ANN T. MARSHALL
MEDIATION

2800 1st Ave., #433A | Seattle, WA 98121 | 206.619.8043 | Ann@anntmarshall.com | anntmarshall.com

BEYOND THE RESUME

Ann T. Marshall, Mediator

The first mediation I ever sat in, as a new lawyer, was a boundary dispute. Well, a boundary dispute that spiraled into much more. A large subdivision, developers, easement rights, multiple property owners, and a disagreement about the purpose of barbed-wire fencing going back not years, but generations. I interviewed an elderly gentleman in his small kitchen about his childhood memories. I deposed developers, contractors and subcontractors turning the property into hundreds of lots.

The case spanned many years, starting when I was still in law school, more than four years before I appeared in it. I remember one lawyer asking me, “did you read my letter about that?” And I said, “Ted, when you wrote that letter, I was probably at the bar with my friends in law school.” He laughed.

The funny thing is, that mediation didn’t resolve the case that day, nor did it get particularly close. I think it settled later, in direct negotiation.

But I watched people tell their story to someone who wasn’t going to attack them at the end of every sentence. They got to finish. And because they weren’t instinctively defending themselves, they could hear the other side’s perspective in a way I had not seen happen in a courtroom. It was the only point in the case where there was a process specifically designed for that.

I was hooked.

Over the decades that followed in litigation practice, I kept noticing a consistent theme. The money, time, and emotion a case consumes can have remarkably little to do with the problems fueling it. Discovery disputes, evidentiary rulings, deep legal analysis—necessary, yes. But that process can also shut down the exact conversation the parties need to have.

It took me sixteen years to start mediating myself, and another eight years before it was all I did.

> *The currency of a dispute is the people entangled in it: their interests, their motivations, what they think the other side is up to, and what they have not examined about that belief.*

So that is the work. Cases where the parties are dug in and counsel put the odds of settling in the single digits. Sometimes we finish on the day. Sometimes I am still at it, weeks later.

What looks like success in mediation from a party’s perspective depends on who you are. For an individual who has never been in litigation before, it’s the end of a burden their close friends and family have been hearing about for years. For a claims professional with two hundred open files, it is a file off their desk, closed with relief for a number that beat the risk of trying it. For both, the resource drain stops.

I vehemently do not believe a good settlement is one where everyone goes away unhappy. A good settlement is one where people understood something they didn’t before, and they reached an agreement that made sense for everyone.

Mediation throughout the Pacific Northwest and nationwide, in person and virtually.

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