all, but is instead based on revenge or some other principal-based motivator.

© 2011 Mediation with Joe Salama