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Comparing The 3 Major Styles Of Mediation

By Nicole K. Levy | October 14, 2018

Mediation

Divorce mediator Nicole K. Levy reviews compares and contrasts facilitative mediation, evaluative mediation and transformative mediation.



Mediators use a variety of techniques to resolve legal disputes. Indeed, mediation is a craft that can be executed in different ways, depending on a mediator's expertise, the preference of the clients, and the nature of the dispute in question. While differences in personalities and techniques make it **important to find the right mediator for your situation**, it's important for clients to understand that multiple mediation styles can be effective. Understanding the primary mediation approaches is an **important tool** for prospective mediation clients who are uncertain about the process.

1. Facilitative Mediation: The Standard Approach

Facilitative mediation is the backbone upon which every mediation is built. In facilitative mediation, a mediator's goal is to create a facilitative environment where both sides of a dispute can speak relatively openly about what they agree on and where they disagree, and then bridge the gap through direct communication, with the mediator acting as a facilitator. Compared to the other mediation methods described below, facilitative mediation tends to include a hands-off approach. Facilitative mediation is built on the premise that by understanding the areas in dispute, each party will make compromises to resolve the dispute through a mutually beneficial resolution. In short, facilitative mediation depends on direct compromise. Accordingly, facilitative mediation requires parties to communicate reasonably effectively about the issues in dispute and their respective goals. Even if participants' goals are divergent, facilitative mediation achieves compromise by enabling each party to be heard, and through the mediator's assistance in understanding the opposing party's interests and goals. In facilitative mediation sessions, the parties are likely to find themselves

talking together in a conference room with the mediator sitting between them, occasionally asking questions to move the process along, and assisting each participant in sharing views in a manner that the other party can understand, relate to, and respond to. A facilitative mediator also assists with procedural questions that arise, while re-framing interests and positions in manner that enables each party to understand both their own goals, and the other's goals, in the context of a negotiated compromise. Facilitative mediation is generally the simplest form of mediation, in part because the mediator's role is to merely act as a "referee" and communications coach, while avoiding sharing opinions that a participant may view as favoring one party or the other's position(s).

2. Evaluative Mediation: Offering Objective Opinions to Participants

Evaluative mediation tends to be more hands-on than facilitative mediation, with a primary focus on the goal of preparing a final agreement. In the family law mediation context, evaluative mediators are often lawyers with significant experience with divorce and child custody matter, including an ability to forecast the likely outcome if the matter were decided in a courtroom. The predictive element of evaluative mediation – in which the mediator evaluates the merits of each participant's position and provides direct feedback to the parties on which position is objectively more likely to succeed – can help deeply entrenched opponents who require outside assistance to break a logjam. Evaluative mediation is also often effective for legally or informationally sophisticated participants by providing each party with objective feedback that weighs the relative pros and cons of each argument. Somewhat paradoxically, evaluative mediation can help participants **avoid litigation** by placing their trust in an agreed-upon authority, whose opinion can serve as a substitute for a judge. By their nature, an evaluative mediator is not shy about offering his or her opinion on the outcome of a divorce or custody matter, should the parties turn to litigation. This frank opinion sharing allows the parties to get some insight as to how their position may be heard by the court, and whether it is worth pursuing a hard position or adopting a compromise. Indeed, a credible third-party opinion can often allow one or both sides to shift their position. An evaluative mediator is also helpful for providing guidance when participants are unsure how to resolve an issue, or if there are concerns that a judge may not approve an agreement as fair and reasonable. It's not unusual for facilitative mediations that become stuck on a single issue to incorporate evaluative mediation to break the logjam on the issue in question. However, mediators and participants must be cautious about abrupt shifts between facilitative and evaluative mediation styles, where evaluative mediation often includes the mediator expressing favor towards one party's objective position. The primary challenge with evaluative mediation centers on the mediator's **impartiality**. When a mediator articulates a preference for one participant's view, the other party may question the mediator's

impartiality. Before offering evaluative opinions, it is important for each party to understand and agree to the mediator's role. The evaluative method will not be a good fit for every divorce or family law mediation.

