

TWLF NEWS & VIEWS

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The Chameleon Mediator

In this quarter's newsletter, Elan E. Weinreb, Esq., Managing Member of The Weinreb Law Firm, PLLC, focuses on his particular mediation style—what he calls “chameleon mediation”—and offers some tips for mediators who have adopted or wish to adopt this particular style.

What the Amazing Chameleon Can Teach Mediators

Of all of G-d's magnificent creatures, one of the most amazing and admirable in my opinion is the chameleon (such as the one which appears on the right).

Wikipedia tells us that the creature is a lizard that presents itself in a variety of sizes and colors and often has the ability to change colors. Chameleons live in a variety of habitats that range from rain forest to desert conditions and are found in the wild in parts of Africa, Asia, and Europe. Adaptability and versatility are clearly their trademarks.



Scientific research from 2014 has revealed something interesting about how chameleons change colors, often but not always for purposes of camouflage. From the “Chameleon” Wikipedia page, we learn:

“Chameleons have two superimposed layers within their skin that control their color and thermoregulation. The top layer contains a lattice of guanine nanocrystals, and by exciting this lattice the spacing between the nanocrystals can be manipulated, which in turn affects which wavelengths of light are reflected and which are absorbed. Exciting the lattice increases the distance between the nanocrystals, and the skin reflects longer wavelengths of light. Thus, in a relaxed state the crystals reflect blue and green, but in an excited state the longer wavelengths such as yellow, orange, green, and red are reflected.”

“What the Amazing Chameleon . . .” — *cont. from Page 1*

The chameleon’s color change thus constitutes not one, but two separate reflections that are a function of changing circumstances: (1) the reflection of external light; and (2) the reflection of the creature’s internal mood.

Yet, notwithstanding such dramatic changes, the chameleon still remains at its essence a chameleon: the lizard that it was originally born. It does not compromise upon its internal identity, notwithstanding that the world around it may have been misled to believe otherwise (even to the extent of not being able to visually perceive it anymore), with the blood flowing through its body, irrespective of any color change, remaining the same all along.

There are some mediators such as yours truly who have learned much from this information about our polychromatic reptilian friend. Consciously refusing to align with any of the “big three” styles of mediation—facilitative, evaluative, and transformative (and for more on this, see Zena Zumeta’s excellent article, entitled “Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation” on mediate.com)—they choose to adapt rather than to adopt by choosing to use the techniques of all three styles at any time in the mediation process (and sometimes outside of it as well).



What determines their colors at any given time? At least three factors: (1) the personalities of the parties involved in the conflict; (2) the circumstances surrounding it; and (3) the potential for or prospect of creative solutions. Likewise, analogous factors determine the chameleon’s colors: (1) the potential predators, prey, allies, or competitors in the field; (2) terrain and the relative strengths and weaknesses of the aforementioned players; and (3) the potential for survival opportunities.

Do the parties want to maintain their relationship(s) after the mediation process concludes? Best to use transformative and facilitative techniques. Do the parties want from you as a mediator an idea of how they would fare in court (what is sometimes termed a “mediator’s proposal” or “reality check”) so that they can adjust negotiation positions? Best to use evaluative techniques. Is there a power imbalance that is being exploited? Best to use facilitative techniques and caucuses (private meetings between the mediator and the party or parties on one side of the conflict).

And, of course, all of the aforementioned considerations and more can present themselves sequentially, simultaneously, or spontaneously in one or more mediation sessions. As such, the adaptive, evolving “chameleon mediator” has a distinct—and perhaps sometimes critical—advantage over mediators who rigidly follow only one mediation style.

Tips for the Chameleon Mediator

While being a “chameleon mediator” has advantages, it is not for every person. At the end of the day, Polonius’ famous words in Act I, Scene 3 of Hamlet still ring true: “This above all: to thine own self be true.” As such, if, for example, you are by nature facilitative and simply cannot bring yourself to be evaluative when the parties want you to be so, then don’t force yourself to change. You will likely either fall short or—worse—be perceived by the parties as not being genuine. In this regard, the parties’ trust of you as their mediator—somewhat analogous to the blood that runs through the chameleon’s body—is paramount. Lose that, and all is lost.

Still interested in “chameleon mediation”? If so, here are three tips which I’ve found from experience to be helpful: (1) Solid Preparation — As is the case with many things in life, serious preparation for mediation sessions—meaning at the very least in-depth knowledge of relevant facts, occurrences, and transactions and a clear understanding of the strengths and weaknesses of all party positions—will allow you to better devote mental resources to appreciating the “flow of emotions” in the sessions and deciding when and to what degree to “change your colors” (i.e., your mediation approach); (2) Disclosure — To maintain trust and candor, tell the parties up front (without being too specific) in your introductory remarks that you will be using a variety of mediation techniques based upon several styles of mediation; and (3) Reflection (or Camouflage) — Without actually saying, implying, or doing anything to align yourself with party positions or interests, use active listening skills such as looping to slowly, accurately, and empathetically reflect back what the parties state to you (in both joint sessions and caucuses). There are times where reframing of statements will be necessary, but if possible, try to reflect your understanding of any statements before reframing them. With a little bit of practice, like the wisest of chameleons, you will soon learn to become virtually invisible and end up helping the parties help themselves all by themselves.



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