



What are the main Methods / Styles of Mediation?

When you engage in the Mediation process there are 3 main Methods / Styles of mediation that you can expect a mediator to use, namely “Evaluative”, “Facilitative” & “Concord”. In this short article we are going to briefly look at each style.



Ever increasing interest in the whole area and process of Mediation accentuates the lack of clarity of understanding of what mediation is all about and how it works. Is it – as we have asked before – merely another legalistic layer in the litigation process, at one

extreme, or, at the other, a type of counselling of parties to assist them in resolving their dispute. The answer is that, while it can be either, it usually lies between these extremes. Textbooks seek to define Mediation by reference to what is called “Evaluative” on the one hand and “Facilitative” on the other. Such attempts at definition limit the perception and thus the effectiveness and the possibilities of the process. Efforts at definition or codification often have the effect of calcifying rather than clarifying. “Transformative” is another term that people have used to try to give the meaning of what it is all about and have sought to define this in terms that it allows the disputing parties themselves to agree upon a resolution process they design themselves.

At Mediate Ireland we subscribe to all of the processes that might best lead to resolution of disputes in the context of how the particular dispute is presented to us. We do not get involved in debate or argument as to which method is “best” or what is the “right way” (or, the “wrong way”) of mediating. Our philosophy and standards have evolved from in-depth study and from practices that have worked in the past and that we believe to be most effective. It also highlights what we believe the mediation process should do for people, how it can be done and why going through this process is a good idea – this will always be by reference to practices that best fit the clients’ situation and their expectations for dispute resolution. This is called “concord” mediation which comes closest to defining processes that fit with our philosophy and allow full consideration of clients’ situation and expectations.

You want mediation to have the effect of your dispute being resolved quickly, cost-effectively and successfully. “Concord” Mediation seeks to satisfy this need in the context of its philosophy and your situation.

EVALUATIVE MEDIATION

Evaluative Mediation is often thought of as being more “hands on” in terms of the mediator suggesting feasible outcomes and actively trying to bring the parties to a resolution. An unskilled evaluative mediator runs the risk of just telling people what to do and calling it mediation. Mediation must avoid becoming adjudication, arbitration or glorified legal settlement. The draft Mediation & Conciliation Bill, 2010 may have the effect of a perception arising that Mediation will be “forced” because Judges and County Registrars will be able to order it in certain circumstances. This may lead to an idea that there will be a new market around



solving disputes; there will – and the new market will need new tools. The old tools used in litigation and legal settlement will not work. Mediation is not adjudication.

FACILITATIVE MEDIATION

The general perception of Facilitative mediation is the Mediator is focused on facilitating the disputing parties in coming to a resolution on their own. However, the fact of someone calling themselves a facilitative mediator doesn’t automatically mean that they are helping someone. Mediation must avoid becoming counselling through overzealous facilitation. When a mediator perceives a need or desire for counselling as an alternative he or she should immediately discuss and recommend it to the parties and bring the mediation to a conclusion. Mediation is not counselling.



Many models of mediation adopted presuppose that the process is likely to take a number of mediation sessions spread over a period of weeks or months. We do not say that this is right or wrong, in fact on the face of many disputes it would seem to make eminent good sense. However, it can very open-ended and provide parties with an excuse not to seriously face the issues. It is time consuming and, ergo, costly.

Evaluative mediators can at times be guilty of mischaracterizing the work of facilitative mediators and vice versa – there is tremendous worth and value in both approaches and all need to do better at recognizing the value that different styles bring. Concord mediation seeks to emphasise the value or values, from wherever they come that can be matched with the interests of well-informed participants.

CONCORD MEDIATION



Concord Mediation fully subscribes to the fact that the best resolution is one that the parties can easily sign up to in terms of it being “their own” but also recognizes that we have a role in suggesting feasible outcomes and helping parties to consider options that might not otherwise have arisen. Mediate Ireland, adopting

the concord approach comes from a position that most disputes, not all, can be resolved in a short period. A single day is our point of reference – but always making due allowance that it may take a bit longer, or even be concluded within a shorter period of hours. Concord Mediation seeks to bring the best practices of the evaluative, facilitative and transformative methods into a structured process that can be complied with and followed throughout such a specific time period. Thus can resolution be achieved very quickly and cost effectively.

