

# THE SEASONS OF ALTERNATIVE DISPUTE RESOLUTION: A STUDY OF MEDIATION TACTICS IN THE CONTEXT OF ANCIENT GREEK MYTHOLOGY

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## I. INTRODUCTION

Greek mythology has long provided fascinating stories of conflicts between the Gods and how those conflicts in turn influenced the Earthly life of humans. While these stories serve as entertaining narratives used to explain natural phenomena, one story in particular is practical in examining the delicate contours and consequences of family mediation: the legend of Hades and Persephone.

This paper will call upon the facts of this famous myth and examine the pronounced character elements of the participants as well as the risks present in the dynamic conflict and resolution. In doing so, this paper will illustrate how, according to ancient legend, a mediation was responsible for our changing seasons.

Through the vehicle of this myth, this paper will further illustrate how the ancient Greeks contemplated the usefulness of mediation in resolving disputes. Indeed, the practice of mediation was first developed in ancient Greece concomitant with a philosophical movement that encouraged individuals to think about their relationships with others and themselves.<sup>1</sup> This movement advocated the responsibility of the individual through the control of one's passions as well as the consideration of the "master-slave" relationships between themselves and others, and it ultimately laid the foundation for the development of mediation as a court recognized means of dispute resolution.<sup>2</sup>

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<sup>1</sup> Jean-Louis Lascoux, *History of Mediation*, WIKIMEDIATION, [http://en.wikimediacion.org/index.php?title=History\\_of\\_mediation](http://en.wikimediacion.org/index.php?title=History_of_mediation) (last visited Oct. 18. 2011).

<sup>2</sup> *Id.* [http://en.wikimediacion.org/index.php?title=History\\_of\\_mediation](http://en.wikimediacion.org/index.php?title=History_of_mediation) (citing *The Republic*, Book IV, Plato).

Although the ancient Greeks did not formally use the word “mediation,” two notions, reflective of modern day dispute resolution, were developed: (1) the intervention of a third party to encourage individual responsibility and separation from passions, and (2) the intervention of a third party that does not empower individual responsibility but rather steps in to substitute the party and strengthen compelled decision making.<sup>3</sup> The former notion marked the beginning of the development of mediation, which was initiated by the philosophers of the time.<sup>4</sup>

Under ancient Greek philosophy, it was believed that one could influence others in decision-making by first creating trustworthiness through understanding others and then, only after this trustworthiness is established, making others understand his position.<sup>5</sup> This method of influence consisted of three sequential steps: ethos, pathos, and logos.<sup>6</sup> Ethos is defined as an individual’s ethical nature and credibility.<sup>7</sup> Pathos refers to one’s empathy, or ability to understand another person and see things from his position.<sup>8</sup> Lastly, logos means one’s logic and talent of persuasion and presentation of his ideas.<sup>9</sup> This philosophical approach created and advocated by the ancient Greeks is still very applicable to mediation practice today.<sup>10</sup>

The myth of Hades and Persephone reflects the ancient Greek society’s faith in a mediation-type dispute resolution as well as their high regard for the practice of mediation. The inclusion of a mediation-type proceeding in this myth illustrates how the ancient Greeks viewed the practice as valuable even for their

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<sup>3</sup> Lascoux, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> John Meredith, *The Greek Philosophy of Influence*, THE LEARNING CENTER, <http://championsclubcommunity.com/covey/2010/04/02/the-greek-philosophy-of-influence/> (last visited Oct. 18, 2011).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> David Hurley, *Greek Philosophy and Mediation Practice* (July 2008), <http://www.mediate.com/articles/hurleyD1.cfm#1> (last visited Oct. 19, 2011) (discussing how he finds this philosophy useful in his own mediation practice).

venerated Gods. By closely examining this myth, one can gain an understanding of the utility of mediation in today's court system as well as throughout history. By making the unexpected connection between past mythology and present reality, the gravity of mediation in dispute resolution becomes clear, as does the resilience of the ancient Greek philosophy's application in modern day mediation.

## II. BACKGROUND: THE CONFLICT

According to Greek mythology, Hades, the God of the underworld, fell in love with Persephone, the goddess of growth. Persephone was the daughter of Zeus, the king of the Gods, and Demeter, the goddess of bountiful harvest. After receiving permission from Zeus to take Persephone as his wife, Hades kidnapped Persephone and brought her to his kingdom in the underworld. Demeter, upon finding out that Zeus had betrayed her and that her daughter had been taken to the underworld, was overcome with grief and fury. She refused to return to Mount Olympus and instead roamed the mortal Earth, destroying everything in her path and plaguing the world with starvation. Zeus quickly came to the realization that all of humankind would cease to exist if Demeter continued in her swelling rage. Zeus understood that without humans, there would be no one to honor and worship the Gods.<sup>11</sup>

