

Mediation, like cooking, requires keen taste and deft hands

Mediation, much like cooking, requires a blend of instinct, preparation, patience, and creativity—balancing structure with flexibility to transform disparate ingredients or perspectives into a satisfying resolution.

By Lori Dobrin

In my other life I am a minor Instagram celebrity. My alter ego, @Leftyliciousesq, celebrates her culinary exploits in our home kitchen. She shares with her followers a passion for cooking that she inherited from her great grandmother Ida.

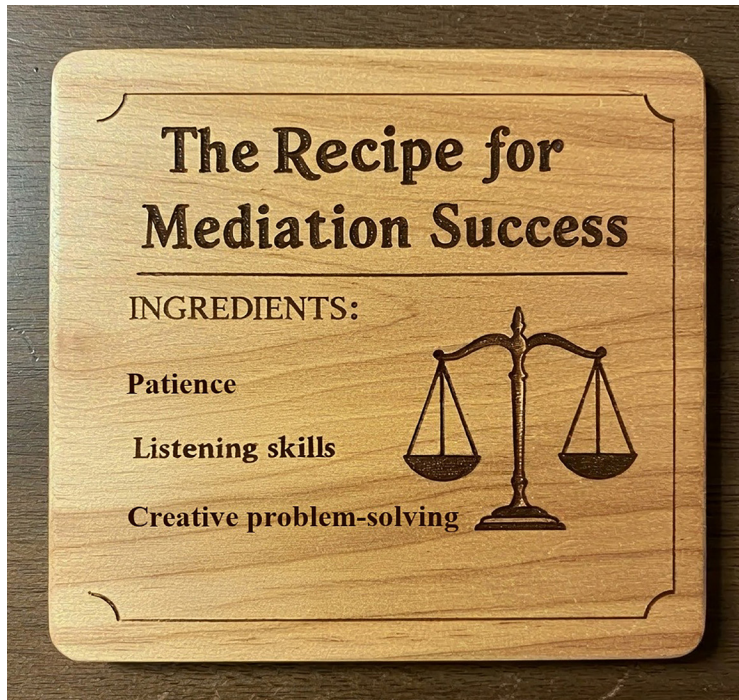
Ida was a natural in the kitchen, cooking by instinct and muscle memory, measuring ingredients with eyes and hands, and always turning out delectable dishes precisely because her methods were so imprecise. I, too, cook by instinct; but I also believe in planning carefully and following recipes.

I have begun to see clear parallels between my great grandmother's touch-and-feel methods in the kitchen and my own approach to mediation. Achieving successful resolution of a difficult legal dispute requires many of the same sensibilities and instincts as whipping up an unforgettable recipe.

The methods and techniques may be different, but the overall approach is remarkably similar. Just as the best meals rely on skills and steps not found on recipe pages, the most successful mediations tap into feelings and judgments not found within the letters of the law or the texts of court decisions.

Be prepared

The key to mastering a finished dish is preparation, meticulously reading through the recipe beforehand, being familiar with the list of ingredients, the required steps,



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and all kitchen gadgets and appliances needed to most efficiently and effectively achieve the result.

Similarly, in approaching mediation, preparation is the most important ingredient. It is the advance work - getting to know the parties and their lawyers, reading through the respective briefs, and anticipating and strategizing different perspectives of the same set of facts - that enables an effective mediator, just like a veteran cook, to meld and blend the two sides so that each gets a taste of the other's point of view. A skillful mediator is mindful, serving these tastes in small teaspoonfuls, tempering the seasoning when delivering conflicting information so that what could

be bitter bites are not spat out with offended disgust.

In pre-mediation calls with counsel, I often start the process of managing expectations. When the gap between parties' positions is wide, I listen carefully to what the attorneys reveal without their clients present. Just as a small but key ingredient can completely change a recipe, a hidden kernel of information may be the point upon which the entire mediation will hinge. In an insurance coverage dispute on a homeowner policy, defense counsel told me that this was the last outstanding claim the insurer was handling in California. Armed with this information, I knew there was a huge incentive to resolve the case,

and I used it to help facilitate a settlement that worked for both sides.

Manage time

When cooking, it is critical to plan and allot an appropriate and realistic block of time and space for a dish to come together. Starting a recipe for croissants at 8:00 a.m. on a Sunday morning will not yield a flaky, buttery slice of Paris by brunch time.

Timing in mediations can also be crucial. Some cases, such as those in which the damages sought are not exorbitant or the policy limits are minimal, may benefit from early dispute resolution. This can save parties substantial costs for discovery and experts. If such a case can be resolved at a minimal policy limit, a smart mediator will encourage the parties to do so early. This enables the plaintiff to net more

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without court costs being deducted while, at the same time, minimizing the defense's costs as well as any potential exposure from a rejected policy limits demand.

