

Mediation: Staying Culturally Relevant in a Multicultural World

By Nina Meierding, MS, JD

With the increased need for effective conflict resolution throughout the world, we have seen many international programs and non-profit organizations originating in the United States with the noble goal of providing assistance to other countries. In addition, mediators are venturing to other countries to help in difficult situations – social conflicts, commercial transactions, complex business disputes, custody disputes across borders, or international negotiations. And, because the United States is becoming more and more a multi-cultural nation and we are part of a global economy, mediators working in the United States are working with a variety of cultures. Yet, many of the mediators have been trained solely in a Western-style model of mediation with Western-style tools in their “toolboxes.” Even the theoretical constructs of ADR often reflect a Western model that is not always respectful of culturally diverse concepts. While using Western techniques does not inherently mean that the interventions will not be successful, it does mean that they are less culturally sensitive. Internationally, it may also be seen as the United States bringing its process to another country that already has had its own conflict resolution processes in place for generations.

In order to be culturally aware, we must first look at some of the basic differences in mediation theory and practice between different models.

Most Western mediation codes of conduct reflect the goal of mediator “neutrality” (an elusive term at best) and the importance of the mediator not being invested in the outcome of the dispute. Western mediators are very careful to disclose anything that could be perceived as a “conflict of interest” – either in a relationship with one or more of the parties or in the subject matter of the dispute.

However, many cultures follow very different belief systems about mediation. In some cultures, mediators are elders who have been chosen specifically because of their existing knowledge of the specific dispute and their interest in assisting in the resolution so that a group (tribe, community, church) will all benefit. This concept represents “collectivism” - the sense that the conflict not only impacts the “parties” involved but the community in which they live

and/or work. The mediator may use group pressure as well as his/her respected position to persuade the parties about the importance of settling the issues and restoring harmony to the larger group. This concept of a respected authoritative figure, known to all the parties, mediating a conflict in which he or she has an interest in the outcome can also apply to businesses – both in other countries, as well as international companies headquartered in the United States.

Western models also often require that the “parties” to the dispute be required to attend the mediation. If not present, an absent party may be labeled in “bad faith” and if the absentee party is a key player, the remaining parties are accused of using a tactic of “lack of authority” by not having all the essential parties present. In collective cultures, the term “parties” is constraining and restrictive. Sometimes, people who are not parties to the dispute are the ones who come to mediation while the party may not be at the mediation. This is especially true when saving face is an issue. Members of the community may resolve the dispute in a collaborative way and allow the transgressor to still retain his role and/or status within the group by not having to directly face his accuser or directly account for his own actions. The same concept applies to business – if someone has erred in his or her performance, if someone has been responsible for a breach of a contract, if someone is accused of misconduct, they may not be present at the mediation to resolve those issues. In the Western construct, a mediator would be worried that if the party did not attend they may not have “buy-in” or be “invested in the outcome.” However, this is not true in some other cultures. The pressure from the group (even away from the mediation “table”) is more instrumental than any pressure brought to bear within the process.

In addition, adding people in the Western model is oftentimes seen as complicating the mediation unnecessarily. And, yet, in collective cultures it is important that the values of the group take precedence over the needs of the individual. Therefore, more people may be involved and the primary person speaking on behalf of the group may or may not be the center of power and authority.

Western mediators often use “reality testing” as a technique to move parties towards resolution – and may not be aware that there are very different cultural concepts of reality and fairness.

The legal standard of fairness is based on law, statutes, codes of conduct, employee handbooks – all objective criteria that have been established to define what is fair. The equity standard of fairness looks at the level of time, energy, money, and effort that has been expended to help determine what would be fair. The culturally based standard of fairness reflects needs-based and relationally based assessments of fairness and is used primarily in more collective cultures. The faith-based standard of fairness looks at scripture, religious teachings and a higher power in determining what is fair.

A mediator from a Western culture (especially one who has served as a judge, lawyer, or mediator for the courts) often will use a legal standard of fairness. This may make sense if the dispute is being dealt with under the “shadow of the law” and the default process will be in the courts if the parties do not settle. However, this standard of fairness may be totally inapplicable to business disputes or other conflicts where the parties wish to keep the dispute private and are not looking to the court to determine what is fair. To use a legal standard or even an equity standard of fairness when dealing with people who utilize a needs-based/relational based-standard of fairness can be seen as insulting to the relationship and to the group.

