



Maryland State Bar Association, Inc

Bar Bulletin

The Power of Tears in Mediation

By Donna Duquette and John Spiegel | September 14, 2016

"I'm sorry I'm crying."

It's a commonly heard statement by participants in our divorce mediations. What the speaker doesn't know is that we're pleased to see the tears. In our experience, the tears are a positive predictor of a successful mediation.

Benefits of Crying in Mediation

Here are four ways that tears can be helpful in mediation:

1. *Tears point to what is important.* This was illustrated in a recent mediation. The husband began to get teary-eyed during the property division discussion. The mediator, in a tone of relaxed confidence, asked what was bringing on the tears. The husband paused, reflected, and said: "I just realized how important my retirement is to me. This is something I've been saving toward most of my life." By accepting the tears and providing a pause, the mediator helped the husband identify and acknowledge the emotional underpinnings of his decision-making.
2. *Crying helps people think more clearly.* Crying appears to function as an inborn mechanism to assist people in processing strong emotions. Current scientific theories propose that emotional crying releases stress hormones and helps the body return to a state of equilibrium after being overly aroused. On the other hand, trying to restrain tears expends mental energy and reduces the ability to think. In mediation, tears don't pull people's attention away from the substantive agenda items. To the contrary, tears allow people to put their full attention on the topics being discussed.
3. *Crying may signal a move from blaming to self-reflection.* Anger is made up of feelings combined with a lot of thinking, especially judgments and blaming. We find that underneath the anger is usually either a broken heart or great fear. When mediation participants begin crying after expressions of anger, the tears often signal that these deeper, purer emotions have been touched. The mediator can help the participant shift focus from blaming the other person to empowering self-reflection by providing space for the tears, inquiring about the pain and fear, and exploring the concerns and hopes connected with these deeper feelings.

4. *Crying often elicits compassion.* One theory of crying is that it evolved evolutionarily in part as a way to elicit compassion and garner support. Tears, when not overused, can often short circuit the escalating dynamic of blaming, defensiveness, and counterattack. When one participant shows vulnerability through crying, it often elicits a compassionate response and a willingness to listen from the other participant.

Responding to Tears

How should the mediator respond when a participant begins to cry? First, stay connected to the person and stay relaxed about the tears. Treat the tears as tears of healing, not tears of hurting. Slow down and provide space in the conversation for what comes next. When a participant apologizes for crying, quickly reassure the participant that they don't need to pull themselves together for the mediator's sake. Remind them that crying is an efficient use of mediation time (which it surely is).

Then inquire about the source of the tears: "What brought on the tears?"

If the person crying is acutely embarrassed or ashamed or the other person particularly frustrated, then caucusing might be useful. The crying person can use the caucus for self-reflection and preparation to re-engage with the other participant. The other person can be told of the benefits of tears in mediation and supported to think about how to respond.

Because of cultural conditioning, as all of us know, women are more likely to cry than men. But if emotional safety is provided, men too will cry in mediation when the need arises. It's a sign that the mediation is going well.

Some of our mediation colleagues emphasize that they establish strict ground rules to discourage emotional expression, or they simply take a break when someone starts crying during a mediation session. From our experience, this is a tremendous missed opportunity for promoting healing, understanding, and problem-solving. Tears are a mediator's friend, and not an enemy.

Donna Duquette and John Spiegel's Rockville-based Mediation office of John Spiegel, JD & Donna Duquette, JD, LLC is devoted to family and divorce mediation.