Consequently, Zeus sent Hermes to retrieve Persephone. However, the cunning Hades gave Persephone a pomegranate to eat before she left, which eternally bound her to the underworld, for once you eat in the underworld you cannot leave. In the face of the familial conflict, Rhea—the mother of Zeus, Hades, and Demeter—decided to step in to encourage a compromise between the parties. Eventually, an agreement was reached whereby Persephone would spend half of the year in the underworld ruling as queen with her husband, Hades, and the other half serving as the goddess of growth on Mount Olympus with her mother, Demeter. Accordingly, the Earth would become colder and less fertile in the

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<sup>11</sup> *Hades Takes a Wife: Persephone*, INFOPLEASE, <http://www.infoplease.com/cig/mythology/hades-takes-wife-persephone.html> (last visited Nov. 15, 2011).

winter months when Persephone would return to the underworld to be with Hades. When it was time for Persephone to return to Mount Olympus, Demeter would restore the Earth's warmth and fertility. Hence, the seasons were born.<sup>12</sup>

### III. THE ALTERNATIVE DISPUTE RESOLUTION STRUCTURE

#### A. *Form of Alternative Dispute Resolution*

As aforementioned, the dispute will be resolved through mediation. Mediation is specifically defined as “a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be.”<sup>13</sup> The key elements of mediation are that it is informal and non-adversarial.<sup>14</sup> Put succinctly, the fundamental goal of mediation is to assist disputing parties in arriving at a mutually acceptable agreement.<sup>15</sup>

In adapting this story to the modern day ADR structure and concepts, this myth will be examined from the vantage of a family mediation. This myth involves a hybrid of the typical family law issues of child custody in the context of Demeter desiring her daughter Persephone to live with her, as well as divorce in the context of Hades wanting to keep Persephone as his wife against the wishes of her family. There is also an element of family business present, given that each God is responsible for some duty that affects the mortal world.

#### B. *The Mediator*<sup>16</sup>

In accordance with the Greek myth, Rhea will be present at the mediation. However, pursuant to modern notions of fairness

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<sup>12</sup> *Id.*

<sup>13</sup> FL ST MEDIATOR Rule 10.210.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Mediators in ancient Greece were known as proxenatas. SOCIAL DISPUTE RESOLUTION CENTER, *History of Mediation*, [http://www.socaldrc.com/history\\_of\\_mediation.htm](http://www.socaldrc.com/history_of_mediation.htm) (last visited Oct. 18, 2011). However, this paper will use the modern day term of “mediator.”

and neutrality,<sup>17</sup> a third party mediator will be brought in to conduct the negotiations. This mediator will be Themis, the Greek Goddess of Justice. Themis is a particularly fitting mediator because one of her duties was to preside over the proper relation between man and women, which was considered the basis of the rightly ordered family during the ancient Greek times.<sup>18</sup> Zeus and Rhea, although not direct parties to the dispute, will be present at the mediation as interested third parties. Rhea has an obvious stake in the outcome of the mediation because she wishes to promote family harmony. Zeus is concerned for the survival of humankind so that the Gods and his kingdom will continue to be worshipped.

### **i. Conflict of Interest**

A mediator shall not mediate a matter in which there is a conflict of interest.<sup>19</sup> A conflict of interest occurs when “any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator’s impartiality.”<sup>20</sup> The mediator must disclose any conflict of interest, and can only proceed with the mediation if all parties agree.<sup>21</sup> Nevertheless, if the conflict of interest clearly harms his or her impartiality, then the mediator must withdraw notwithstanding an express agreement by the parties.<sup>22</sup>

In this situation, it is impossible to avoid a conflict of interest. Although Themis is not a mortal human, she is still worshipped by humans and thus has some stake in their survival if

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<sup>17</sup> “Neutrality is a bedrock principle of mediation that provides the basis for an effective working relationship between a mediator and parties to a mediation.” Ellen E. Deason, *The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability?*, 85 Marq. L. Rev. 79, 82 (2001). “A mediator has an affirmative obligation to maintain impartiality throughout the entire mediation process.” FL ST MEDIATOR Rule 10.330.

<sup>18</sup> *Definition of Themis*, WEBSTER’S ONLINE DICTIONARY, <http://www.websters-online-dictionary.org/definitions/Themis>.

<sup>19</sup> FL ST MEDIATOR Rule 10.340.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

she wants to continue to be worshipped. Furthermore, because Themis is a Goddess and Zeus is the king of the Gods, Themis' impartiality may be impaired; she may favor a position that Zeus, her King, advocates. However, Themis has timely disclosed these conflicts of interest.<sup>23</sup> As soon as she was selected to mediate this dispute, she informed all parties of the conflicts of interest. At the same time, she assured the parties that she felt that she could serve as an impartial mediator. All parties agreed to have Themis serve, recognizing that given the nature of the dispute, Themis is the best option for the mediator. No matter what, there will be a conflict of interest in this situation. If the mediator is a mortal being, then he or she will have a profound stake in the outcome of the mediation because if Demeter is not satisfied she could cause the death of all mortals. If the mediator is a God, then he or she will be influenced by the position of the King of Gods. In choosing Themis, all parties acknowledged this predicament and agreed that Themis, as the Goddess of Justice, is in the best position to serve impartially.

