

MEDIATION: IT'S ALL IN THE STYLE

Mediation is a very effective way to resolve disputes between parties. Certainly, there are many reasons that mediations may work, even in strongly contested matters, because, in some instances, it is the first time that the parties have had a chance to tell someone their “story”. And often times, just sharing their perspective about the dispute can be the first step in helping get to its conclusion.

The method of mediating a matter, depending on the parties involved and sometimes the type of dispute, can also impact the ability of a matter to reach a resolution. That method, or the particular “style” that a mediator may use to facilitate a resolution session, can be the difference between a case that gets resolved and one that falls apart.

Here are the typical methods being used:

- 1) **Facilitative.** This is the most common style that is used, where a mediator will “facilitate” the negotiation process between the parties. The facilitative mediator will support each side to tell their story and then typically allow the parties to break into sessions and the facilitative mediator will “shuttle” between the different parties with a goal of assisting each side to move in a direction to help create a solution that both sides will accept. The facilitator seeks to enhance communication and understanding between the parties. Although the facilitative mediator may ask questions, the mediator does not offer the solutions. The facilitative mediator also does not offer opinions or predictions regarding the resolution of their case but helps each side “communicate” to each other through the mediator concerning the facts in dispute. Facilitative mediation is process-driven, in that the facilitator process the process, but it up to the parties to work toward a self-created resolution.
- 2) **Evaluative.** The evaluative mediator is one that will express their opinion concerning the advantages and disadvantages of each side’s case to help both side understand the risks inherent in pursuing their case to closure in front of a judge, arbitrator or jury. The evaluative mediator can often help move one party that is stagnant in their position once that party hears from a “neutral” party the weaknesses of their case. The evaluative mediator can offer the parties an independent cost-benefit analysis to the case at hand, and can ultimately provide their opinion regarding the ultimate outcome of the case. For this reason, the evaluative mediator can often be seen as heavy handed in their management of the process since one party may feel that the mediator is not truly being impartial. In order to be a successful evaluative mediator, that person needs to have a level of experience and knowledge that is sufficient to sway the parties to understand the risk of not resolving the case while it is still in their control to settle.

Although these methods are primarily the most common used by mediators, over the years there have been some efforts to expand the approach towards resolution and therefore a few other styles that are used, often called either “Transformative” or “Narrative”. The transformative mediator approaches the dispute with the goal of helping to repair the broken relationship between the parties as a means of then helping to resolve their underlying dispute. Some transformative mediators have a background in mental health or psychology and are successful in connecting with the parties on an emotional level in

order to help create a resolution to their dispute. The transformative mediator focuses on having the parties share their values and interests with the other side. A narrative mediator is someone that seeks to reshape the conflict by giving it a new “narrative”. The goal is by reshaping the story, the parties can see the dispute in a new light and hopefully find a new approach from that new perspective to help settle the matter.

Although these other methods may be considered “idealistic”, it is often times the most successful mediator that will be flexible during the mediation process and utilize all the tools in that mediator’s toolbox to help find an approach that leads to a successful resolution of the parties’ dispute.

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