Applying The Hawaiian Mediation Model
To Disputes and Conflicts

11 Interspectives 40 (1992)

John Barkai

Introduction

In its simplest form, mediation is a conflict resolution method in which a mediator helps two people negotiate a voluntary solution to their dispute. What makes mediation different from other third-party dispute resolution processes is that the mediator does not have the power to decide who "wins" the dispute or what the solution should be.

The mediator is neutral and provides nonjudgmental management of the negotiation process. Even though the mediator has no power to decide, mediation is a powerful and successful dispute resolution process. The majority of mediated conflicts result in negotiated solutions that are satisfactory to all the disputants. Statistics from mediation centers indicate that approximately 85 percent of the mediations end in agreements. Even if there is no mediated solution, the disputants are no worse off than before the mediation.

A Basic Model of Mediation

The basic mediation process can be most clearly identified in its purest form by looking at the mediation of minor disputes. Mediators of minor disputes devote their attention to managing the mediation process and using techniques which allow the disputants to 1) identify, clarify, and communicate the issues and interests in dispute, 2) effectively negotiate with each other, and 3) structure a settlement that is fair and workable from their perspectives.

Especially in minor disputes, the mediator has no way of knowing what a fair and workable settlement would be from the disputants' perspectives. In addition, there is no legal standard by which to judge, for example, how much noise to too much for the neighborhood or how the children of the neighbors should relate to each other. Because the disputants have to live with any negotiated agreement, the disputants (not the mediator) are the people in the best position to decide what is the best, most workable solution.

The native Hawaiian people had their own family problem solving process called Ho'oponpono. [See, V. Shook, Ho'oponpono: Contemporary Uses of a Hawaiian Problem-Solving Process. Honolulu: University of Hawaii Press (1985).] This article, however, focuses on the contemporary, community mediation process in Hawaii. Formal mediation began in Hawaii in 1979 with the establishment of the Neighborhood Justice
The following model of mediation was developed over more than a decade and thousands of mediations at the NJ. The mediation model presented here has been revised and refined as a result of the experiences of many volunteer mediators and almost countless mediator trainings.

The Core Process

The core process of mediation is designed around two central tasks: 1) defining the problems, and 2) negotiating solutions. When teaching mediation in Hawaii, the mediation process is conceptually divided into two phases referred to as the "Forum" and the "Negotiation." Each phase is in turn divided into three stages.

The Forum includes: 1) the mediator's opening statement, 2) the disputants' statements, and 3) private meetings called "caucuses" with each disputant to discover all the issues and interests important to a fair, workable solution. The Negotiation includes: 1) a second round of private caucuses with each disputant to define options and begin the bargaining, 2) a joint session with all disputants to negotiate the general terms of the agreement, and 3) a drafting session that results in a specific, written agreement. Such a mediation process can be diagramed as two triangles, each with three layers, as seen below.

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A. The Forum Phase

The Forum phase, represented by the top triangle, starts with the mediator's opening statement, then allows each disputant to tell their view of the conflict, and finally moves to caucuses.
with each disputant. In the mediator's opening statement, the mediator first convenes the meeting by discussing the voluntary, confidential, and impartial nature of the process. In addition, the mediation process is described generally (especially the confidential caucuses), and it is stressed that the mediator will not issue a decision as a judge would in court. Next, in the disputants' statement stage, each disputant is asked to make a short statement about their view of the conflict and the other disputant is asked to not interrupt. Finally, the mediation moves into a series of confidential caucuses with just the mediator and one of the disputants present. As the mediator process moves to the caucus stage, the upper triangle has its widest part, signifying the increasing amount of information that becomes available to the mediator and the disputants as issues, positions, interest, feelings, and hidden agendas are discussed and clarified in the caucuses.

The full development of facts and feelings in the Forum phase offers the greatest opportunity to create in the Negotiation phase a cooperative, integrative solution - what some people refer to as a "win-win" solution. As the mediator uses this Forum phase to learn the history of the conflict, the disputants often focus on just the facts which support their view of the conflict. In both joint meetings and especially in the caucuses, the mediator probes beyond the apparent facts to learn the disputants' underlying interests and feelings about the conflict. During the Forum, the time focus is on the past and the present.

B. The Negotiation Phase

In the Negotiation phase, represented by the second, inverted triangle, the mediator shifts the focus to the future and assists the disputants to negotiate solutions based upon their interests. The Negotiation usually begins with another series of caucuses. The caucuses are used to move the disputants off their current negotiating positions by asking them to brainstorm possible solutions to the problem. Mediators can use a number of techniques to narrow the differences between the disputants and allow them to save face. Common mediator tactics are to review the good parts of the prior relationship, create doubts, stress the consequences of no agreement, provide reality testing about proposed solutions, and emphasize the progress that has been made. Several caucuses may be necessary.

When the disputants appear ready to bargain effectively face-to-face, the mediator brings the disputants together for a joint meeting. Although the mediator may still manage the bargaining as mutual concessions are proposed and accepted, the disputants are encouraged to negotiate directly with one another. Finally, as the disputants work out the solution, the mediator assists them by drafting a written agreement that is balanced, specific, complete, workable and in the disputants' own words.

C. A Communication Focus

Throughout the entire mediation process, Hawaiian mediators use facilitative communication techniques. During the Forum, the mediators try to get the disputants to reveal and clarify their interests and express their feelings by using various communication techniques such as open-ended questions, clarifying questions, and active listening. Mediators often summarize to acknowledge what the disputants have said, to prevent repetitive accounts, and to check their
understanding of what the disputants mean. They use active listening to acknowledge the disputants' feelings because feelings can be as important to a solution as the facts. Mediators also "reframe" the disputants' language to eliminate blame and the attribution of motives.

A fundamental hypothesis of Hawaii community mediation model is that the disputants are in charge of their own dispute. Hence, during the Negotiation phase the disputants are expected and encouraged to create their own solutions to the conflict. Acting under the assumption that disputants are more likely to move from their entrenched negotiation positions towards mutually acceptable solutions if the basis of the solutions comes from a disputant's own mouth rather than if suggested by someone else, mediators are taught to refrain from giving advice. Hence, rather than make direct suggestions to the disputants, mediators ask well crafted questions that are intended to stimulate the creative thinking of the disputants.

The Neighborhood Justice Center

The basic mediation model described in this article is used in many different types of disputes in Hawaii, including complex, multi-party construction cases in court, bitterly contested divorce proceedings, minor neighbor-neighbor disputes, and for playground conflicts mediated by grade school children. When the mediation is done at the Neighborhood Justice Center [now called the Mediation Center of the Pacific], the mediators are community volunteers from a wide variety of backgrounds and professions, who mediate without compensation. All such mediators have gone through at least 40 hours of training using role plays and debriefing sessions as the primary teaching techniques. Finally, at the NJC all mediations are done with two mediators in a process called "co-mediation."

Conclusion

The process of mediation has been used for thousands of years to resolve conflicts. In some parts of the world, mediation is considered to be the same as, or similar to, conciliation. Whatever its name, at its core is a voluntary process used to help two or more disputants negotiate and settle their differences. The article has described a basic model of mediation taught to community mediators in Hawaii and adapted to a wide variety of disputes. The people of Hawaii have made it their own process.