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Party-Directed Mediation: Helping Others Resolve Differences
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PART I – INTRODUCTION

Party-Directed Mediation Model Overview



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The two pillars of *Party-Directed Mediation* are (1) a preliminary meeting (i.e., pre-caucus, or pre-mediation) between the intermediary and each of the parties prior to the joint session and (2) a joint session in which parties speak directly to each other rather than through the mediator. Both of these supporting columns are somewhat controversial.

We intend to examine the nature of the controversy and suggest which types of conflicts lend themselves to Party-Directed Mediation. And perhaps just as importantly, which do not. Another objective is to clearly describe the model so intermediaries can apply it in a consistent, positive fashion.

The aims of the *pre-caucus* are to (1) permit parties to vent and reduce negative emotions and (2) teach contenders to

negotiate more effectively. Armed with these skills, individuals are more likely to arrive at satisfying and enduring outcomes.

The initial focus of the pre-caucus is to attend to each party through an *empathic listening* posture. The third party hardly speaks, but lets the affected persons feel accompanied through their journey. This active listening approach was developed by Carl Rogers and is best described in his renowned book, *Client-Centered Therapy*. Empathic listening is not the same as asking good questions. While the third party's role is that of a listener, we ought not think the mediator is either distracted or detached from the process.

Before concluding the pre-caucus, mediators prepare contenders for the *joint session*. The responsibility falls on the intermediary to assure that each party (1) is truly ready to confront the other, (2) has acquired the requisite tools for effective interpersonal negotiation, and (3) knows how to avoid dysfunctional behaviors.

As individuals become more capable negotiators, they handle discord more effectively. Certainly, when differences in opinion are brought to the table, they present opportunities to find more elegant, satisfying, and lasting solutions.

When the contenders arrive at the joint session, they speak directly to each other with minimal third-party interference. Mediators underscore their reduced role in the joint session dialogue by sitting at a distance from the disputants.

Some situations may call for a different conflict resolution strategy, as it may not be psychologically safe to bring disputants together for a face-to-face confrontation. The safety of proceeding into a joint session is gauged during the pre-caucus.

The application of Party-Directed Mediation principles, then, depends on the degree to which (1) the case lends itself to them and (2) the contenders wish to acquire interpersonal negotiation skills.

Just as people today are more likely to ask for second opinions when it comes to their health and doctors' recommendations, there are those who wish to have a greater hand in solving their own disputes. Some cases—as in certain restorative justice

programs—call for months of preparation as parties come together for a joint session in which they face and speak directly to each other. Yet, other situations are solved by individuals after a friend lends an ear so they gain the necessary confidence to approach and face the other party on their own.

In fact, people tend to sort out most of their differences without a mediator. It is not surprising that individuals who have been listened to and coached in a pre-caucus may go on to resolve their dispute without a mediated joint session. Certainly, one of the objectives of Party-Directed Mediation is to help people resolve future variances without outside help. At times, however, the assistance of a third party is crucial. Yet, in Party-Directed Mediation, the contenders retain most of the responsibility for conflict resolution.

Talk about empowering disputants sometimes elicits a negative—if not defensive—reaction among some mediators and scholars. This resentment is partly justified. In their fervor for empowerment, some have come to imply the inferiority of other approaches. Empowerment is not automatically the best mediation approach.

For instance, a year and a half after one of my sabbaticals in Chile, I received a threatening letter from a collection agency on behalf of the car insurance enterprise I had utilized. I was accused of not paying my last installment. Unfortunately, I had long since discarded proof of payment. This was the first and only note forwarded to me. It was difficult to deal with this situation from so far away.

You can believe I was relieved when one of my brothers, who lives in Chile, contacted the insurance agency and mediated between us. I hardly knew the people involved and had no interest in mutual validation, transformative opportunities, or the like. I simply wanted the problem to go away without having to pay twice.

I know mediators who are very gifted at seeing solutions that the affected parties simply cannot perceive. These skilled practitioners are able to discern potential agreements, know exactly when to speak, find the right tone of voice to use,

recognize when humor would be helpful, and get people to agree. They are virtuoso artists within the profession. In my opinion, such skills and abilities will always be needed, especially in the resolution of certain types of conflicts.

There are other types of disputes, especially those of an interpersonal nature—involving people who will continue to live with each other, work together, or interact after the mediator goes home—that can greatly benefit from a style that empowers each disputant. This is when Party-Directed Mediation can play a key role.

The Party-Directed Mediation model is particularly useful in the resolution of deep-seated interpersonal discord as well as multicultural or ethnic clashes. While its primary focus is on contention affecting two individuals, some of its tools may be profitably applied to disputes among groups.