## **ii. Payment of Mediator**

The payment of Themis presents a unique issue. Because a mediator cannot charge a contingent fee or a fee based on the outcome of the mediation,<sup>24</sup> Themis should not be compensated by anything that only has value in the mortal world. For example, she should be compensated in Greek coins, known as drachma, which the ancient Greeks used as their monetary system.<sup>25</sup> Nor should she be compensated by a monument or temple from which humans will worship her. This is because the survival of humankind depends on the outcome of the mediation. If Themis is paid in any form that only has value if humankind survives, then this could be considered a type of contingent fee. That is, her payment will only have value if Demeter is satisfied with the result and returns to Mount Olympus—thereby ending the famine on Earth and

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<sup>23</sup> *See id.* (“Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.”).

<sup>24</sup> FL ST MEDIATOR Rule 10.380.

<sup>25</sup> *Greek Drachma*, WIKEPEDIA, [http://en.wikipedia.org/wiki/Greek\\_drachma](http://en.wikipedia.org/wiki/Greek_drachma).

allowing humankind to live on. This fee would be contingent on the outcome that permits humankind to survive.

The only appropriate payment for Themis would be something that has value only in the world of the Gods. The survival of the Gods is not contingent upon the survival of humankind. The Gods only want humankind to exist so that they have beings to worship them. In harmony with the vain nature of the Gods, the parties have agreed to erect a statute on Mount Olympus in honor of Themis as compensation for her mediation services.

### *C. The Location*

The location of the mediation should be a neutral place where all parties feel comfortable. Hades is the God of the underworld, so the mediation cannot occur there because it is his kingdom from which he inevitably derives a sense of power. Additionally, the whole conflict is centered on the fact that Demeter refuses to return to Mount Olympus until her daughter is returned. Thus, Mount Olympus is an inappropriate place to hold the mediation as well, which is buttressed by the fact that Zeus rules on Mount Olympus and would feel most in control and dominant there.

The most suitable location for the mediation is a neutral place on the mortal Earth—a place where none of the Gods object to or feel they suffer a disadvantage. Given that Themis will be serving as the Mediator, the mediation shall occur in her hometown of the ancient city of Delphi. Delphi was considered to be the center of the Earth as well as the place where heaven and earth met.<sup>26</sup> According to Greek myth, Zeus released two eagles, one from the east and one from the west, and the place where they met was the center of the world.<sup>27</sup> Having the mediation at the center of the world is symbolic of the parties coming together from opposite sides and converging to eventually meet a middle ground. Thus, this location may subconsciously make the parties more inclined and open to an agreement.

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<sup>26</sup>Matt Barrett, *Delphi, Greece*, GREECE TRAVEL, <http://www.greecetravel.com/delphi/> (last visited Oct. 18, 2011).

<sup>27</sup>*Id.*

Furthermore, Delphi was the center of worship for the God Apollo, who represented moral discipline and spiritual clarity.<sup>28</sup> Given that there is a need for good faith bargaining in dispute resolution<sup>29</sup>, having the mediation take place at the center for moral discipline offers another level of symbolic suitability.

#### ***D. The Participants***<sup>30</sup>

In mediation tactics, it is important to become familiar with the characteristics of the parties. Knowing how a person is inclined to respond to confrontation is crucial to the mediator's ability to guide discussion and negotiation.<sup>31</sup> It is also useful to gauge how risk adverse or risk loving a party is, as that may impact his or her willingness to budge from a position.

##### **i. Zeus**

Zeus is the ruler of the Gods and is the God of the sky. His weapon is the thunderbolt, which he is known to throw at people

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<sup>28</sup> *Id.*

<sup>29</sup> This proposition is supported by the fact that, in present time, “legislatures and courts have adopted rules requiring good faith in mediation, and courts have sanctioned violators.” John Lande, *Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs*, 50 UCLA L. REV. 69, 72 (2002) (discussing the problems with bad faith in mediation); James J. Alfani, et al., *MEDIATION THEORY AND PRACTICE* 287–300 (2d ed. 2006) (presenting “arguments and policy concerns over a ‘good faith’ participation requirement in mediation”).

<sup>30</sup> Persephone is noticeably absent from the mediation. This is because she cannot leave the underworld. Consequently, the mediation will focus on Demeter and Hades as the primary parties. The role of Persephone can be analogized to that of a minor child in a modern day mediation involving a custody dispute—although the child does not make the decision, the parties still consider his or her best interest.

