

Implication Of Psychology In The Field Of Mediation

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Introduction

Psychology is the study of people and their thoughts, feelings, and behaviors. One of the primary goals of a mediator is to secure an attitude shift on the part of those in dispute, which can only be accomplished by understanding the human characteristics and qualities that underpin many conflict situations. A qualified mediator will detect and acknowledge the psychological elements at work and work with them to bring about a change in attitude and shift in beliefs regarding the conclusion of the disagreement, whether instinctively or consciously. Most of the mediation cases involve highly emotional and personal issues. It is exceedingly improbable that reasonable debate and logical persuasion would result in a change in the attitudes of disputing parties. This is because any argument will have both an intellectual and an emotive component.¹

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¹ 2021. [online] Available at: <<https://r3resolutions.com.au/what-does-psychology-have-to-do-with-mediation/>> [Accessed 21 December 2021].

Mediation as a resolution method

Mediation is an ancient technique of settling conflict that is mentioned in both the Bible and the Talmud. However, it was not until the 1990s that mediation was acknowledged as a legitimate alternative to litigation by the legal profession. It has been employed in both personal and neighborhood disputes, as well as group and organizational conflicts and political confrontations. Mediation's calm approach may be viewed as an excellent method of resolving issues. Mediation might be viewed as a continuation of the parties' own dispute resolution efforts. The mediator might be a single individual, a group, an organization, or a state with the objective of influencing or resolving a specific issue. The mediator can employ reasoning, knowledge, persuasion, or social influence tactics, for example. "The mediators' action is legitimated by their goal of modifying, decreasing, or resolving a dispute." The mediation process has unique qualities as the interest of the parties, mediators and the general objective of influencing the result of the conflict, is intertwined.²

² Diva-portal.org. 2022. [online] Available at: <<https://www.diva-portal.org/smash/get/diva2:795608/FULLTEXT01.pdf>> [Accessed 21 December 2021].

Need of emotional aspect

It is the emotional aspect that transforms a difference of opinion into a heated debate. Obviously, there is a role to play in formulating legal arguments and applying facts – but keep in mind that in the great majority of instances, the parties are legally represented, and their client's case has already been evaluated for strengths and weaknesses. Simply stating that the other side is wrong and telling them to accept it is not the most effective way to reach a common ground in a dispute – in fact, doing so, especially in front of others (such as a client, colleague, or significant other), may be perceived as a threat.

Mediation from a psychological perspective

The purpose of mediation is to replace the "win-lose" situation with a "win-win" situation by persuading warring parties to lay aside their demands and consider the other party's interests, goals, and underlying needs. In order for this to occur, a grasp of the psychological components involved in the process is required. It is a sign of maturity to be able to maintain a consistent, mature perspective of one self and to perceive others as persons with both bad and good features. People in dispute typically have a negative perception of the other party, thus it is critical

for a mediator to understand and learn to support self and object consistency.

In mediation, the parties go through a psychological cycle. This abbreviation stands for narcissistic inflation, deflation, and hopefully realistic resolution. This procedure requires simple, easy, and healthy self-strength, particularly at the onset, and this may be the most essential psychological dynamic in civil dispute mediation. The cycle is most visible when there is just peer-to-peer competition. Furthermore, the ability to "let go" is an important part of mediation psychology.

In mediation, paying attention to hurt psychological interests is frequently the tipping point for a settlement. This means that focusing on the material or technical interests of the conflicting parties may make little sense because interests of many sorts are often intertwined. Respecting or violating psychological and procedural interests has an influence on the breadth and quantity of substantive interests, both directly and indirectly. As a result, recognizing the interrelationship of various interests frequently leads to genuine understanding between parties and a long-

term solution.³

Dismissive positivity

Most often in mediation, plaintiffs have suffered a major loss, such as a death or the loss of physical "ability," work, or money. Defendants may also suffer a loss: a good employment connection has terminated, a consumer will not return, or the possibility of future commercial interactions has vanished. When faced with a loss and the attendant grief, individuals will seek out optimism and cheerfulness. Perhaps it is a means to block off the ache of loss, perhaps it is a technique to detach ourselves from the loss, perhaps it is just empathy.

