

Confessions from a natural mediator

By Kim Kirn

Although I work as a mediator and arbitrator, just like everybody else, I feel like I can learn more about my profession and could always spend more time preparing for or following up on cases.

However, I had a strange experience recently that surprised me by showing me that my skills are as a natural mediator, not a trained mediator. While training, CLE's and other programs are helpful, I think they are only a supplement to the skills I bring to the table as a mediator.



My strange experience began while I was traveling with four friends on an Italian train and we were searching for our first class reserved and pre-paid seats for a six-hour train ride. When we found our seats, they were occupied by two very strong-willed Australian travelers who vehemently believed that the seats were theirs. They had been in the seats for the prior leg of the trip and had given their ticket information to the conductor, who was now nowhere to be found. We were toting luggage as were the Australians and it was not easy to move about the narrow train cars with our luggage.

Without thinking twice or hesitating, I stepped up and explained we just wanted to sit in the seats we had paid for and that we did not want to scatter into the few single available seats left in the car.

I was polite but clearly stated we were not leaving the car until this was resolved. Moreover, I responded to their comment about the conductor that I would go find the conductor if that became necessary. The exchange went back and forth with both sides starting to repeat themselves and no one backing down. I asked to see the Australians' tickets to compare them to ours. The tickets were identical except for the "car location." Our tickets indicated Car 1 and theirs indicated Car 2 (in Italian, of course)

Next, we determined that we were currently in Car 1 and that the next car over was Car 2, also first class. I offered to walk to Car 2 and check out the seats. Sure enough, the same two seats assigned to the Australians were empty in Car 2. I returned to Car 1 and shared my information and offered to help carry their luggage to Car 2. I remarked that it was an easy mistake anyone could make. The Australians had no counter-argument and, while looking a bit dejected, they were resigned to moving and left with no further complaint.

My friends were all stunned and commented about how well I handled the situation. They were certain we were in for a long and loud argument with an Italian train conductor in the middle trying to translate into English for all of us.

I shook my head and thought "Wow, that was nothing. You should see the disagreements I mediate, and with some luck, settle everyday."

My friends had not seen that side of my professional life and their positive feedback caused me to realize that I just naturally stepped in and used my skills to mediate what could have been a nasty argument. What was strange to me is that I was not trying to be a mediator; I was not trying to impress clients or ratchet up my mediation success percentage. I was just being myself, a natural mediator.

If I had to synthesize those natural skills, I believe they are openness to gathering information and being open to either positive or negative information. (When I asked to see the tickets I had no idea which Car was identified on their ticket.)

In addition, I was polite and non-threatening but direct and made it clear we would go to the next level (the conductor) if necessary. I was willing to work hard to find a solution. (I volunteered to see if seats were open in the next car and squeezed my way through the aisles and connecting platforms to find a resolution.)

I was truthful in reporting back and when I delivered bad news to the Australians, I offered to help with the logistics of moving the luggage. I never gave up and ended the dispute without any of the parties becoming angry. I allowed the losing party to save face by remarking anyone could have made the same mistake.

So after practicing law for over 25 years and mediation for more than four years, I learned something new about myself and I was pleased to discover I am a natural mediator.

One thing I have not mentioned is that three of the four of my traveling companions were also lawyers who have participated in dozens of mediations but had no inclination to jump in to resolve the case of the mis-seated Australians travelers.