

## **Avoiding Thinking Snares in Mediation**

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Thinking snares are common barriers to conflict resolution in mediation. What are thinking snares? They are patterns of thinking that impede our ability to be objective, to weigh conflicting information, and to re-evaluate positions.

Let me share a story providing a truly stark example of a thinking snare. I had a mediation between a service provider and their client over unpaid invoices. During my pre-mediation phone calls with each of the parties, it became clear that the parties had never done the most basic thing – neither had confirmed that the invoices had been sent or received or had been paid or remained unpaid. They had simply dug in on their insistence that they were right and were unable to re-evaluate the situation.

As a result, I asked each party to bring their books and records (whether paper or via electronic access) to the mediation. We then started the mediation with a joint session where the parties reviewed each invoice and checked their records. In the end, the case was settled. Not because they each made concessions to reach a compromise, but because they figured out what was actually owed by talking and sharing information.

This example highlights the dangers of thinking snares.

Whether or not we are aware of them, we all have ingrained patterns of thinking. Some thinking snares are referred to as cognitive barriers. Some are based on unconscious biases, assumptions, and/or expectations.

In the example, while the dispute arose from miscommunication, the crux of the issue was intransigence and an inability to absorb contrary information. One side complained, “you didn’t pay my invoices” and the other side defensively responded, “yes I did.” They dug in on these positions throughout the life of the litigation and were unable to hear any conflicting information.

Common examples of thinking snares are anchoring bias and advocacy bias. Anchoring bias occurs when too much importance is given to one piece of information over the weight of all other available information. Whereas advocacy



bias is when we are so fixated on the strength of our position that we are unable to hear or consider any views to the contrary.

Thinking snares impede our ability to engage in critical thinking. Critical thinking is essential to conflict resolution in mediation. Anytime you are in a dispute - whether in litigation, an interpersonal conflict, or contract negotiation – take a step back to become aware of your own internal biases and thinking patterns, and then step away from them so you are open to new ideas and new information. Doing so enables us to explore new options and opportunities and to recognize common ground. Ultimately, this may pave the path to resolution.