<sup>31</sup> See Richard Birke & Craig R. Fox, *Psychological Principles In Negotiating Civil Settlements*, 4 HARV. NEGOT. L. REV. 1, 2—4 (1999) (discussing how knowledge and awareness of psychological principles can aid a mediator in being a better negotiator and reaching more efficient and desirable settlements).



who displease him. Despite being married to Hera, he had many affairs—one of which resulted in the birth of Persephone. Zeus is known to punish liars and those that break vows.<sup>32</sup>

In light of Zeus' position of authority amongst all Gods, it is likely that he will be commanding in discussions and unwilling to reach an agreement that varies even slightly from his own position. The mere presence of Zeus in the mediation could prove detrimental to any meaningful conversation geared at reaching an agreement that is satisfactory to all parties.<sup>33</sup> Furthermore, Zeus' violent nature and position could intimidate the other parties. While Zeus not only presents problems for the parties to the conflict, he also may cause trouble for the mediator. Zeus' personality could make him be unwilling to listen to or cooperate with the mediator, and the mediator in turn could be too intimidated by Zeus' position of power to assert any type of control.

The Florida Rules for Certified and Court-Appointed Mediators stress the importance of the mediation participant's right to self-determination and mandate that this right be preserved throughout the mediation.<sup>34</sup> The mediator holds the responsibility of protecting this right and in doing so the mediator may need to postpone or cancel mediation if the mediator reasonably believes that there is a threat of violence or undue psychological dominance.<sup>35</sup> Such a threat may impair a party's "ability to freely and willingly enter into an informed agreement."<sup>36</sup> This concern is plainly pronounced in this conflict, due to Zeus' violent nature as well as authoritative position. Consequently, as the mediator, Themis will have to be acutely aware of Zeus' demeanor as well as interaction with the parties throughout the mediation. If necessary, Themis may need to cancel or postpone the mediation if she cannot

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<sup>32</sup>John. M. Hunt, *The Olympians*, [http://www.desy.de/gna/interpedia/greek\\_myth/olympian.html](http://www.desy.de/gna/interpedia/greek_myth/olympian.html) (last visited Oct. 18, 2011).

<sup>33</sup> "People are more likely to accede to the request of a perceived authority figure." James J. Alfani, et al., *MEDIATION THEORY AND PRACTICE* 95 (2d ed 2006).

<sup>34</sup> FL ST MEDIATOR Rule 10.310.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

prevent Zeus from infringing on the parties' right to self-determination.

## ii. Hades

Hades is known to be a greedy god whose main objective is to increase the population of the underworld so that he may have more subjects over which to rule. Consequently, he favors actions that serve to increase the number of dead.<sup>37</sup> Thus, his interest in keeping Persephone in the underworld is two fold: he will have his coveted wife, and Demeter will continue to cause famine and death in the mortal world. Hades is infamous for not allowing his subjects to leave the underworld. He is identified to be un pitying and awful, but however, he is not capricious.<sup>38</sup> Given that Hades is known to be consistent, the parties may be able to take comfort in the fact that Hades is inclined to honor whatever agreement they make.

## iii. Demeter

Demeter was considered the most generous of all goddesses and known to be of an understanding nature.<sup>39</sup> Through her personality, she won the sympathy of the other Gods and also had the ability to sympathize with humans.<sup>40</sup> She was both shy and modest.<sup>41</sup>

Given that the personalities of the two primary players, Hades and Demeter, are so different, there may be an unequal balance of power between the harsh and evil Hades and the shy and kind Demeter. Thus, Themis will need to take these characteristics into consideration throughout the mediation and ensure that Demeter is not taken advantage of because of her gentle disposition. Additionally, Demeter is in an extremely emotional and depressed state, which may further impact her ability to negotiate.

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<sup>37</sup> Hunt, *supra* note 32.

<sup>38</sup> *Id.*

<sup>39</sup> *The Goddess Demeter—Greek History Essay*, <http://www.freeonlineresearchpapers.com/goddess-demeter-greek> (last visited Oct. 18, 2011).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

#### **iv. Persephone**

Although Persephone will not be present at the mediation, she is still an important nonparticipating person. Themis is under a duty to make all participating parties aware of the potential interests of Persephone.<sup>42</sup> Accordingly, Themis will need to familiarize herself with Persephone's interests prior to the mediation. Themis will not be able to adequately fulfill her role as a mediator if she is not able to correctly address and convey Persephone's potential and actual interests that could be affected by the outcome of the mediation. Although Persephone misses her mother, she has also come to have feelings for her husband, Hades, and enjoy her life as queen of the underworld.<sup>43</sup> Both Hades and Demeter must be aware of Persephone's feelings and take them into consideration rather than focusing solely on their own selfish desires.