A complicating factor in culturally sensitive negotiations occurs when parties are represented by lawyers. The lawyer, due to his or her own training, may solely utilize the legal theory of fairness. The mediator may then assume that the parties (whether present or absent) also have the same standard of fairness. As a mediator, I have often heard “My lawyer doesn’t understand what is really important here,” or “my lawyer says that this is better than what I would get if I went to court, but I don’t feel satisfied.” While mediators hear this in situations where cross cultural issues are not present, it is even more apparent when the additional cultural overlay exists.

Western models often look at a signed agreement as the successful resolution to a dispute. In fact, many Western mediators are trained to make sure that something is signed before the parties leave the mediation. This is, in part, because a signed agreement is seen as a binding document and something that is legally enforceable. But, some cultures see a signed contract as simply memorializing that a relationship between the parties exists. If something changes (especially something beyond the parties’ control) then the contract may not be seen as binding – simply a document that a relationship exists and that the dispute will be worked out in a way that is mutually satisfying.

Western mediators have also sometimes misunderstood that when a party is asked, “Is that an acceptable solution?” that a “yes” answer does not necessarily mean that there is an agreement. “Yes,” can mean, “I understand.” “Yes,” can mean, “If I say ‘no’ then you will lose face, so I will say ‘yes’.” “Yes,” can mean “I do not have the authority to give my consent, but I will lose face if I do not respond.” The mediator, however, hears “yes” and assumes agreement and moves forward with misguided assumptions.

These are just a few of the many ways that cultural differences can impact the basic tenets and theories of mediation practice. While this author is not recommending an overhaul of the “Western model” of mediation, she is stressing the importance of understanding the histories, traditions, beliefs, and values of diverse cultures both in the United States and abroad. A mediator should not assume that he or she can research a country’s cultural profile and automatically know what cultural attributes a party brings to the table – this would cause stereotypes. A mediator should never assume anything – the best mediators are curious, flexible and patient. Being sensitive and aware of the nuances of cross-cultural negotiations allows mediators to work more fully and more effectively within our diverse, multicultural world.

About the Author: Nina Meierding MS,JD has assisted in the resolution of over 4,000 disputes and has conducted training throughout the world, including Sweden, Ireland, England, Scotland, the Netherlands, and India. She has consulted and trained many groups - including court systems, corporations, medical agencies, school districts, small and large business entities, nonprofit groups, and county, state and federal governmental agencies in the areas of conflict resolution, cross cultural issues, management skills, and negotiation skills.

Nina teaches academic courses in Negotiation, Advanced Negotiation, Mediation, Advanced Mediation, Domestic Relations Dispute Resolution, Advanced Family Mediation, Counseling Diverse Communities, and Cross Cultural and Gender Issues. She is an Adjunct Professor at Pepperdine University School of Law in Malibu, California, the Institute for Conflict Management at Lipscomb University in Nashville, Tennessee, in both the counseling and the dispute resolution departments at Southern Methodist University in Dallas, Texas, and has been a guest instructor at many other universities. Nina has also been an instructor at the National Judicial College in Reno, Nevada and the California Judicial College, and has been a plenary speaker and presented workshops at judicial and state bar conferences.

She is a Past President of the Academy of Family Mediators, has served on the Executive Committee and Board of Directors of the Association for Conflict Resolution, and has also served on the boards of the Southern California Mediation Association, the Ventura County Bar Association, and the California Dispute Resolution Institute. Nina is the mediation consultant and mediation partner for the Wisconsin Special Education Mediation System (WSEMS). Nina was awarded the Peacemaker Award in 1992 by the Southern California Mediation Association for her outstanding work in resolving disputes and promoting peaceful resolution. In 2005, she was awarded the John Haynes Distinguished Mediator Award which is an international award given annually by the Association for Conflict Resolution for exceptional service in the field of conflict resolution. More information about Nina's training practice (Negotiation and Mediation Training Services), her cross cultural DVD, and her training calendar can be found at www.mediate.com/ninameierding. Nina can be reached at nina@meierding.com.

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January 2010