

Picking the right type of mediation

A style for Every Circumstance

Facilitative Mediation - also called problem-centered. The mediator's role is to facilitate better communication and creative problem solving.

Interest-based Mediation is very similar to facilitative mediation. Key components are the exploration of the parties' interests; development of a large number of options; and an assessment of options by objective criteria agreed upon by the parties.

Rights-based Mediation - also called early neutral evaluation or evaluative mediation. The mediator evaluates the case in the light of rules (for example, generally accepted accounting principles), contract interpretation or the law. This is the model used in a pre-trial process.

Therapeutic or Healing Mediation. Although the parties may have specific issues in dispute the mediator's emphasis is on the healing of relationship or of the community.

Transformative Mediation This process strives to empower the parties, to encourage the disputants to appreciate the positive aspects of the relationship and to offer recognition of one another's points of view, as well as opportunities to themselves and the other person differently.

Med-Arb is a hybrid of mediation and arbitration. The parties agree in advance that if they are unable to reach an agreement in mediation the mediator will take on the role of arbitrator and make a decision.

You've decided to use mediation

What to Look for When You're Looking

"What are the qualities of a good mediator?" I was recently asked by a newspaper reporter. One fundamental quality is that the mediator be able to listen carefully without judging. Good listening is not passive. It is an active effort to understand the other person and to communicate that understanding. In seeking to understand each party without judging them, the mediator often opens up the path for the parties to be able to hear each other, a necessary first step to getting the situation resolved.

Another key quality is patience. A step-by-step facilitated mediation process will generally yield the parties' own solution. The mediator who gets impatient and tries to push the parties to agree to the mediator's own solution will likely end up with

less satisfied customers or with a less durable agreement.

Why are these qualities so important? The mediator's job is to reduce the obstacles to communication, maximize the exploration of alternatives and address the needs of those involved. The mediator tries to ensure that the parties reach agreement freely, without undue influence and on the basis of informed consent.

Mediation is a developing field. So far there are no professional standards limiting what is "mediation" and who can call themselves a "mediator". Anyone can advertise themselves as a mediator. As a consumer it is important to ensure that the mediator is a fit for your situation.

Interviewing a Prospective Mediator

Ask the Right Questions:

1. Do you belong to any professional organizations for mediators?
Professional organizations such as the Arbitration and Mediation Institute of Ontario and the Ontario Association for Family Mediation require members to follow a Code of Professional Conduct. Members of the Ontario Mandatory Mediation Program rosters in Toronto and Ottawa are required to follow the Code of Conduct under that program.
2. What kind of training have you had in mediation? How long have you been a mediator?
The Ontario Mandatory Mediation Program requires a minimum of 40 hours of mediation training in order to be considered for the roster. The London Area Mediators' Association requires a minimum of 60 hours of training or 40 hours of training and 20 hours of mediation experience for its roster members. Mediators who participate in ongoing professional development will have had much more mediation

than 40 or 60 hours of education specifically in mediation. For example, my current total is 282 hours of mediation training since 1994.

3. What kind of mediation do you use?
There are a variety of different styles and models for the mediation process. Many mediators use a hybrid of more than one model. See the box on this page for an explanation of the models. I use a facilitative or interested-based mediation style. Generally the parties agree that the mediation proceedings are confidential and cannot be used in a later court proceeding and the mediator will not be summoned as a witness in a later court proceeding.
4. What kinds of mediation have you handled?
The mediator may also suggest additional professional advice such as legal or financial advice if appropriate in the situation.

Munn-thly Memo

Question:

My business partner treats me as if I am an employee. Recently I have begun to notice this more frequently. Our partnership agreement is that we are equal partners, we have invested equally in the business and are equally active in the business although in different areas of the business. He tells me to write the letters or do tasks related to the general management of the business and not specific to our particular areas. I am building up resentment against him and questioning whether I want to continue in this partnership.

Answer:

When you notice that you are reacting emotionally to the situation, as with your feelings of resentment, it is time to take steps to get it resolved. Whether we are generally assertive or not, when we are faced with a situation where we anticipate conflict, sometimes we find it difficult to assert our own interests. This is especially true when we fear that dealing with the situation may precipitate an end or change in a relationship which is important to us, such as a business partnership.

While sorting this out with your partner has some risks, not dealing with this situation will leave you dissatisfied as you have already noticed. It is up to you to decide when the advantages of dealing with the situation outweigh maintaining the situation as it is or leaving the partnership. Caution: find a way to deal with the situation before you have built up a level of anger which will cause you to explode when it finally comes up.

When you decide to speak with your business partner I suggest that you arrange a time when you can both focus on the issue without interruption. Think about what you will say in advance. Avoid blaming your partner because this will create a defensive reaction which will not help to get

the situation resolved. Use neutral, objective language to describe the situation as you see it and what you want instead. I suggest this helpful formula to get the conversation started constructively. It may help to write down your answers when you are planning what to say.

1. What would I like to feel or be in this situation? (It is important for you to identify this to yourself. You might not choose to say this to the other person.)
2. Use "I" statements to describe
 - a. Your perspective on the situation
 - b. Your feelings on the situation
 - c. Your wants in the situation

For example in the situation you describe I might think:

I would like to feel valued as an equal partner in the business.

I might say:

I've been thinking about how you asked me yesterday to collect the information for the bank. I feel belittled when you tell me to do tasks that should be done by our employees. I want you to treat me as an equal partner in this business.

Ask the Right Questions:

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5. How much will it cost?

Most mediators charge on an hourly basis. In addition to the cost of the mediator's services there may be disbursements such as meeting room space and travel expenses for the mediator. The mediator may ask for a deposit when the mediation is scheduled. While you're on the subject of money ask about the mediator's cancellation policy.

mediator can likely give you a rough idea of the length of time. This will be flexible because it will depend on the parties needs during the mediation session.

6. How long will it take?

Based on the types of issues involved the

While you're talking to the mediator you will have an opportunity to evaluate the personal qualities such as listening skills and patience. Your decision to use mediation is important. It is worth the investment of time to choose the best mediator for the situation.

Mark Your Calendar

Upcoming Training Events Presented by Kathryn Munn

May 7, 1999

Civil Justice for Non-lawyer Mediators
Fanshawe College, London

9:00 a.m. - 4:30 p.m.

Call (519)452-4425 for more information.

May 26, 1999

Constructing Consensus from Conflict - Managing
in the New Millennium Breakfast Series
London Chamber of Commerce

8:00 a.m. - 10:30 a.m.

Call (519) 432-7551 for more information

Note: date has been changed.

June 1 and 2, 1999

Communication from Conflict to Consensus The
Management Centre, Lambton College, Sarnia
9:00 a.m. - 4:00 p.m.

Call (519)542-7751 Ext 505

for more information

June 16 and 17, 1999

Conflict Resolution

The Management Centre, Lambton College,
Sarnia 9:00 a.m. - 4:00 p.m.

Call (519)542-7751 Ext 505

for more information

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