

Best Practices

What is mediation?

OVERVIEW

Mediation is a process in which the people engaged in a dispute work it out to their own satisfaction, using the help of a neutral third party. Through mediation, parties in dispute talk with each other until they find a mutually acceptable resolution. It does not matter whether that resolution would stand up in court or meet other external standards.

Mediation is becoming increasingly common in resolution of disputes because “flattened pyramids” have spread authority throughout organizations and communities. This means that when disputes and conflicts take place, it is very likely no one person or office can solve them by a simple mandatory decision.

Since our work at Roberts & Kay often involves assisting people in developing new processes or projects, in the past we rarely began work with clients in situations where conflict is already a clear feature of the work. We learned to mediate the differences that emerged as the work unfolded.

Now we are working to develop new skills that will make it possible for us to expand our mediation work in the public arena. (See CDR workshop description on page 2.) We are expanding our services to include serving as neutral mediators for people and organizations that are already in the midst of disputes.

Mediation operates on the principle that given the right conditions, people are capable of making the important choices that affect their lives and do not need external authorities -- such as the courts -- to impose solutions for the sake of order. For many disputes, mediation is a powerful improvement over litigation in the adversary system, offering parties in dispute a more humane, direct route to settlement. We view mediation as a sound addition to our other work in support of democratic practices in workplaces and communities. In this issue of *Best Practices* we offer more information about mediation.

mediation

Take any number of parties in dispute. Add a skilled, neutral mediation team.

The result: people with improved chances of resolving their own disputes satisfactorily.



Roberts & Kay, Inc. presents Best Practices, a publication highlighting progressive strategies that will serve both private and public sector organizations in the next decades.

BENEFITS

Mediation Fundamentals

In April, 1994, we were two of the "Boulder Eleven," a group of Kentuckians who journeyed west for a week-long workshop on environmental and public policy mediation in Boulder, Colorado. The Kentucky Environmental Mediation Task Force chose CDR Associates for its members' training after assessing the leading national mediation training organizations.

CDR began work in mediation in 1978. Partner Chris Moore wrote *The Mediation Process*, published by

Jossey-Bass, an excellent and practical guide. We were impressed with both the quality of the training and the demonstrated depth of experience of the CDR staff.

We are excited about the prospects for settling disputes through mediation. We see great benefits for individuals, groups, and communities that learn to resolve conflicts with less acrimony, and less lingering bitterness.

The following overview reflects some of what we learned from CDR.

What are the advantages and benefits of mediation?

In contrast with litigation, mediation can cost less and can lead to quicker settlement of disputes.

People who participate in mediation create their own solutions, so they are usually more satisfied with the solutions and more likely to carry out the terms of the solution.

In comparison to litigation, people in mediated disputes feel more in charge of the outcomes and often feel a greater sense of personal power.

After experiencing mediation, people have better problem solving skills to use in other situations. They are also more likely to be able to continue working relationships with others involved in the dispute, if need be.

Finally, mediation produces more creative solutions to disputes, with each side more likely to find the solution satisfactory.

When is mediation appropriate?

Mediation is becoming more common in the public sphere in arenas such as the environment, public works, health care, and school policies. Mediation also works with issues in the private realm: families, health care issues, construction and building problems, personal injury, and small claims. Here are some factors that make mediation more likely to succeed:

- ❖ The people in dispute (the parties) truly want a settlement.



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- ❖ The parties may have to be in ongoing or future relationships with each other.
- ❖ Each party is willing to have a third, neutral party involved in the issue.
- ❖ The parties have external reasons to want a settlement: time pressures, money issues, or fear of negative changes in circumstances.
- ❖ The parties have resolved some issues or cooperated in the past, and do not have a long history of fighting with each other.

What's so smart about mediation?

Three critical communication mechanisms distinguish mediation from other forms of dispute resolution. First, and most important, most people behave differently, and more reasonably, when talking with opponents face to face, assisted by a skilled, neutral person they don't know.

Second, as described by Roger Fisher and William Ury in their ground-breaking book, *Getting to Yes*, a mediator assists parties in discovering and talking about their interests, not just their positions. For example, members of a neighborhood group insist they need a traffic light at an intersection. That is their position. Their interest is safe entry and exit. If traffic engineers can find other ways to meet their interest (speed bumps, reduced speed limit, stricter enforcement of the speed limit) the neighbors will be satisfied.

Third, mediators learn to listen to angry and accusatory statements and “reframe” them, translating the essential information from one party to the other, while leaving the anger and accusations behind. For example, one party might say “Those so-and-so's leave the *?@\$ lights on all night at the park, and I can't sleep.” A mediator might reframe this as “So you're saying that the lights from the park are so bright that they bother you when they are left on after you go to bed.” The central message is heard; the anger, having been expressed, need not elicit angry statements in return.



"Conflict is not a contest. Winning and losing are goals for games, not for conflict. Learning, growing, and cooperating are goals for conflicts."

The Magic of Conflict

IN PRACTICE

Mediation in practice

A neighborhood association in Lexington hired a firm to plant street trees and agreed to pay \$10,000 for the work. The parties signed no contract. The firm encountered unexpected difficulty, and submitted a bill for roughly \$14,000 to the association. The association's position was that they had agreed on a price and they would pay no more. The firm's position was that the work had required more than initially understood, and they should be paid full value for their work. In mediation, the firm recognized its interest in maintaining goodwill in the neighborhood, and the neighborhood recognized its interest in maintaining goodwill with the firm. The parties discussed alternatives to their initial positions, seeking to meet their interests. They formed an agreement that provided for payment of \$11,000 to the firm and provided the firm free advertising worth roughly \$500 in the neighborhood association newsletter. Both parties view the settlement as positive. The neighborhood association avoided an adversarial proceeding and a bad relationship with a local firm. The firm turned a potential bad will and bad publicity situation into a goodwill situation with the potential for additional business.

Resources

Thomas Crum. *The Magic of Conflict*, New York, Touchstone, 1987.

Roger Fisher and William B. Ury. *Getting to Yes*, Boston, Houghton Mifflin Co., 1981.

Christopher W. Moore. *The Mediation Process*, San Francisco, Jossey-Bass, 1986.

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In Dispute?
Think Mediation.