

2012 EXCEL Conference

**Effective Apology
in Mediation:
Facilitating "I'm Sorry"**

Presenter: Anne Bachle Fifer

Effective Apologies in Mediation

Apologies

Think of apologies you have experienced:

- 1) Ever receive a heartfelt apology?
What was the result?
Why? What made it effective?



- 2) Ever had to make a heartfelt apology?
What was the result?

Effective Apologies in Mediation

Apologies

Think of apologies you have experienced:

- 3) Ever given an apology for some reason other than heartfelt remorse?
What was the result?
Why? What made it ineffective?
- 4) Ever received such an apology?
What was the result?

Effective Apologies in Mediation

Apologies can be very powerful....
...for good or for ill.

Effective Apologies in Mediation

Attorneys: What do you think about having your clients apologize?

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Attorney Concerns About Apology

- o No training in considering apology
- o No discussion of apology w/ client
- o Legally irrelevant; doesn't fit within legal rights and remedies
- o Ethical duty to advocate on behalf of client's legal rights could conflict
- o Plaintiff lawyers want to help client recoup economic loss
- o Defense lawyers fear admission of fault could become liability.

Pavlick, Apology and Mediation

Effective Apologies

Cultures that focus on ...
community, relationships, hierarchy
...value apology in resolving disputes

Cultures that focus on ...
individuals, rights, egalitarianism
...shun apology in resolving disputes

Pavlick, Apology and Mediation (2003)

Effective Apologies

Levels of “psychological closure”

- Acknowledgement of what happened
- Ownership of roles played, actions taken, consequences that occurred
- Affirmation of better relationship in future
- Genuine apology
- Forgiveness
- Reconciliation

Christopher Moore, *The Mediation Process* (2003)

Effective Apologies in Mediation

Full apology
 ————→ greater satisfaction,
 less anger, more sympathy

Partial apology
 ————→ worse than saying nothing.

Robbenolt, Apologies and Legal Settlement (2003)

Effective Apologies in Mediation

Full apology

Say Nothing

Partial apology

Robbenolt, Apologies and Legal Settlement (2003)

Effective Apologies in Mediation

Apology: For whose benefit?

- For the speaker's benefit
- For the victim's benefit
- For their mutual benefit
- For a third-party's benefit

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Types of Apologies

- Tactical
- Explanation
- Formalistic
- "Happy-ending"



-- Deborah Levi, The Role of Apology in Mediation

Effective Apologies in Mediation

Seven A's of Confession

- Address everyone involved
 - Avoid if, but, and maybe
 - Admit specifically
 - Acknowledge the hurt
 - Accept the consequences
 - Alter your behavior
 - Ask for forgiveness (allow time)
- Peacemaker Ministries

Effective Apologies

Elements of an Effective Apology

- Remorse / Regret
- Responsibility
- Repair / Restitution
- Avoid future harmful behavior

Effective Apologies in Mediation

Elements of an Effective Apology

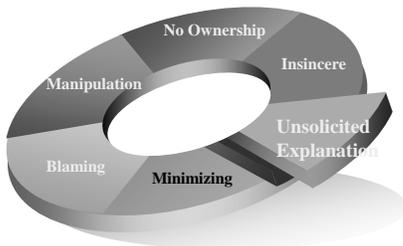
- Responsibility
- for an Act
- that Harmed the hearer
- Remorse / Regret
- Remedy / Repair / Restitution
- Avoid future harmful behavior
- *Unconditional*
- *Voluntary*

Effective Apologies in Mediation

Language of Effective Apology

- Responsibility
- for an Act *I did that.*
- that Harmed the hearer *I hurt you.*
- Remorse / Regret *I'm sorry.*
- Remedy / Repair *I'll fix it / I'll pay*
- Avoid future harmful behavior *It won't happen again.*

Failed Apologies



By limiting the scope of the apology, we enhance the probability of success. – Darrel Puls

Effective Apologies in Mediation

Some very public apologies ...

Effective Apologies in Mediation



“I engaged in behavior which was regrettable and demonstrated bad judgment. I’m 23 years old, and despite the successes I have had in the pool, I acted in a youthful and inappropriate way, not in a manner that people have come to expect from me. For this, I am sorry. I promise my fans and the public, it will not happen again.”

