

Mediation Planning

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Diana Mercer
Attorney-Mediator
Peace Talks Mediation Services
8055 W. Manchester Ave., Suite 201
Playa del Rey CA 90293
(310) 301-2100

Diana Mercer, Attorney-Mediator, is the founder of Peace Talks Mediation Services in Los Angeles (www.peace-talks.com) and the co-author of *Your Divorce Advisor: A Lawyer and a Psychologist Guide You Through the Legal and Emotional Landscape of Divorce*, (Fireside 2001).

Mediation planning helps you become a strategic mediator. No longer just grateful that a client has come in the door, and no longer flying by the seat of your pants, you're thoughtfully planning out your office procedures, case management procedures, and your actual mediation sessions in a thoughtful and ever-expanding way.

We were introduced to the concept of the strategic mediator by Forrest Mosten at his May 2004 advanced family mediation training. Mosten is also quick to credit Christopher Moore's *The Mediation Process* (Wiley/Jossey Bass 2003) and Michael Lang and Allison Taylor's *The Making of a Mediator*. (Jossey Bass 2000) with these ideas and we've summarized them here before telling you what we're doing in our own practice.

A strategic mediator approaches each mediation as follows:

- Develop a theory;
- Develop a goal for the case (in most cases, the goal is an agreement);
- Develop a strategy to get to the goal (you may do this individually for each issue);
- Develop an intervention based on the strategy;
- Reflect on what went well and what the mediator could have done; differently after the parties are gone.

Each strategy may have many possible interventions, but it's good to have a few thought out beforehand.

A strategic mediator is also thinking about:

- The next statement or action to create baby steps toward agreements;
- How to create awareness of the progress and underlying interests;
- How to motivate discussions;
- How to guide without directing;
- Giving the parties the best opportunity to agree.

The plan is to move along the continuum of mediator competence (adapted from *The Making of a Mediator*, Michael Lang and Allison Taylor, Jossey Bass 2000):

- Apprentice:** unconscious incompetence
- Novice:** conscious incompetence
- Practitioner:** unconscious competence
- Artist:** conscious competence

Preparing for a Session

At least an hour before clients come in, start by being debriefed by your Dispute Resolution Associate (DRS) about his or her telephone experience in convening the case to date. How the clients have behaved on the telephone, what they've told the DRS and how they've told it, and what they've failed to tell the DRS can all provide clues as to what we might be facing in the mediation room.

The next step is to set the intention and to make sure the office is set up to be client-centered. The idea is to have the space and physical environment set the tone for calm and peace.

Before the clients arrive, we get comfortable, adjust the room setup and make sure the water pitcher and snacks are ready. If it's a second or third appointment, we discuss the last session and develop a probable agenda. The mediators define their own agendas and consider likely impasses and agreements so that we're prepared for what may come up during the session. We distribute copies of previous mediation summary letters so clients can mark on them as we fine-tune previous tentative agreements.

When clients arrive, they're offered a seat in the client library or in a caucus room. Our Dispute Resolution Associate offers them coffee, tea, and sodas. We make a fresh pot of coffee if it's the afternoon. The client library is stocked with hard copies of our worksheets and forms, books on divorce, mediation, and parenting, and it also has videos like *Children, the Experts of Divorce* and *it's Still*

Your Choice. There is a landline telephone clients can use as well as a table to write on. It's not uncommon for some participants to be chronically late – after all, conflict is unpleasant business-- so we make sure that early arrivals have plenty to keep them occupied while they wait.

The mediators don't greet clients except to say "hello" until both parties have arrived. We want clients to be assured that we are neutral and that we don't use one person's early arrival as a conspiracy theory opportunity. It can be a little awkward ignoring someone sitting in the next room, but most clients appreciate our explanation. After all, if we hold good boundaries with them, we'll do the same when it's their spouse who arrives first next time.

