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Mediation's limits in conflicts arising in family business

BY BLAIR TRIPPE

As an experienced mediator, I believe that mediation should always be considered to remedy disputes. This is especially true when families are involved because mediation is less likely than litigation or continued animosity to destroy important relationships. In mediation, all parties have a voice at the table. In addition, because each individual is respected as the expert on his or her own particular situation, family members should be empowered to craft resolutions that work for them—which is what mediation is all about. If parties are helped to create their own solutions and if they accept only agreements that meet their interests, then those agreements will be durable and will improve the situation for all involved.

There are, however, clear limitations to the benefits of mediation when applied to conflict in family business. The mediation process, by definition, is a dispute resolution technique. It presumes that the dispute involves issues that lend themselves to negotiation. These are typically issues of money, power and specific instances of behavior.

When the issues do not lend themselves to negotiation, mediation can actually set back the conflict management effort and do more harm than good. One cannot negotiate one's values, beliefs, personalities, emotions and skill sets. Such issues—issues of identity—often lie at the heart of family business conflict.

Conflict or dispute?

There is an important distinction between managing conflict and resolving disputes. Conflict in family business is systemic; it is built in to the very structure of the family business system. Individual stakeholders in the family business system often have multiple roles that pose internal conflicts of interest.

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Among groups of stakeholders, roles are often structurally conflicting. For example, a family shareholder in the business may expect distributions of income from the company profits. His or her sibling who is an executive with the business may be more inclined to prioritize high salaries, good perks and reinvestment for growth, instead of what a business executive might consider to be excessive distributions for non-contributing shareholders. A mediation that addresses one specific dispute arising from these systemic conflicts is at best chipping away at a much bigger conflict issue that the process cannot address in totality.

Mediation works best when the issues can be well articulated and are fixed in time. Conflicts in family business are not well bounded by circumstance because they typically involve many stakeholders whose issues are very intertwined and commingled. In addition, these issues are not static; they change as the family changes and develops.

For example, if there is a seemingly isolated dispute about the size of the vice president's bonus, mediation may be able to help. But consider a situation in which the vice president is the CEO's youngest daughter. She believes that family members disregard her and views the low bonus as continued evidence that her father doesn't value her contribution. In this case, an attempt to determine a "fair" bonus amount through mediation will most likely fail. And even if a negotiation is successful, what if the CEO's son takes the position that if his sister is getting a raise, he also deserves a raise? That could end up spreading, rather than resolving, the conflict. And what if the son's wife sees her sister-in-law's new salary as a slap in the face to her husband and refuses to let her father-in-law into her house until her husband is treated "fairly"?

Matters could become even worse if the father/CEO or another stakeholder attempts to mediate the dispute. No family member or stakeholder is able to be a neutral third party, since he or she will presumably have a stake in the outcome. The role of a neutral third party is essential to the mediation process.

Because family business conflicts typically involve multiple parties and interrelated issues that span generations, simple dispute resolution techniques quickly become overmatched. Furthermore, unlike typical mediations (such as in civil cases), the family relationship still exists after the mediation—even if the parties no longer speak. As a result, a common subtext to any attempt at family business mediation is that the post-mediation relationship itself is also being negotiated—often unintentionally and without appropriate vigilance. Because the future family relationship is at stake in a negotiation, and because "family-ness" itself either cannot be, or is not, negotiated, mediations in family business often fail.

Identity-based conflict

Identifying what can and cannot be negotiated is fundamental to the success of any conflict management approach. Negotiation can address substantive issues of power or money, or specific (limited) instances of behavior. As stated previously, a person cannot bargain with his or her values, beliefs, skill sets or feelings—essentially, issues relating to his or her identity. Some examples of this are:

- Risk tolerance
- Political or religious beliefs
- Biases from historical family relationships
- Aptitude and experience relating to one's job responsibilities
- Personality (and personality clashes)
- Communication styles and skills
- Work ethic
- Feelings of betrayal and disloyalty
- Feelings of entitlement and need
- Belief that he or she is the best leader for the company

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All these are examples of the categories that define us and that cannot be negotiated. These identity-based factors are highly emotional, and stakeholders will not feel "safe" to negotiate until they feel their identity is protected. This is particularly important because neuroscience research has shown that practical, logical thought is virtually impossible when one's identity is threatened. Essentially, the amygdala—the part of the brain that is responsible for processing memory, decision making and emotional reactions—is activated when someone feels he or she is in danger or under siege. This part of the brain is where the fight/flight response resides, and it is activated when one feels under attack. When this happens, a person is incapable of thinking clearly and can only shut down or fight. As a species, this was a good and necessary thing for survival. But at the office, it may not be so good—and it may explain why family business stakeholders can become so deeply entrenched in their positions.

Mediation requires rational thought for the parties to move from their positions to focus on interests. It also requires fully informed consent, which necessitates the ability to process information. When someone feels threatened, however, this may not be possible. Furthermore, the dispute being mediated may have little to do with the true issue at hand. A person may perceive that his or her identity as a member of the family, as a next-generation leader or as an important, productive member of the community is being threatened by the mediation of a seemingly small issue, like a business title. Mediation is not a process designed for or equipped to manage a fight/flight response. The larger situation needs an approach that can develop the organization and the individual out of conflict.

Managing conflict

Mediators who underestimate the complexity of family business conflict or those who attempt to sequester emotion or limit the mediation to the economic, strategic or managerial (i.e., negotiable) issues at hand may either encounter a stalemate or find that a conclusion reached may not prove reliable. Managing anger and emotion, always a challenge in mediation, is especially challenging in mediations involving a family business. Accordingly, to have any possibility of success, mediation should commence only after the non-negotiable issues of emotions, relationships and identity have been given due diligence and the parties are truly ready to focus on negotiable issues. Mediation can indeed play a useful role in helping to manage family business conflict, but it must be implemented carefully and applied to issues of dispute that remain after the issues involving emotions, identity or structures and systems have been addressed.

Conflict management is one of the core services offered by many family business consultants. Helping stakeholders identify structural problems that give rise to conflict and helping develop individuals, groups and systems address many of the systemic and identity-based conflicts that family business stakeholders experience. Sometimes, application of so-called best practices for family businesses can move a system forward. Other times, a more tailored approach or one that focuses on building individual skill sets or team communication is more helpful. The important thing to consider, however, is that no conflict management approach for family businesses should default to dispute resolution techniques up front.

No matter how skilled the mediator, mediation alone is no match for the complexities and intensity of systemic family business conflict. While the mediation process is two-dimensional, what is required is a multi-dimensional process. Conflict management should take into account more than the parameters of the presenting dispute at hand; it should develop a picture of the family, the business and the family business system in their entirety. While mediation is appropriate in some situations, it is important that family business leaders and their advisers are clear on where mediation fits within the broader scope of a conflict management or family business consulting engagement. FB