Themis will have the difficult task of raising Persephone's interests while, at the same time, respecting the rights of the parties to make their own decision.<sup>44</sup> The intricate nature of mediation requires that the mediator make the parties aware of the nonparticipating person's interests without impeding on the right to self-determination and without advocating, or appearing to advocate, a particular stance.<sup>45</sup>

#### **v. Other Nonparticipating Persons**

In addition to underscoring the interests of Persephone,

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<sup>42</sup> FL ST MEDIATOR Rule 10.320 ("A mediator shall promote awareness by the parties of the interests of persons affected by actual or potential agreements who are not represented at mediation."). The comment to Rule 10.320 states that in family mediations, "the interests of children, grandparents or other related persons are also affected."

<sup>43</sup> *Persephone, Greek Goddess of Innocence and Receptivity and Queen of the Underworld*, GODDESS GIFT, [http://www.goddessgift.com/goddess-myths/greek\\_goddess\\_persephone.htm](http://www.goddessgift.com/goddess-myths/greek_goddess_persephone.htm) (last visited Nov. 15, 2011).

<sup>44</sup> FL ST MEDIATOR Rule 10.320.

<sup>45</sup> *Id.* ("In family mediations, for example, a mediator should make the parents aware of the children's interests without interfering with self-determination or advocating a particular position.").

Themis must also address the interests of humankind as well as the Gods, as both of these groups have a stake in the outcome of the mediation. Humans face the possibility of extinction if the mediation does not produce a result satisfactory to Demeter. Furthermore, the Gods that are not participating in the mediation will not have anyone to worship them if all of the humans die.

### III. THE MEDIATION PROCESS

There is no doubt that this mediation will require the mediator to exercise a high degree of skill and sound judgment. By examining the character elements of the participants in this particular conflict along with the duties of the mediator, it becomes clear that mediation is no simple undertaking. Mediation involves a great deal of factors—most of which are not static—that the mediator must constantly be aware of, balance, and respond aptly to. The transcript of the mediation will illustrate how these elements play out and how Themis responds and controls the situation.

#### A. *Transcript of the Mediation*

*(The parties are all positioned around an oval table. Hades is sitting on one side in between Demeter and Zeus.<sup>46</sup> Rhea is sitting next to Zeus. Themis is sitting across from the Parties.)*

**Themis: (Opening Statement):** Good morning. My name is Themis. I am the Greek Goddess of Justice. We have all gathered here in my hometown of Delphi in order to resolve a conflict between the members of this family. I will be your mediator today. I have had many years of experience mediating conflicts

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<sup>46</sup> Themis has purposefully positioned the parties this way. Having the parties sit side by side can psychologically influence the parties by reinforcing “the mental attitude of tackling a common problem together.” Roger Fisher, William Ury, & Bruce Patton, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 61 (2d ed. 1991) (noting also that people facing each other respond personally and argumentatively to each other).

between humans as well as Gods.<sup>47</sup> It is a duty given to me by virtue as my role as the Goddess of Justice, but it is a duty that I deeply enjoy. My role as a mediator will be to facilitate conversation with the ultimate goal of having you all reach an agreement that each of you is satisfied with.

**Hades** (*interrupting*): I am quite satisfied with the situation as-is. Let Demeter continue her devastation of the mortal world. It only provides my new queen and me with more subjects to rule.

**Demeter** (*visibly upset*): How dare you! You have no...

**Themis** (*interrupting Demeter*): Excuse me but I was not done speaking. On that note, I would like to point out that in all of my years of experience with mediation, there is one factor that is always present in a successful mediation—that is, the parties *listen* to and respect each other.<sup>48</sup> I'd like to lay some ground rules before we proceed. Those rules being that everyone here today must listen to each other, not interrupt each other, and most importantly, not criticize each other.<sup>49</sup>

(*all parties nod their heads in acknowledgement*)

Now, I am not the one making decisions here today.<sup>50</sup> That's not my job. The decision-making responsibility lies with you (*points*

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<sup>47</sup> Here, Themis is building Ethos, establishing her credibility as a mediator.

<sup>48</sup> See FL ST MEDIATOR Rule 10.410 (“A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.”). Respect is essential to continuing the dialogue. See Kerry Patterson, et al., CRUCIAL CONVERSATIONS: TOOLS FOR TALKING WHEN STAKES ARE HIGH 79 (2d ed. 2012) (“Mutual Respect is the continuance condition of dialogue. As people perceive that other don't respect them, the conversation immediately becomes unsafe and dialogue comes to a screeching halt.”).

<sup>49</sup> See Fisher, *supra* note 46 at 61 (suggesting that a negotiator lay down the ground rules, including the no-criticism rule, in order to promote meaningful brainstorming of solutions).

<sup>50</sup> FL ST MEDIATOR Rule 10.220 (“The ultimate decision-making authority . . . rests solely with the parties.”).

to *Demeter*) and you (*points to Hades*) only. Everything that occurs during the course of this mediation is confidential unless I am required by law to disclose it.<sup>51</sup> No outside parties will ever know what happened here and what was said. I know that this duty of confidentiality is especially important in this matter. It could be very harmful to the reputation of the Gods if humans somehow found out what was said at this mediation. Likewise, the conversations could also impact the feelings of the other Gods towards the parties here today. Thus, I want to assure you that no one will find out what goes on in this mediation. You all can speak freely without fear of how your words or actions will affect you outside of this room.