Seek sensory input

Culinary confidence is a product of both experience and multisensory attention. A good cook uses not only what she has learned from years of trial and error but also sensory skills that she has developed and perfected over time. Beyond the recipe written on a page, cooking involves listening - the oil must sizzle before the vegetables can be sautéed - and observing - the whipped cream must reach peak stage before it can be dolloped on a slab of pie. Just as importantly, good cooking requires patience. It takes time for onions to caramelize sufficiently to bring their sweetness to a perfect French onion soup.

So too with mediation. Beyond reading briefs and knowing the law, mediation involves listening deeply for cues and gently asking the question that will allow the mediator to peel back the layers of the onion, to get to the root reasons why a participant is entrenched in his or her position. Many times, it is not what is being said out loud but the visual observations - the subtle lift of an eyebrow or other facial expression, body language, exhalations - that may signal an emotional shift in position, a willingness to become or remain open to resolution.

Paying rapt attention to these signs with visual and auditory senses does not happen right away; this is where the secret sauce of patience is critical. It takes time for parties to trust the mediator enough to reveal their vulnerabilities, feelings and under-

lying concerns and etiologies. Just like waiting for bread dough to rise, the baker/mediator cannot rush the process or his loaves will not bake properly and could collapse or implode.

Identify essential ingredients

Just as a recipe is built around a main ingredient, every legal dispute has a main ingredient. Identifying - and honoring - that ingredient is critical to successfully resolving the dispute. A good mediator will look beyond the parties' briefs and use listening and observation skills to find the main ingredient of a case. With that knowledge, he or she can guide the parties to a solution.

In business disputes, real estate transactions and personal injury cases, liability is often a matter of "he said she said." Defendants initially value claims far below the amount plaintiffs are seeking. As negotiations proceed over the course of a day - just as yeast causes dough to rise - a change occurs. The defendant finally offers a number above the halfway amount; the plaintiff understands this as an acknowledgment that some liability is being conceded. This may be all the plaintiff needs to hear; it can be the impetus for forging a satisfactory settlement.

In a family dispute over property, a child may sue his parents, but much more is at stake in this case than money or real estate. The parties should really be focusing on the legacy being left behind, the example being set for a child or a grandchild. Such a focus can be a powerful motivator to overcome any impasse and work toward a solution that values the property to benefit future generations.

Be creative

Even when you follow the instructions of what you believe is a fool-proof recipe, you may be thrown a curveball. You might be in the middle of your out-of-this-world blueberry muffin recipe and suddenly realize you forgot to buy buttermilk. Based upon your experience and research, you remember that one substitute for buttermilk is regular milk with a proportionate amount of lemon juice. My own version of AI - adjust and improvise - infuses creativity and spontaneity into the recipe and the process. I have learned to trust my palate, and I always know that the ultimate finished product will be delicious.

Even when a cook follows a recipe exactly, she should expect that each time it will come out a bit different. There will always be variables, such as the quality and freshness of ingredients that are beyond the cook's control. The same holds true in mediation. Even if a mediator has handled the same type of cases for decades, no two cases will ever be the same. The parties, their attorneys, and their circumstances will be different each time; the mediator will be at a different point in his or her life and career than the last time a similar case came up - even if it was just the prior week.

Every mediation is unique even if it involves the same set of facts, same causes of action, same disputes, and same law as a dispute mediated and resolved the week before. The injured plaintiff in this week's case may be sad and defeated and just want closure, while last week's injured plaintiff wanted revenge for the consequences of the incident. The mediator must recognize the

level of heat or electricity, then use his or her AI skills to acclimate and recalibrate, to reduce the boil to a gentler simmer. In the case of the sad plaintiff, the mediator/cook can add optimism to infuse some brightness into a heavy recipe.

When the plaintiff in a personal injury case claimed facial disfigurement from the airbag deployment, the defendants minimized that injury based on what they had seen on social media. As the mediator, I knew that a more creative approach might be needed. With counsel's permission, I held a joint session so that the defendants could personally observe the plaintiff. After less than ten minutes of observation and respectful discussion, the parties arrived at a settlement of their dispute.

Recipe for success

The objective of a cooking session is to bring a dish together. The objective of a mediation session is to elevate the parties to a transformation in mindset. How does one know when that happens? The cook pokes the roast in the oven and knows it is the ideal temperature, texture and color. She knows this because she relied on preparation, patience, and experience working with the ingredients. She had confidence that she knew how to read the situation. Ultimately, the perfect dish came down to nothing more than a feel.

This is the essence of being a mediator. Mediators incorporate those same skills into every session. Like a cook hosting dinner guests, the mediator's goal should be that every participant leaves the table feeling more satisfied than when they arrived.