

April 2015

*The Center for Alternative Dispute Resolution Newsletter
State of Hawaii, Judiciary*



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“I’m Sorry”: The Role of Apology in Mediation

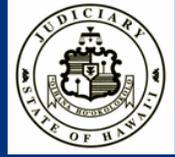
An apology is an expression of remorse in which the offending party recognizes that an act caused harm, accepts responsibility and regret for the act, provides assurance that the act will not occur again, and if needed, offers restitution. Statements like, “I’m sorry you felt that way,” an insincere, “Sorry,” or expression of regret at being caught, fail to meet the standard for a true apology. Public apologies from Richard Nixon’s “Checkers Speech” to the recent Honda recall serve as examples of failures. The genuine offer of an apology rebalances power. The offended party may reject the apology because the act cannot be forgiven or because the apology is not sincere. When equal power between parties is restored, the parties may then begin to address issues.



Carl D. Schneider proposes that apology is part of mediation, a process focused on taking responsibility for harm done. Because mediation often concerns situations in which one party “feels injured by the other,” an apology may make a difference in their interaction and satisfaction with the outcome.¹ According to Deborah Levi, parties may need to reconcile “intangible injuries” before attempting resolution of their dispute. An apology can help restore the self-esteem of the person who has been injured and allow for a shift in focus from punishment of the other party to resolution of the issues.² Lesley Henry cautions that an apology alone may not resolve all the issues but offers the potential to reduce tension between parties so they may address issues more effectively.³ Divorce mediations are an example of cases in which an apology for harm done may help parties to move forward to resolve custody and property issues.

According to Schneider, parties may need help from the mediator to move past defensiveness and offer an apology but only if they are ready to do so.⁴ However, Barbara Benoliel warns that mediators may not interpret the behavioral cues of parties accurately and instead anticipate the feelings of the parties based on their own responses to the situation.⁵ Levi cautions mediators to resist suggesting that one or both parties apologize and instead to listen for any suggestions of a willingness to give or receive an apology. She explains that the parties may have established interaction patterns that make it difficult to express remorse, adding that their decision to have a third party help with their dispute signals that the conflict has escalated beyond their ability to resolve it on their own. The parties may have long lists of behaviors they find offensive in the other by the time they enter mediation; however, they may not have truly listened to each other until they take part in the mediation process.⁶ Dan DeFoe proposes that by participating in mediation, the parties may finally have a forum to listen to both the issues and the apology, thus increasing the likelihood that they may settle, avoid litigation, and ultimately save time and money.⁷

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Notes:

1. Carl D. Schneider, "[What It Means To Be Sorry: The Power of Apology in Mediation](#)," *Mediation Quarterly*, Volume 17, Number 3 (Spring 2000). Web. Last visited January 15, 2015.
2. Deborah Levi, "[Notes: The Role of Apology in Mediation](#)," *NYU Law Review*, Volume 72 (1997), pages 1165-1210. Web. Last visited December 12, 2014.
3. Lesley Henry, "[Apologies in Negotiation: A Consideration of Gender](#)," paper, Family Law Dispute Resolution, January 2009. Web. Last visited December 15, 2014.
4. [Schneider](#)
5. Barbara Benoiel, "[Apologies in Mediation "Who's Sorry Now?"](#)," *Canadian Arbitration and Mediation Journal*, Volume 17, Number 1 (Summer 2008), pages 26-27. Web. Last visited December 15, 2014.
6. [Levi](#)
7. Dan DeFoe, "[Perceptions of 'Sorry' – Negotiated vs. Delegated Apologies, Settlement Levers, and Mediation](#)," *Psycholawlogy*, November 18, 2013. Web. Last visited December 15, 2014.

We welcome your input: Please send us your ideas for topics that you would like to have discussed in upcoming forums and issues of the *ADR Times*. We also welcome your insights from your experiences in mediation, facilitation, negotiation, and other ADR processes so we may share them with our readers. We look forward to hearing from you and to providing a forum for the exchange of ideas.

"You cannot truly listen to anyone and do anything else at the same time."

M. Scott Peck