The philosophy underpinning concord mediation emphasises key principles of a mediator’s mediation practice standards. These practices are usually ones that have worked in the past and that the mediator believes to be most effective. Such principles include: participant empowerment; confidentiality; effectiveness; neutrality; trust.

They also highlight what the mediator believes the mediation process should do for people, how it can be done and why going through this process is a good idea.

Our key principle is peacemaking: our methods permit the mediator to work with the parties, solicitors and counsel in private confidential settings, which facilitate building rapport and trust—the keystones of peacemaking. We seek to open the doors to conciliation, peace, and healing. A mediation has failed if the parties, although reaching settlement, walk away angry and feeling abused.

Concord mediation is inclusive of the best elements of evaluative, facilitative and transformational mediation with due regard to people's need for quick and cost-effective methods all within a context of successful resolution.

SO WHAT DOES THIS ALL MEAN?

Mediators tend to feel strongly about these three styles of mediation. Generally speaking organizations that train and accredit mediators and set standards for mediation - from national and state mediation organizations, and legislative and judicial mediation programs - are silent on this issue of method. Some prohibit evaluation, and a few require it. For example, the Mediation Council of Illinois - Best Interests of Children states: *"While the mediator has a duty to be impartial, the mediator also has a responsibility to promote the best interests of the children and other persons who are unable to give voluntary, informed consent If the mediator believes that any proposed agreement does not protect the best interests of the children, the mediator has a duty to inform the couple of his or her belief and its basis."* **Mediate Ireland** is very conscious of such a duty in its mediation of family law matters and other situations that involve children and people with disabilities.



Another example of these strong feelings is found in a review of Florida's professional standards for mediators. The committee got stuck on the issue of evaluation in mediation. The then rules were *"a mediator should not offer information that a mediator is not qualified to provide" and "a mediator should not offer an opinion as to how the court in which the case has been filed will resolve the dispute"*. The committee came out with two options for a new standard on this issue: Option One would prohibit giving opinions except to point out possible outcomes of the case; Option Two states that the mediator could provide information and advice the mediator is qualified to provide, as long as the mediator does not violate mediator impartiality or the self-determination of the parties. After receiving comments on these two options, both were withdrawn and the committee tried again. The comments were many and strong. Eventually, the new rule was written to reflect Option Two.

This has been addressed in the **Draft Mediation & Conciliation Bill, 2010** in that it provides a differentiation between mediation and conciliation and processes where under a more evaluative approach can be adopted by the mediator when and if the parties agree that the mediator should act as conciliator. The approach of **Mediate Ireland** is to adopt the Concord approach and if that evolves to a situation in which the parties agree to the mediator acting in a more evaluative way, as conciliator, then such agreement can be adopted.

A concern of people thinking of embarking on a mediation process to resolve their dispute, and of their solicitors and barristers, is that they do not know what they may get when they end up in a mediation setting. Some people feel that mediators ought to disclose prior to clients appearing in their offices, or at least prior to their committing to mediation, which style or styles they use. Other mediators want the flexibility to decide which approach to use once they understand the needs of the particular case. **Mediate Ireland** consider this flexibility to be of the utmost importance in that the evolution of any particular mediation will in itself dictate the process that will be appropriate. The establishment of a good relationship between the mediator, the person in dispute and their representatives, under Concord principles will serve as its own guide as to which of the established processes emerges as most appropriate in the particular case.

We believe these styles are guideposts rather than distinct differences in the evolution of any given mediation - from least interventionist to most interventionist. Most mediators use some facilitative and some evaluative techniques, based on individual skills, experience and predilections and the needs of a particular case. We have found that the more "boxed in" a mediation becomes - like where perceived legal information or positions are taken too seriously and where the whole process is perceived as being either evaluative or facilitative - the less importance is given to possible resolutions coming from the parties themselves. We focus strongly on what the parties say and how they say it; what their interests are as opposed to the stated issue; what their real needs are - so that possible resolutions coming from them are always highlighted. **Such resolution coming from the parties themselves** are always much more valuable, deeper and provide the basis of a more lasting solution. **Concord Mediation** as used by **Mediate Ireland** mixes the various techniques, rather than focusing on any one of them, so that the resolution of the dispute can evolve in its own time and way with facilitative, evaluative and transformative being interwoven in the process as it develops.

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Mediate Ireland brings people together to resolve their disputes, QUICKLY, COST EFFECTIVELY, and CONFIDENTIALLY, because people want to move on with their lives.

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