This may all sound like a bit much, but one client described it as, "There was a feeling of abundance with all the snacks and drinks and extra telephones, and I felt like I didn't have to worry about my case because there would be enough to go around." Another client said, "You're lending me a book and giving me a folder of information, but when I hired my lawyer for three times as much money, all he gave me was a piece of paper saying he was my attorney." Having a client-centered office is an important part of success in the mediation room. The mediation environment should be part of the solution, not part of the problem.

Knowing Your Customer

Most of our clients are very nice people having the worst day of their lives. As much as they have in common, they are also unique, particularly because Los Angeles presents us with a very diverse population.

Anticipating racial, ethnic, socio-economic and cultural differences and related planning

Some categories of diversity come to mind easily, *e.g.*, racial, ethnic, religious, gender and nationality issues. Others are not so quickly identified but can influence the climate in the mediation room as much or more than those which are more obvious:

- Cultures torn by war;
- Traumatized cultures;
- Persons with a traumatic personal history;
- Geographic differences between regions of one country or state, *e.g.*, New Yorker and Californian, Southerner and Northerner;
- Degree of practice within a religion, or Atheism;
- Political leanings, from Conservative to Liberal, but also lifestyle politics, like a vegan lifestyle;
- Socio-economic class.

This list is by no means exhaustive, but designed to help you think about the different issues that create diversity issues in the mediation room.

Within these diversity labels, other nuances exist which are influenced by all of the above, for example:

- Mores about openness to therapy and helping professions;
- Trust in the government;
- Trust in the court system, and justice system;
- Willingness to communicate with persons inside and outside the family about personal problems or family secrets;
- How trauma is handled;
- Parenting styles, e.g., authoritarian, laissez-faire;
- Acceptable gender roles;
- Tolerance for conflict;
- Negotiating styles.

All of these variables can influence what happens in the mediation room.

As a mediator planning for a mediation session, and using good case management, it helps to anticipate where some of the diversity issues may create conflict or impasses to settlement. To advance-plan a session with new parties based *only* on their anticipated ethnic or cultural backgrounds would likely do more harm than good, making it difficult to abandon pre-conceived notions about who the parties are likely to be as individuals once you've started to work with them. Yet, to completely ignore and fail to anticipate likely diversity issues would be equally as irresponsible.

If you find yourself working with particular groups of people often (whether it's Koreans, Jews or Southerners), it would be worthwhile to learn more about that group's culture and their norms and mores. It not only gives you insight into their culture, but also credibility in the mediation room when you can convey that you understand some of the clients' backgrounds.

This section is only a very brief introduction to a vast opportunity to explore diversity in mediation, but a fascinating line of inquiry and an opportunity to bring a higher level of artistry to your mediation practice.

Using Case Consultations

Therapists are familiar with the idea of case conferencing, and many lawyers belong to study groups. Since many mediators work alone, it is often helpful to review cases in a confidential way with our colleagues, peers and mentors.

Other examples of professional consultation:

- Continuing education and conferences;
- Case conferencing;
- Study groups;
- Mentoring and professional supervision;
- Participation in a listserv or online discussion group;
- Informal meetings and lunchtime discussions, either at your office or more formally at a meeting such as the Los Angeles Superior Court's brown bag "lunch with a judge" series;
- Case conferencing through professional organizations such as the Los Angeles Collaborative Law Association;
- Self-study and reading journals, articles, books.

As mediators, we can use case consultation groups, too. Here's how it works:

Share your case in a non-identifying way (e.g., change the names) and have a question ready that you think the group could assist you with handling. Keep the facts brief, and define what process issues are bothering you. "Brief" means less than 5 minutes.¹

The group gives input via open-ended questions ONLY. No advice or "this is what I would do." Rather, "would you consider....?" or "have you tried...?"

Conclusion

Moving from unconscious competence to artistry in the mediation room requires a dedication to lifelong learning, but sometimes the next step can be as simple as slowing down enough to proceed thoughtfully in the midst of a hectic day. A little preparation goes a long way toward success in mediation, and provides a good example for clients to follow: anticipating another's needs and meeting those needs before being asked.

¹ We learned this style of case conferencing from Forrest S. Mosten, Attorney-Mediator, at his advanced family mediation training.