



Advance with the Times: Choosing Suitable Mediation Tools & Achieving Results

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Remarks

- Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution Results and Implications
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Maryland Evaluation

- ▶ Pre and Post Surveys to compare **attitudes and changes in attitudes** of participants who went through ADR to an equivalent comparison group who went through the standard court process.
- ▶ Coding of mediator interventions to evaluate **effectiveness of various mediation strategies** on short-term and long-term outcomes



Statistically Significant Findings

- ▶ Those who went to ADR, *regardless of whether they reached an agreement*, are more likely to report:
 - ▶ They could express themselves, their thoughts, and their concerns
 - ▶ All of the underlying issues came out
 - ▶ The issues were completely resolved (rather than partially resolved)
 - ▶ They acknowledged responsibility for the situation
 - ▶ They increased their rating of level of responsibility for the situation from before to after the intervention
 - ▶ They disagreed more with the statement “the other people need to learn they are wrong” from before to after the process



Significantly Significant Findings cont.


- ▶ Participants who developed a negotiated agreement in ADR were more likely to be satisfied with the judicial system than others (*including those who reached a negotiated agreement on their own*)

Participants who went through ADR more likely 3 – 6 months later to report

- ▶ Improved relationship & attitude toward the other participant
- ▶ The outcome was working
- ▶ Satisfaction with the outcome
- ▶ Satisfaction with the judicial system



Mediator Strategies -- Studied

- Reflecting – reflecting emotions & interests
 - Eliciting – asking participants to suggest solution; summarizing solutions that have been offered; asking participants how those solutions might work for them
 - Offering/Telling – offering opinions; advocating for their own solutions; offering legal analysis
 - Caucusing – meeting with each side of the case separately and privately
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Mediator Strategies -- Results

- ▶ Reflecting Strategies
 - ▶ Positively correlated with participants reporting:
 - ▶ The other person took responsibility and apologized
 - ▶ Increase in self-efficacy
 - ▶ Increase from before ADR to after ADR that court cares
- ▶ Offering Strategies
 - ▶ Long term – the more offering strategies used, the **less** participants report
 - ▶ Outcome was working
 - ▶ Satisfaction with outcome
 - ▶ Recommend ADR
 - ▶ Change in approach to conflict



Mediator Strategies -- Results

▶ Eliciting

- ▶ Positively associated with reaching an agreement
- ▶ Positively correlated with participants reporting
 - ▶ They listened and understood each other & jointly controlled the outcome
 - ▶ The other person took responsibility and apologized
- ▶ Long term – participants were more likely to report a change in their approach to conflict and were less likely to return to court for an enforcement action



Mediator Strategies - Results

- ▶ Caucus

- ▶ More time in caucus =

- ▶ participant reports that the ADR practitioner controlled the outcome, pressured them into solution, and prevented issues from coming out
 - ▶ Increase in sense of powerlessness, increase in belief that conflict is negative, and increase in desire to better understand the other participant


- ▶ Long term: More time in caucus, more likely the case will return to court for enforcement AND

- ▶ **less likely** for participants to report

- ▶ Consideration of the other person
 - ▶ Self-efficacy
 - ▶ Court cares



Implications

- ADR (mediation) is effective as an intervention – not just because it is not court
 - Supports what we know intuitively about “supportive/facilitative” versus “directive/evaluative” mediator interventions
 - Underscores result of “overuse” of caucus
 - Length of time needed for mediation
 - Lessons for training and qualifications
 - If need for evaluative processes, create options
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Minnesota Court Rule (114)

Current ADR Processes

- Adjudicative
 - Arbitration
 - Consensual Special Magistrate
 - Summary Jury Trial
- Evaluative
 - Early neutral evaluation
 - *Non-binding Advisory Opinion*
 - Neutral Fact Finding
- Facilitative
 - Mediation
- Hybrid
 - *Mini-Trial*
 - Mediation-Arbitration (Med-Arb)
 - Other

Proposed ADR Processes

- Adjudicative
 - Arbitration
 - Consensual Special Magistrate
 - Summary Jury Trial
- Evaluative
 - Early neutral evaluation (**FENE & SENE**)
 - Neutral Fact Finding
- Facilitative
 - Mediation
- Hybrid
 - Mediation-Arbitration (Med-Arb)
 - **Parenting Time Expediting**
 - **Parenting Consulting**
 - Other