On another note, I may have the parties split up and go into separate rooms. In that event, anything said to me is still confidential.<sup>52</sup> I cannot run and tell you (*points to Hades*) what she said (*points to Demeter*) or vice versa. This entire process is consensual. My duty here today is to be an impartial facilitator of conversation. This means that I have no authority to impose a resolution or adjudicate any aspect of this dispute.<sup>53</sup>

From what I have gathered, this dispute has arisen over the custody of Persephone, who is *Demeter's* daughter and *Hades's* wife. Before we get into the mediation discussions, can I get a commitment from each of you to negotiate in good faith today?

*(Themis goes around the room saying each God's name and receiving an affirmation in return)*

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<sup>51</sup> FL ST MEDIATOR Rule 10.360 (“A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required by law.”).

<sup>52</sup> FL ST MEDIATOR Rule 10.360 (“Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.”).

<sup>53</sup> Themis has complied with the requirements of the opening statement as dictated by FL ST MEDIATOR Rule 10.420 (stating that the mediator shall inform the participants that mediation is a consensual process, the mediator is an impartial facilitator, and that the communications are confidential).

Wonderful! Now I'd like to begin with Demeter. Demeter, please tell me a little about this situation

**Demeter:** Well, Themis, Hades has kidnapped my beloved daughter and taken her to the underworld where she must remain for some time because Hades tricked her into eating a pomegranate. I cannot bear the thought of life on Mount Olympus without my daughter and refuse to return unless she comes with me.

**Themis:** Ok, Thank you, Demeter. I understand that you are upset over losing your child.<sup>54</sup> Hopefully we can arrive at an agreement today that you will be pleased with. Hades, will you please tell me your thoughts on the situation?

**Hades:** Demeter is being dramatic and overreacting. Her daughter is a queen in my kingdom. She is spoiled with riches and is loved. She has no need for her mother or for Mount Olympus anymore. In her grief, Demeter is actually doing her daughter a favor by causing human death by starvation because her actions send more souls to us in the underworld.

**Zeus** (*standing up and pointing a finger*): Her actions are killing the only beings that worship us as Gods! You are being selfish, brother. I DEMAND that you return Persephone to Demeter so that we can put an end to this and restore order.

**Hades** (*laughing*): And what incentive do I have to return your daughter? I will get nothing out of the arrangement.

**Rhea** (*quietly and calmly*): Now Hades, you must see the bigger picture. I am your mother. I do not wish there to be unrest and hostility between my children. Think about your wife, will she ever truly be happy with you if she knows her family is suffering? Things could escalate. Do you really want a war between the Gods because you refuse to return Persephone? That is a war you will surely lose. Who else will be on your side? You have ostracized

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<sup>54</sup> Themis is exercising Pathos here, showing Demeter that she understands where she is coming from and how terrible it must be to lose her daughter. Themis is showing Demeter that even if Hades thinks her grief is petty and unwarranted, she is understanding of it.

yourself from the Gods through your greedy character, while Demeter has won their favor through her kind disposition. Furthermore, the Gods will be on Zeus' side because they will want humans to survive to continue worshipping them. You ask what incentive you have? You risk losing everything in war if a settlement is not reached today.

**Zeus** (*turning toward Hades and clutching his lightening bolts*): And mark my words: you *will* lose everything. I will see to it. You are merely one God in an undesired Kingdom. I am the ruler of all Gods. How dare you laugh at and defy me. The only reason I am here is to try to work out a peaceful arrangement. A war between the Gods will make us look petty and weak in front of the mortal humans that worship us. In order to preserve our revered image, we must resolve this without overt force. Make no mistake, however, for I will call upon the Gods to help me win this battle if need be.

**Themis** (*calmly*): Thank you Zeus and Rhea for bringing to Hades' attention risks that he could not realize on his own.<sup>55</sup> However, I do not think that threats of war will get us anywhere. While it is a very real possibility that should be considered by all parties, it should not be the centerpiece of our discussion.

*(Themis realizes that Zeus is attempting to intimidate Hades and force him to let Persephone go. Tensions are running high, and Demeter has fallen silent and allowed Zeus to dominate the conversations. Themis also notes that the physical safety of Hades is endangered. This threat could potentially impair Hades' ability to exercise self-determination. Themis quickly decides to separate the primary parties from the peripheral ones).*

Zeus and Rhea, I would like both of you to step out of the room so I can have a conversation with Hades and Persephone alone.