An optimistic mindset can lead to beneficial outcomes. According to positive psychology, optimistic individuals live longer, earn more money, and are healthier. Unfortunately, this can go too far. If the joyful comments are flippant, shallow, or one-sided, the person who has suffered a loss feels much worse following a dismissively pleasant comment. Upbeat words such as "everything will work out," "life doesn't give us

³ Diva-portal.org. 2022. [online] Available at: <<https://www.diva-portal.org/smash/get/diva2:795608/FULLTEXT01.pdf>> [Accessed 21 December 2021].

more than we can manage," and "everything occurs for a purpose" are all instances of dismissive positivism. A recent survey questioned respondents what they found most useful and least helpful when waiting for vital news. Although some participants indicated they enjoyed words of encouragement to remain hopeful, it was far more typical for others to find this type of engagement irritating.

Listening to the hurt person is a better tactic for the advocate and the mediator. Allow them to share their tale. If mediation is successful, this will be their "day in court," so make it count. This may take time, but clients who feel truly heard and valued are happy clients who are more likely to suggest and review you. Remind the injured person that this is difficult; it is difficult for everyone present. If you have had a similar experience, try sharing it with the injured individual. It has the potential to create a rapport that will aid in the resolution of the issue.⁴

Improving mediation by reducing stress

Mediation is generally believed to be stressful for the participants. In mediation, science can help us understand the origins of stress and educate

⁴ Ken Chackles, Understanding and Using Psychology in Mediation, 67 ST. LOUIS BAR 1, 2-4 (2021)

us how to reduce its negative consequences. Stress is elicited in conflict circumstances, and it has both beneficial and bad consequences on human behavior. To assist species in dealing with challenges, the stress response emerged.

We've all heard of adrenaline, which is one of the stress chemicals elicited by combat. Adrenaline has an influence on us by increasing our heart rate. Cortisol, another hormone induced by conflict, is subtler than adrenaline but can have a major and long-lasting influence on our judgment. Cortisol can be beneficial by assisting a person's attention and sharpening their mental talents, but high amounts of cortisol can also impair a person's judgment.

There are ways that attorneys can use to reduce the impact of stress during mediations. Attorneys for the participants can employ these approaches independently with their clients and recommend that the mediator utilize them:

- If a combined session is planned, start the mediation with a separate meeting with each party.
- Discuss the stress of mediation with the parties and propose strategies to deal with it, such as taking deep breaths, calling for

breaks, or taking notes.

- Suggest that the parties name their feelings and express how they feel.
- Allow enough time for parties to recuperate from stress before making choices. Take a pause or engage in a more relaxed dialogue after a session that is likely to have caused stress to a party before asking for decisions.⁵

Mediation and psychotherapy

Understanding the psychological aspects of the mediation process is critical for at least three reasons. To begin, because mediation is founded on the principles of self-determination and informed consent, mediators must be fairly convinced that each party is mentally competent to engage in the process.

Second, when parties in mediation engage in ways that disrupt the process, stymie progress, or appear self-defeating, mediators must assess if psychological elements are at work and, if so, how to address them. Of fact, there is no simple solution to these issues. Because a mediator's

⁵ Ken Chackles, Understanding and Using Psychology in Mediation, 67 ST. LOUIS BAR 1, 2-4 (2021)

interaction with the parties is typically brief—perhaps only a few hours or one day—it may be difficult, if not impossible, to identify even some of the essential psychological elements at work, much alone acquire a thorough knowledge of them.

Third, while mediation is not psychotherapy, it can have both therapeutic and counter-therapeutic effects. In mediation, the parties may be seeking intangible advantages such as an apology, forgiveness, or just deeper understanding from the other side.⁶

Conclusion

Advocates in mediation, whether representing a party or serving as the mediator, may learn from psychology and other fields that study human emotion and behavior to better their relationships with clients, mediators, and just about everyone else. The mediators should at least understand a basic level of psychology so that they can help the parties with their interests and needs. Paying attention to the hurt psychological interests of parties is frequently the tipping point for a settlement. By understanding psychology as an innate concept of mediation it is easier to promote

⁶ David A. Hoffman, *The Psychology of Mediation*, 14 *CORDOZO JOURNAL* 1, 21 (2013)

positive settlements. In today's world mental health and psychological aspects are of prime focus, hence the modern jurists advocate that professionals who are concerned with resolving conflicts and disputes must have a thorough understanding of the psychological and mental factors in order to arrive at the most optimal resolution.