-- Olympic swimmer Michael Phelps, Feb. 2, 2009, after a photo of him smoking pot was published

Effective Apologies in Mediation

- How would you feel, as the recipient of this apology?
- Is anything missing?
- Should something be omitted?
- If you were coaching this person to make a better apology, what might you say?

I'd like to clear up some of the questions that have been raised over the past 10 days, and take full responsibility for my actions.

At the outset, I'd like to make it clear that I have made terrible mistakes that have hurt the people I care about the most, and I'm deeply sorry. I have not been honest with myself, my family, my constituents, my friends and supporters, and the media.



Last Friday night, I tweeted a photograph of myself that I intended to send as part of a joke to a woman in Seattle. Once I realized I had posted it to Twitter, I panicked, I took it down, and said that I had been hacked. I then continued to stick to that story, which was a hugely regrettable mistake. To be clear, the picture was of me, and I sent it.

I am deeply sorry for the pain this has caused my wife, Huma, and our family, and my constituents, my friends, supporters and staff...I'm deeply ashamed of my terrible judgment and actions..."

- U.S. Congressman Anthony Weiner, June 7, 2011

Effective Apologies in Mediation

Hints from the Defense:

- “I feel badly about what happened”
- “I don’t think money is going to fix this.”
- “I wish I had never said/done that”
- “What else can I do to make things right?”
- “Do you think it’d help if I apologized?”
- “I’ve tried to apologize but he won’t listen”
- I’ll do whatever it takes to put this behind us.

Effective Apologies in Mediation

Hints from the Plaintiff:

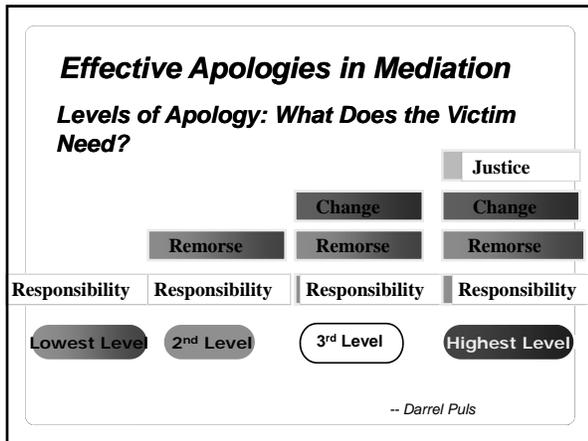
- “He shows no remorse”
- “She never even called to see how I was doing”
- “They think money alone will take care of this.”
- “The least he could do is apologize.”

Effective Apologies in Mediation

Mediator can help with Parties’ Apology:

- 1) Avoid personal judgments
- 2) Be alert to party request for apology
- 3) Don’t demand apology unless party initiates

-- Deborah Levi



Effective Apologies in Mediation

Easiest	D: Yes	P: Open	M prepares each party
Harder	D: Yes	P: NO	M broaches topic with uninterested party
Harder	D: NO	P: Yes	M broaches topic with uninterested party
Hardest	D: ???	P: ???	M broaches topic with each

- Effective Apologies in Mediation**
- Mediators: What not to do regarding apology**
- De-value its importance, and thus miss the cue or party request
 - Deflect attention away from it, by focusing on the future, or talking only about money
 - Dismiss idea of apology because party is not entitled to it
 - Dismiss idea of apology because party is trading away legal rights/responsibilities
 - Insist on apology when party declines

Simulating the Apology in Mediation

Setting: Workplace dispute between Andy & Nemo. Andy is Nemo's supervisor and mentor.

During a tense meeting about downsizing the department, Nemo publicly criticized Andy. Andy responded by calling Nemo "a loser, a troublemaker, and [expletives deleted]."



Nemo filed a grievance, and the union asked both Andy & Nemo to meet with a mediator; they agreed.

Effective Apologies in Mediation

Four Promises of Forgiveness

1. I will not dwell on this incident.
2. I will not bring this incident up and use it against you.
3. I will not talk to others about this incident.
4. I will not allow this incident to stand between us or hinder our personal relationship.

--Peacemaker Ministries