*(Rhea nods her head and begins to stand up to leave)*

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<sup>55</sup> Themis is refusing to react to Zeus' emotional outburst. Instead, she calmly recognizes the legitimacy of Zeus' concerns before anyone else can respond with an emotional reaction. See Fisher, *supra* note 46 at 30–31 (discussing the importance in negotiations of acknowledging emotions as legitimate and not reacting to emotional outbursts).



**Zeus:** I will not leave. Anything you need to say to them can be said in front of me. As king of the Gods I have an unrestricted right to be privy to these conversations. The outcome affects me just as much as it affects Hades and Persephone. This is part of my duty.

**Themis** (*courteously*<sup>56</sup>): Zeus, I respect your concerns. However, I am not doing this to keep you in the dark. Your position is clear: you are content so long as Demeter is satisfied and agrees to return to Mount Olympus and restore the Earth's fertility. Correct?

**Zeus:** Yes.

**Themis:** So, all I ask is for some time alone with Demeter so that I can get a better, more candid idea of how we can achieve this. I was asked to come today as your mediator for a reason right?<sup>57</sup>

**Zeus:** Yes.

**Themis:** And what was that reason?

**Zeus:** Because you have had a good deal of experience in mediating conflicts, which is what our family needs.

**Themis:** Then please trust in my reputation and experience. (*Themis gestures toward the door*).

**Rhea** (*placing her hand on Zeus' arm*): Come, dear. Let Themis do her job.

(*Zeus and Rhea exit the room*).

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<sup>56</sup> Here, Themis is acting in accordance with her role as a mediator. Mediators are required to be patient, dignified, and courteous throughout the process. Themis maintains this demeanor throughout the entire mediation. See FL ST MEDIATOR Rule 10.350.

<sup>57</sup> In family mediation, "parties may stipulate to anyone serving as a mediator." 118 AM. JUR. TRIALS 305 (Originally published in 2010). Here, the participants have all agreed on Themis as the mediator.

**Themis:** Hades, I see your point<sup>58</sup> in that you care for Persephone and feel that you are providing her with a wonderful life as your queen.<sup>59</sup>

Now that it is just the three of us, I would like us to get to the bottom of this dispute. Let me see if I've understood your respective positions correctly.<sup>60</sup> Demeter, you are concerned for the well-being of your daughter in the Underworld. You're also upset because as her mother you'd like to be able to spend time with her and do not want to lose your relationship with her.

*(Demeter nods in agreement)*

And Hades, you are in love with Persephone and want her to be able to spend time as your queen in the underworld. You feel that she is happy there and will have a great, pampered life there.

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<sup>58</sup> Themis is making the effort, throughout the mediation, to understand where each side is coming from. Even though this is a difficult endeavor, it is arguably "one of the most important skills a negotiator can possess." Fisher, *supra* note 46 at 23 ("If you want to influence [the parties] you also need to understand empathetically the power of their point of view and to feel the emotional force with which they believe in it."). This tactic is consistent with the ancient Greek concept of pathos.

<sup>59</sup> After Hades was attacked by the other mediation participants, Themis has decided to return to Hades in order to establish Pathos with him.

<sup>60</sup> Themis feels that the safety of the conversation has been violated by the threats made by Zeus. She recognizes that in order to get the parties to speak candidly again she will need to build the safety back up. See Patterson, *supra* note 48 at 133 (discussing the need to maintain safety in crucial conversations). Themis has already asked the parties to express themselves. In order to make it safe for the parties to speak openly, she is now calmly paraphrasing, in her own words, to acknowledge the story. See Patterson, *supra* note 48 at 164 (noting that in order to build safety one must first ask the parties about how they feel and then, to build additional safety, paraphrase what was said); see also Fisher, *supra* note 46 at 51 ("People listen better if they feel that you have understood them. They tend to think that those who understand them are intelligent and sympathetic people whose own opinions may be worth listening to."). This method, endorsed by modern day negotiation books, echoes the values underlying the pathos approach used by the ancient Greeks in negotiation.

**Hades:** Exactly.

Correct me if I am wrong but this whole thing was essentially brought about because both of you love Persephone?

**Hades:** Yes.

**Demeter:** With all my heart.

**Themis:** So I suppose it could be said that both of you want what is best for her?<sup>61</sup>

**Demeter:** Of course.

**Hades:** Yes. And what is best for her is to be queen of the underworld where she is smothered with attention, lavish gifts, and riches.

**Demeter:** My daughter is a kind Goddess. The underworld is no place for her. The best thing for her is to remain on Mount Olympus, surrounded by her family. She will be happiest fulfilling her duties as Goddess of Growth.

**Themis:** This may be true, Demeter, but there is some indication that Persephone has grown accustomed to her lifestyle in the Underworld and has come to enjoy it.<sup>62</sup> Furthermore, we know that Persephone must remain in the underworld at least for part of the year because she ate the pomegranate there.<sup>63</sup> We also cannot forget that if we do not reach a suitable agreement, humankind may be wiped out by famine, which in turn would result in the Gods having no one to worship them. Please do not forget that this

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<sup>61</sup> Themis is employing an important negotiation tactic here by identifying the parties' shared interest: the well-being of Persephone. See Fisher, *supra* note 46 at 70–73 (discussing how this tactic can help produce agreement).