3. Transformative Mediation: Reaching Resolution by Correcting Power Imbalances

Like facilitative mediation, transformative mediation focuses on reaching resolution by improving the communications of participants. However, where a facilitative mediator asks questions that nudge the parties towards a mutually beneficial outcome, transformative mediators focus instead on the nature of the relationship itself. Transformative mediators seek to transform the relationship (and the conflict that has formed within the relationship) by empowering the parties and working to equalize unhealthy communication styles or power dynamics. Transformative mediators try putting both sides on an equal playing field, so they can better understand each other's positions and interests, and move closer towards a resolution. Transformative mediation is most effective when one party is reluctant to engage in mediation due to a power disparity, **lack of boundaries**, or informational imbalance that both parties acknowledge. For example, in a **high net worth divorce** where one spouse has a significantly superior knowledge of finances, the less sophisticated party may feel that he or she simply cannot achieve a fair outcome without an attorney providing advocacy. Similarly, transformative mediation can be effective in **high conflict divorce cases** where the facilitative method breaks down. Transformative mediation can help bridge the informational gap, power disparity and/or sophistication gap to enable two spouses who want to mediate their divorce to do so on relatively equal footing, despite such barriers. Transformative mediation can be incredibly beneficial in **child custody cases**, where one party has very limited parenting time, as well as divorce cases in which there is a significant discrepancy in financial resources, knowledge or expertise. In many cases, transformative mediation is a solution for individuals who are reluctant to mediate due to their perceived inferior position. To be effective, however, the "superior" position party must generally be prepared to acknowledge the uneven power dynamics and agree to a mediation style that seeks to re-balance the parties' positions. Transformative mediation often starts with the mediator observing the parties as they argue or talk through their issues. As the sessions progress, the mediator will begin to provide feedback – not just on the issues discussed, but on the communication styles, personalities and power dynamics the participants exhibit. The mediator will then critique the participants' approaches and communication styles, seeking to equalize the negotiation. Transformative mediation is **not therapy**, where it is not the mediator's job to improve the parties' relationship in a truly lasting way. Rather, transformative mediation focuses on equalizing the parties' negotiating power in a controlled setting for the specific

goal of resolving the legal dispute. (Any deeper benefit participants receive is incidental, if not uncommon.) Transformative mediation is the most complicated mediation style, as well as the most potentially problematic. By seeking to equalize the power dynamics between the participants, the transformative mediator approaches the line of advocacy for one participant. For transformative mediation, it is critical that both parties agree that the relationship dynamics pose a barrier to resolution, and each agree that the transformative approach is appropriate and necessary.

No Style is Exclusive

Of course, these mediation styles are by no means mutually exclusive. Even if a mediation is almost entirely facilitative, there are likely to be occasions where the parties ask the mediator for an evaluative opinion on a particular subject. Similarly, a mediator who is seeking to facilitate communication will often draw on aspects of transformative mediation in order to assist the participants in understanding each other's perspectives, [interests and positions](#). Meanwhile, every evaluative or transformative mediator is continually drawing on aspects of the facilitative mediation that forms the backbone of all forms of mediation.

Notice, Consent and Communications Are Key

It may sound simplistic, but the key for any mediator is to avoid surprises for the clients. Transformative and evaluative mediation are often highly effective techniques, but it is essential that clients understand and agree before a mediator deviates dramatically from the traditional facilitative mediation approach. If you are unsure what technique your mediator is employing, [be sure to ask questions](#).

Call for more information today at (781) 253-2049. ***Nicole is a divorce mediator and mediation coach for South Shore Divorce Mediation, with offices in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a collaborative law attorney Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Nicole is a statutory mediator under M.G.L. Ch. 233, s. 23C and a proud member of the Massachusetts Council on Family Mediation. To read more from Nicole Levy, check out [her author page on the Lynch & Owens Blog](#).***

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