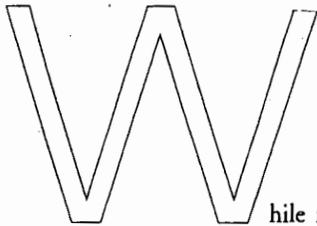


# Mediation and Facilitation: Making the Distinction



While facilitation and mediation may share some of the same skills, the practices and processes of facilitation and mediation are different and distinct in their focus. I believe that using the term 'mediation' as a 'catch all' phrase confuses consumers and practitioners and creates a situation where practitioners who *mediate* may also think they are qualified to *facilitate*. In the same way, people trained only in facilitation are not prepared to mediate. In this article, I explain why I think these are separate but kindred disciplines and why we should be clear about the terms we use and the processes we practice. My comments apply primarily to public policy facilitation; although facilitation is also used in other contexts (strategic planning, team building, etc.)

The term 'mediation' has become very familiar to courts, lawyers and consumers. You hear it in conversations, in television and movie dialogue and in the media. The problem is that the term 'mediation' is being used to describe all manner of ADR process practices: mediation, early evaluation, stakeholder analysis, conflict assessment, facilitation, etc. A loose definition of 'facilitation' is the use of third-party neutrals to help multi-party work groups accomplish the content of their work by providing process leadership and process expertise. See also <http://www.iaf-world.org/files/public/FacilitatorMnl.pdf>.

I began as a full-time court-based mediator in Florida in 1990 (after giving up a law practice to do so). My practice has evolved and expanded in the years since. Currently, most of my practice is in public policy multi-stakeholder facilitation (generally using a collaborative consensus-based decision-making model), although I also assist in strategic planning and comprehensive planning efforts as well as meeting management. I am hired as a third-party neutral process consultant. I design the process, facilitate the meetings and write reports following the meetings. While I still do some mediation (mostly land use and public policy issues), I primarily practice facilitation.

ADR is often described as a continuum of practices. In the simplest of examples, the middle of that continuum is mediation. In mediation, a third-party non-decision-making neutral

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assists parties who are already involved in a dispute by facilitating (the verb) their communication with the goal of having the parties reach a voluntary amicable resolution of their conflict. If there is no voluntary amicable resolution, then the case goes to some *decision-making* neutral (arbitrator, judge, etc.) Mediation requires what I call "crystallized" conflict: issues are known, positions are stated and parties are already identified.

This may be the biggest distinction: in mediation the parties are already involved in a dispute; whereas in facilitation, the neutral is called upon to assist the group in *accomplishing their work*, the focus is not conflict resolution but process expertise, team building and collaborative negotiations. Facilitation *anticipates* potential conflict in order to *avoid* and prevent conflict. Facilitation *precedes* mediation on the dispute continuum. (Notice I did not use the term dispute *resolution* continuum.)

I am not implying that there is no conflict or potential conflict between parties/participants in a facilitation, but that is not the reason they have come together and have called in a neutral. Some form of work needs to be done (policy recommendations, planning, input to some other work being done by a consultant, etc.) and the facilitator is called in to give process advice and design agendas that help them accomplish their work efficiently. Unlike mediation, in which the parties are those individuals involved in the conflict, the participants in a facilitation are the individuals who are chosen to represent a constituency (stakeholders) so that their voice is heard in the work to be done. The participants are together to accomplish a task. While multi-party mediation may have many of the same qualities as a facilitation, the conflict is already at a level needing the skills of a mediator and the threat of other intervention is the backdrop to that process.

Particularly in the field of environmental and other public policy issues, much of the work of a neutral is in process and conflict prevention. Increasingly, more governments, governmental agencies and private entities devoted to the public (such as the Trust for Public Land) are calling together multi-stakeholder groups to work collaboratively using a consensus decision-

making process to make recommendations, give advice, craft new policy, decide policy directions and initiate implementation strategies. Additionally, many organizations and corporations are developing strategic plans with input from their members, staff and clients. More and more, a third-party neutral—the facilitator—is asked to design and administer the process in order to ensure the work of the group is accomplished in an efficient and organized manner while building new alliances and relationships through the use of collaboration.

Furthermore, the cornerstones of mediation: confidentiality, voluntary participation and self-determination are often not expected or are completely absent in a facilitated process. Additionally, facilitation always involves multiple parties. While a mediator might initiate a mediation with no prior knowledge of the case, a facilitator would *never* begin to facilitate a meeting without having previously met with his/her conveners (and possibly the parties) to learn about the subject of the facilitation, the goal(s) of the group, the time they have to accomplish their work and to design the agenda(s).

With regard to confidentiality, much of the work in public policy facilitation is done in “the sunshine”; that is, in the public eye and under strict open government laws allowing the general public to know and be present at all meetings, discussions and negotiations of the parties. There is no expectation of confidentiality. In private organizational work, confidentiality is not mandated, but can be accomplished through a contract with the participants. Participants do not enter the process expecting their discussions to be confidential.

In terms of the voluntary nature of the process and self-determination, many stakeholder groups are formed by appointment and are therefore not “voluntary.” Agency heads, government leaders, organization directors or citizen leaders may want to be part of collaborative planning and decision-making on a matter and thus designate who will represent them on a multi-stakeholder group. Often, those designees have no say in their position representing their entities; it is their role to be the spokesperson for their constituency. In that sense, unless the entity completely

opts out of the process, there is no real option for the participant to be there voluntarily. The work will go on with or without that entity present.

Lastly, decision-making in facilitation differs from that used in mediation. Knowledge of a variety of group decision-making techniques and formal structured exercises for accomplishing work and revealing the will of the group are essential skills in facilitation that are not used in mediation.

It is important for ADR practitioners to recognize that many processes, while related, are not the same. Specifically, I believe one should not hold oneself out as a facilitator if all one has practiced is mediation. I may be a doctor, but if I practice gastroenterology, I would not attempt heart surgery. We need standards for processes other than mediation. We need to stop using the Model Standards for Mediators as the standards that apply to all ADR processes. As Chair of the Ethics Committee of ACR's Environment and Public Policy (EPP) Section, I am working with other ACR colleagues to draft Standards for Facilitators of Public Policy Agreement Seeking Processes. For more information, please see <http://www.orconsensus.pdx.edu/ACREthicsCommittee.php> and send us your input. We welcome your participation in the EPP Section, and your help in making our colleagues and the public more aware of the value and differences of the wide range of ADR processes. ☺

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