<sup>62</sup> Themis is fulfilling her duty to promote the awareness by the parties of the interests of the nonparticipating persons.

<sup>63</sup> Themis has begun the *logos* step in the Greek philosophical approach. She now has gained trust through *ethos* and *pathos*, and will proceed with presenting her argument and proposed solutions.

dispute does not only affect you two and Persephone, but also every living human and every God as well.

**Hades:** Demeter, why don't you just come visit the Underworld to see your daughter? I will see to it that you are treated well and comfortable during your stays. That way, you can see your daughter whenever you'd like, and I will have my wife.

**Demeter:** I would never step foot in the underworld! Spending time in your vile kingdom would be more of a curse than a compromise.

**Themis:** So then the only option is having Persephone stay in the underworld for a period of time and then have her spend the rest of the time on Mount Olympus with her mother.

*(Silent pause, Themis looks toward the parties for acknowledgement of the truth of the statement but elicits no response)*

This seems to be the fairest solution. Having Persephone remain in the Underworld all year would be unfair to her mother. On the flip side, allowing Persephone to stay on Mount Olympus for a longer period of time would deprive Hades of his wife.

**Hades:** I agree. I will allow Persephone to travel to Mount Olympus for one month out of the year.

**Demeter** *(feeling empowered and more confident in caucus than she was when Zeus was present):* Not a chance, Hades. I would sooner declare war on your Kingdom than have to spend a majority of the year without my daughter.

**Hades:** So be it.

**Themis:** War is not necessary. Persephone can spend half of the year on Mount Olympus and then return to the underworld for the second half of the year. In this way, her time will be split evenly and fairly. No one will get more time.

**Demeter:** I could be open to this arrangement but everyone knows that Hades seldom allows anyone to leave the underworld. What will stop him for keeping Persephone there once she returns from Mount Olympus?

**Hades:** I may be the King of the Underworld but my word is still good as the most honored God Zeus himself.

**Themis:** So do you both consent to this agreement?

**Hades:** Yes.

**Demeter:** I would like to consult with Zeus before I commit to anything.<sup>64</sup>

*(Themis nods her head and leaves the room to retrieve Zeus and Rhea. Demeter explains the arrangement to Zeus who listens closely).*

**Zeus:** I believe this is a satisfactory arrangement. Under this scheme, Persephone will be able to fulfill her roles not only as a daughter and wife, but also her duties as queen of the underworld and Goddess of Growth. This arrangement balances all aspects. I approve.

*(turning to Hades)*

And brother, you are well aware of my intolerance for those that break oaths. I trust that you will honor this agreement henceforth.

**Hades:** My kingdom may be tainted, but my word is not, my brother.

**Themis:** Demeter, are you satisfied with this arrangement? We can keep the dialogue open if you are not comfortable with the end result.

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<sup>64</sup> “During the [family mediation] process, any party can pause to seek independent advice from others.” 118 AM. JUR. TRIALS 305 (Originally published in 2010).

**Demeter:** Although I would like to have my daughter with me the entire year, I recognize that may not be in her best interests. Accordingly, in good faith I agree to this arrangement.

**Themis:** Now that all parties have consented to this agreement, I will memorialize it in writing.<sup>65</sup> Persephone will be returned to Demeter no later than tomorrow at noon. She will then remain with Demeter for 6 months before returning to the Underworld. This will continue for the rest of time. Zeus will have the authority to enforce this agreement if any party should breach. If you could all please sign this agreement, then you will be free to leave. Thank you all for your good faith efforts today.

#### IV. CONCLUSION

Through the use of mediation, the Gods were able to reach an arrangement that all parties were satisfied with. Although the legend of Hades and Persephone is ancient, it aptly illustrates the intricacies of modern mediation. From examining a theoretical dialogue of what the mediation could have looked like, we can see how the influence of ancient Greek philosophy served as the foundation for the mediation movement. We can also see how that philosophy is still useful in mediation practice today and parallels the tactics endorsed by modern day negotiation authorities.<sup>66</sup> Even in the face of distinct personalities and high stakes, the mediation allowed the parties to avoid the destruction of their family and the annihilation of humankind. The ancient Greeks recognized the importance of mediation in dispute resolution; so much so that they believed it was mediation between the Gods that preserved the human race. Today, we are reminded of the value of mediation and its ancient Greek origins each time the seasons change.

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<sup>65</sup> The mediator is required to memorialize the terms of the agreement and discuss the process for implementation. FL ST MEDIATOR Rule 10.420.

<sup>66</sup> *See supra* notes 58 & 60.