

Creative Uses of Mediation – Extending Mediation Beyond the Norm: Christian Mediation

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I. Faith-based ADR

Attorneys and judges could provide a valuable service to religious clients by encouraging them to seek an ADR process that incorporates principles of the clients' shared faith. This is especially true where both parties profess to be Christian.

II. Christians and Lawsuits

A. Bible teaches Christians not to sue.

Like other world religions, Christianity discourages its adherents from taking their disputes to secular courts.¹ Jesus encouraged his followers to settle debts quickly, before the matter was brought to a judge.² The Apostle Paul wrote the Corinthian church that they ought to be ashamed of taking their disputes before unbelievers. "Can it be that there is no one among you wise enough to judge between one believer and another? To have lawsuits at all with one another is already defeat for you — why not rather be wronged? Why not rather be defrauded?"³ Paul implies that this is a jurisdictional issue: the church has primary jurisdiction over disputes between its members (who are supposed to be loving one another instead of suing).

B. Church and courts have concurrent jurisdiction.

The American church in modern times has been relatively lax about asserting its jurisdiction over its internal disputes, no doubt in part because the American legal system is deemed fair. The result is that Christians –whether out of ignorance of Scriptural prohibitions, or because their church offers no viable alternative – often bring their disputes to civil courts for resolution. Courts have been rightfully reluctant to get involved in disputes involving doctrinal issues, in effect forcing the church to reclaim its jurisdiction over such matters. In other matters involving Christians on both sides, such as conflicts within families, between businesspeople, even regarding ownership of church property, courts have accepted jurisdiction, concurrent with the church.

¹ For example, Jewish Law (*Halacha*) generally prohibits a Jew from initiating legal action against a fellow Jew in a secular court. *Shulchan Aruch, Choshen Mishpat* 26; Quint, Emanuel, *A Restatement of Rabbinic Civil Law*, Jason Aronson Inc., New Jersey (1990), Vol. 1 at 174–182. (I am indebted to Rivka Schochet for this material.) It is my understanding that this prohibition is also true of Islam.

² The Gospel According to Matthew, 5:25.

³ Paul's First Letter to the Corinthians, 6:1-7.

III. Christian Mediation

A. Church-based dispute resolution processes are available.

Many of these cases are appropriate for a church-based dispute resolution process. If the litigants are all members of the same church, the matter could be referred to their church for resolution. If the litigants are Christians but belong to different churches, Christian mediation is available through local ministries⁴ as well as through Peacemaker Ministries, a national organization offering Christian dispute resolution.⁵ If one party is a church, the denomination may offer dispute resolution.⁶

B. Christian mediation process integrates Christian principles into mediation.

Christian mediation follows the same procedural model used in secular mediation, including joint sessions and private caucuses. But Christian mediators are trained to incorporate prayer and Scripture throughout the process, with the goal not just of resolving the dispute, but also of reconciling the relationship to whatever degree the parties may embrace. Since Christianity teaches confession of sin and forgiveness through Jesus Christ as the way to reconciliation with God, Christian mediation encourages parties to confess their sins to God and one another, to forgive, and to be reconciled to God and to each other. The mediator typically assigns Bible passages for each party to study, prior to the first session and at other times in the process, to prepare them for spiritual healing and growth. Caucuses are used to address personal issues, often by asking the party to read a specific passage in Scripture, then asking for their response to it. For example, if in joint session one party is being less than truthful, the mediator might ask that party in caucus to read the verse, “Speak the truth in love,” and to reflect on whether they are obeying that teaching. Parties who have a difficult time with forgiveness—and most do—are invited to read Bible passages reminding them of how, since their own sins have been forgiven through Jesus Christ, they cannot withhold forgiveness from a fellow sinner. For these parties, the Scripture and the Spirit can change hearts to encourage repentance, confession, forgiveness and reconciliation.

⁴ For example, in the Detroit area: Christian Conciliation Service of Southeast Michigan, (248) 619-9100, www.internt.net/christianconciliation. In Lansing: Christian Conciliation Service of Central Michigan, (517) 485-2270.

⁵ More information on Peacemaker Ministries can be found at their web-site, www.hispeace.org.

⁶ For example, the Mennonite Church is a leader in the field of Christian mediation. <http://peace.mennolink.org/mennopeacecen.html>. The Lutheran Church Missouri Synod has trained hundreds of pastors in Christian mediation. www.HisAoR.org. Other denominations offer mediation that differs from the Bible-based process described in this paper, such as the Quakers, <http://www.pym.org/worship-and-care/are-fcrp.htm> and the Unity Church, www.unitypeaceworks.com.

C. Outcomes include both reconciliation and unique resolutions.

As with other types of mediation, opportunities for creative resolutions abound, especially once parties have reconciled their relationship. In a construction dispute where the church and the contractor each initially argued that the other owed them money, the parties ended up agreeing to make a joint donation to a national ministry. Two siblings disputing over what to do with the family farm they had jointly inherited came up with a creative use of the property; the end result was similar to a proposal the brother had made much earlier, but the sister could not accept it until past relational issues between them were resolved. A divorced couple who had been in court annually battling over custody developed another arrangement in mediation that has lasted for years, because they were able to address issues of mistrust and mis-communication that had prevented them from cooperating.

D. Some cases are especially well-suited for Christian mediation.

Especially appropriate for Christian mediation are cases where the relational issues dwarf the legal issues. This may be true in business disputes, partnership dissolutions, estate and other family-based cases, such as family business disputes, and in many contractual disputes where the parties entered into the contract based in part on their assessment of the other party as a fellow believer. In many of these cases, the issue at the root of the dispute is not a legal issue at all, but one of trust: “I thought I could trust him because he said he was a Christian.” Such cases are ideal for mediation because, once the behavioral, spiritual and relational issues at the root of these conflicts are addressed, resolution of the substantive issues usually follows with relative ease.

E. Contract clause may call for Christian ADR.

The most obvious cases for referral to a church-based dispute resolution process are ones in which the parties’ contract includes a dispute resolution clause to that effect. These clauses are commonly found in employment contracts for Christian schools and organizations, as well as in church construction contracts. Attorneys brought into the case only after the dispute develops may miss the ADR clause drafted by a predecessor, so it may be an alert judge who reminds the parties of their previous agreement to submit any disputes to Christian mediation or arbitration.

IV. Conclusion

Parties who share similar values can be encouraged in mediation to draw from, and to build upon, those shared values. Such parties may be in court by default, because they did not know where else to turn for resolution of their conflict. Judges and attorneys who are alert to these shared values, religious or otherwise, serve both the parties and the legal system by offering these parties ADR tailored to them.