

Styles of Mediation

Facilitative Mediation

This approach to mediation is one in which disputes are reframed as mutual problems to be solved by parties jointly through consensus. It incorporates collaborative problem solving as its main strategy. After parties reframe their conflict as a joint problem, they then explore the problem from all possible points of view, focus on the parties' interests and needs, generate the full range of possible solutions, and finally choose the solution that best satisfies all the interests and maximizes gains for all as judged by some objective criteria of fairness.

The potential for cooperation assumes a non-zero sum situation in which there are multiple issues and varying interests that are not mutually exclusive. It also assumes that people make rational decisions based on an enlightened self-interest that recognizes interdependence, values relationships, acknowledges legitimacy in the other side, and shares goals of fairness and efficiency.

The facilitative mediator does not make recommendations to the parties, give his or her advice or opinion as to the outcome of the case, or predict what a court would do in the case. The mediator is in charge of the process, while the parties are in charge of the outcome.

Transformative Mediation

This approach to mediation is one in which disputants have the opportunity to increase their own capacity to work through their own problems and to understand the perspectives of others. The focus of this kind of mediation is on helping individuals experience personal growth, find their personal strengths, think through their points of view, understand the need for and consequences of decisions, and make and take responsibility for decisions.

This kind of process is intended to generate empowerment (increase in personal capacity) and recognition (acknowledgement of and empathy toward the other) and become a transformative experience through which individuals increase their personal sense of power, capacity, and effectiveness while also reaching beyond their own perspective and interests to understand the other person's perspective. The emphasis is on the healing of reconciliation rather than on reaching mutually satisfying solutions or settlements.

In transformative mediation, the parties structure both the process and the outcome of mediation, and the mediator follows their lead.

Styles of Mediation continued...

Evaluative Mediation

Evaluative mediation is a process modeled on settlement conferences held by judges. An evaluative mediator assists the parties in reaching resolution by pointing out the weaknesses of their cases, and predicting what a judge or jury would be likely to do. Evaluative mediators are concerned with the legal rights of the parties rather than needs and interests, and evaluate based on legal concepts of fairness.

There is an assumption in evaluative mediation that the mediator has substantive expertise or legal expertise in the substantive area of the dispute. The evaluative mediator structures the process, and directly influences the outcome of mediation.

There is room in mediation practice for all of these styles. Each one has its usefulness and place in the world of dispute resolution. Some practitioners believe these styles are more a continuum than distinct differences, from least interventionist to most interventionist. Most mediators probably use a combination of these styles, depending on the case and the parties in mediation, as well as their own main approach to mediation.

"...mediation's greatest value lies in its potential not only to find solutions to people's problems but to change people themselves for the better, in the very midst of conflict..."

...through mediation, people find ways to avoid succumbing to conflict's most destructive pressures: to act from weakness rather than strength and to dehumanize rather than acknowledge each other..."

Robert A. Baruch Bush & Joseph P. Folger