

Why “You Do You” Resonates with Me When Resolving Disputes

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“You do you.” This has become one of my new favorite sayings, as my spouse can attest. In fact, his birthday card to me this year had this phrase on the front because I frequently invoke these words as a mantra. As I enter my new career as a neutral, it strikes me that this concept has long been part of how I have chosen to conduct myself as a legal professional. As a mediator, I commit to doing my best to understand how parties perceive their authentic selves, and then work with them relentlessly to reach a resolution.

To me, “You do you” invokes the teachings of my mentors when I first started practicing law, trial giants Fred Betts and Michael Mines. As a brand-new associate, I was taught to always endeavor to be authentic—in other words, to “do you.”

This phrase may be part of the contemporary vernacular, but the idea behind it has been around for a very long time. In *Hamlet*, Polonius famously tells his son, Laertes:

This above all: to thine own self be true,
And it must follow, as the night the day,
Thou canst not then be false to any man.[\[1\]](#)

“Thines” and “thous” notwithstanding, Shakespeare’s words are still applicable today. This notion of being true to oneself—or being authentic—is important. It means that whatever role you play in the litigation process, strive to be authentic. When someone is authentic, they are credible. This applies to attorneys, parties, witnesses and neutrals.

Being authentic allows you to draw on the confidence of knowing who you are and being willing to embrace your personality and use your traits in the most effective way to communicate. My 35-plus years as a practitioner allow me the confidence to speak my mind, but in a way that is respectful. As a neutral, I will continue in this approach of being honest

but not condescending or combative. I appreciate that there are (at least) two sides to every story and that if one looks hard enough and is creative enough, there is a path forward to resolve any conflict.

A component of authenticity is, of course, candor. And whether you are an advocate or a neutral, candor is essential and mandatory.^[2]

But authenticity is more than honesty; it requires some introspection and vulnerability. I do not think the drafters of the Model Standards of Conduct for Mediators necessarily had authenticity in mind when the following standard was enacted, but I like to interpret it as encompassing the notion that mediators will bring their authentic selves to the mediation process:

“A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.”^[3]

The concept of authenticity has been studied for centuries by a number of disciplines, including by psychologists and philosophers. As researchers Michael Kernis and Brian Goldman have explained, authentic functioning reflects a set of processes, including the concept of self-understanding.^[4] And—allusions to *Seinfeld* being omitted here—as Kernis and Goldman have written, “That is, authentic functioning is reflected in an individual being ‘the master of his or her own domain.’”^[5]

The self-determination theory (SDT) is integral to mediation because mediation depends on the participants voluntarily engaging in the process and taking ownership of the process. “According to SDT, self-determination is one of three basic psychological needs (the others being competence and relatedness), the satisfaction of which is critical for optimal psychological health and well-being.”^[6] The mediator who is authentic and can assist the participants in engaging in the mediation process using the principles of self-determination will achieve success, not only in resolving matters, but in allowing the parties to feel satisfied with the outcome in a way that likely cannot be replicated through a trial or other adjudicative process.

So, I plan on being me and hope that you plan on being you and helping your clients achieve the resolution that most matters to them.

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[1] *Hamlet*, by W. Shakespeare, Act I, Scene 3.

[2] RPC 3.3 governs a lawyer’s duty of candor toward the tribunal (“A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”). RPC 4.1 encompasses this same duty towards a mediator: “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.” And comments to RPC 3.3 remind that “[l]awyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0A(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.” Neutrals also owe duties of candor, as set forth in the Model Standards of Conduct for Mediators, Standard VI.A.4, cited in the RPCs (*see* Comment 2 to RPC 2.4): “A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.”

[3] *See* Model Standards of Conduct for Mediators, Standard VI.A.1.

[4] Kernis, M. H., & Goldman, B. M. (2006). A multicomponent conceptualization of authenticity: Theory and Research. In M. P. Zanna (Ed.), *Advances in experimental social psychology*, Vol. 38, pp. 283–357. Elsevier Academic Press.

[5] *Id.* at 293.

[6] *Id.*