

# PHOENIX REPUBLIC

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## To resolve disputes, take a walk in other party's shoes

The most regrettable tragedies are often the self-inflicted kind.

Plaintiff was a homeowners' association suing one of its members to collect a \$4,000 fine for building an unapproved structure. Mediation was unsuccessful,

**MY TURN**

and by the time we reached the status conference prior to trial both sides had amassed nearly \$60,000 in attorney's fees. I ordered a settlement conference in a last-ditch effort to resolve the matter before assembling a jury.

In settling disputes it's important to offer the parties a different perspective. Human nature dictates that when we're fighting about something and feel strongly that we're right we become entrenched in our position. The plaintiff believes that all would be well if the defendant hadn't done A, B and C. And the defendant believes likewise, if only the plaintiff hadn't done X, Y and Z.

As adults we must recognize that there are always two sides to every



FRANK J. CONTI

story. We must approach the dispute with humility, looking beyond the end of our nose and placing ourselves in the shoes of the other party. Only when we look at the situation from the other's point of view are we capable of seeing

what we could have done to have avoided a costly lawsuit.

We discussed the strengths and weaknesses of each side's case. The facts screamed for settlement. The homeowner had shown a representative of the board a conceptual drawing of the structure, which the board member said didn't appear to be a problem. Two days later the board member reminded the owner she needed to have the architectural plans approved by the board.

Subsequently the homeowner submitted two sets of plans: one for a smaller structure and one for a larger structure. The board approved the

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smaller one. The homeowner built the larger one.

- The HOA could:
  - » Approve the structure with a penalty.
  - » Disapprove and have it torn down.
  - » Approve without penalty.

The board voted to approve the structure with a penalty, to which the homeowner consented at the meeting. She then decided not to pay the fine, and litigation ensued.

I reminded them that jury verdicts are an unpredictable form of legal gambling, and that settlement is always preferable because the parties retain control of the outcome. Then I placed

the court's massive file on the bench, which had grown a foot high with all the legal wrangling.

I warned them a train wreck was coming. A jury trial would mean more work for the lawyers, generating more legal fees that the losing party might be paying in the end. And the only thing worse than paying one lawyer is paying two.

I advised the defendant she could end up paying the \$4,000 fine plus the HOA's \$30,000 legal bill, forcing her to ponder the cost-effectiveness of paying her own lawyer \$30,000 to dispute a \$4,000 fine in the first place.

The parties settled later that morning.

Sometimes when we stop, look at our situation objectively, and listen to the other side, we realize it's better to be reasonable than right.

*Frank J. Conti is the elected Justice of the Peace for the Dreamy Draw Justice Court, which serves northeast Phoenix and parts of Paradise Valley and Scottsdale.*