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Local commentary

How mediation can get the job done

**By Gerald E. Rosen and Eugene Driker**

  The Detroit bankruptcy, which many feared would drag on for years while the city’s citizens suffered, was completely resolved in 16 months on a fully consensual basis.

  Many have asked how this was achieved and what can be learned from the Detroit experience. Although there are no doubt numerous lessons, we believe that the most significant takeaway is that mediation — the resolution of disputes through confidential negotiations led by a neutral facilitator — can produce faster, more satisfying and less rancorous resolution of disputes, and that such an approach can and should be used in other public policy disputes.

  Indeed, in our media-saturated age of cable TV shout shows and politicized polarization, we believe that quiet, facilitated negotiation may hold the key to unlocking the gridlock and dysfunction that all too often seem to paralyze our body politic. Detroit is Exhibit A for this proposition.

  In the Detroit bankruptcy, a group of mediators, which included both of us, devoted thousands of hours in confidential negotiations with all the main parties to the case — including the State of Michigan, the City of Detroit and metro Detroit counties — helping them come to agreements on virtually all of the claims involving the city. Those consensual agreements allowed the city’s plan of adjustment to be immediately implemented following its approval by U.S. bankruptcy Judge Steven Rhodes, and Detroit is now on an expedited road to recovery that few would have thought possible when the bankruptcy began in July 2013.

  While there has been much media attention given to the individuals who participated in the mediation process, scant credit has been given to the process itself and to the communal benefits flowing from its use. Mediation works, and can produce great benefits much more efficiently and expeditiously than other approaches.

  It has been more than 30 years since Harvard professors Roger Fisher and William Ury wrote the book “Getting to Yes,” their classic guide to what they labeled “principled negotiation.” Their suggested techniques on how to achieve agreements between contesting parties emphasized focusing on interests, not on personalities or positions. And those techniques have been employed with great success in mediations that resolved seemingly intractable public policy disputes, such as the 1998 Good Friday Agreement that former Sen. George Mitchell of Maine brokered between Northern Ireland and Great Britain, ending a conflict that had lasted for generations.

  Such agreements confirmed that negotiated settlements, rather than battles in courtrooms or elsewhere, can yield far better outcomes for the disputants and, in many cases, for society at large.

  We believe this is the most important lesson to be learned from the Detroit bankruptcy. Parties that, at the outset, held vastly different views on how creditor claims should be dealt with in the bankruptcy were able, through months of negotiations led by the team of mediators, to overcome strongly held initial positions and achieve results that were both good for their constituencies and good for the city, region and state.

  As we steered the many negotiations that were proceeding simultaneously, we were continuously struck by how four ingredients were consistently the key to success: candor, cooperation, creativity and courage. Until the parties put aside preconceived notions and candidly dealt with the facts surrounding Detroit’s finances and decline, nothing could be accomplished. But once a common set of facts was recognized, paths to agreement opened. Going down those paths required cooperation, and here the parties and their effective professionals moved away from firmly held starting points and sought ways to reach common ground. Often that outcome depended on coming up with creative solutions, many never tried before.

  The most obvious, of course, is the so-called grand bargain, which brought to the bankruptcy desperately needed new sources of revenue from foundations, corporations, individuals and the state to save the Detroit Institute of Arts’ iconic art collection and to dramatically reduce proposed cuts to employee pensions, thereby providing the core of the fully agreed upon plan of adjustment. Numerous other settlements within the bankruptcy also resolved disputes that could have had public policy ramifications.

  There were no instruction books or road maps to guide the parties or the mediators on how to solve many of the unique issues in this unique bankruptcy, but the creative juices flowed and produced agreements that benefited everyone. Finally, cooperating with the “other side” and looking for creative solutions required a healthy dose of courage on the part of many to move away from entrenched positions and try novel concepts, courage that was on full display and contributed greatly to the outcome that Judge Rhodes in his confirmation decision called “miraculous.” Those same ingredients should regularly be employed in other high-stakes disputes that involve the public interest.

  We applaud and thank all those who participated with us in the mediated negotiations in the Detroit case. Their work was heroic. The success they achieved together can and should set the stage for using mediation to resolve other issues in the public sphere well before they reach the crisis state. Rather than waiting for the filing of lawsuits or the collapse of efforts to achieve needed regional cooperation, the parties should be encouraged to utilize mediated negotiation. States and municipalities may well consider developing a team of experienced mediators with a range of expertise who could be available on short notice to step into such situations.

  Just as in Detroit, state and municipal governments around the nation have witnessed how difficult public-policy issues can fester, contributing to regional discord and impeding economic growth. If the experience of the Detroit bankruptcy is any guide, the early and committed use of mediated negotiation is likely to produce benefits that otherwise might never be achievable.

  Gerald E. Rosen is chief judge of the Eastern District of Michigan and served as chief judicial mediator in the Detroit bankruptcy. Eugene Driker is an attorney who also served as a mediator in the Detroit bankruptcy.



Gerald E. Rosen



Eugene Driker

