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**MEDIATION AS A VEHICLE FOR
HARMONIZING RELATIONSHIPS IN FAMILY
CONFLICTS**

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MEDIATION AS A VEHICLE FOR HARMONIZING RELATIONSHIPS IN FAMILY CONFLICTS

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Family conflicts pose one of the most challenging and potentially rewarding contexts for mediators. Family conflicts, both those within families of origin and those of families seeking the dissolution of their marriages, encompass complex histories. These conflicts often extend significantly beyond current disputes and hold long standing issues containing complicated emotional substance.

Mediation provides an opportunity for individuals and their families to harmonize and, perhaps, heal these intricate relationships. However, for this potential to be realized, it is important for mediators to be able to work with, and not avoid, the multifaceted emotional responses that are not only embedded in these conflicts, but may be fueling them.

This paper's goal is to explore ways the mediation process and individual mediators can help families shift from the acrimony that often accompanies their disputes, to more collaborative, problem solving modes through understanding the role of emotions in resolving conflicts. The structure of mediation is a resource for beginning to acknowledge the powerful emotional content behind family conflicts. We focus on the importance to mediators of learning specific skills for dealing with the emotions of disputants in family mediations. We explore how self-awareness can become a tool for helping mediators increase their comfort with emotional content and why that is important to harmonizing family conflicts. This paper draws from materials about mediation and lawyering skills. It also examines research from the counseling field because personal and relationship healing is the primary focus of that field. We propose that with the structure and process of mediation and the skills of trained mediators to be aware of and utilize emotional content, the opportunity for families to move toward their future in more positive ways is enhanced.

Imagine two families. Both have been through divorces and both have resolved the legal issues that obtaining a divorce necessitated. One family continues to be gripped by the types of fights, the stored resentments, and the emotional quagmires, that preceded and characterized their divorce. In this family, the children have become pawns of their parents' conflicts. The children sometimes take on the role of trying to mediate disputes between their parents and among the various extended family members who are part of this conflict circle. Though these parents love their children and want the best for them, their unresolved relational issues contribute to an environment in which conflicts easily flare. The impact of parental strife takes a toll on their children. The love and loyalty the children feel toward each parent is often disrespected by the other. These parents would not choose to have their children grow up in such disharmony, but their own emotions of unresolved pain and anger blinds them to the ways they are affecting their children.

The second family was able to harmonize their differences. Although they went through difficult times before and during their divorce, they were able to create a new relationship from the old by using actions that respected each parent and focused on the best interests of their children. The parents in family number two realize that the ways they relate to each other has a profound influence on the development of their children. They are motivated to work through their

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personal emotions that cause them to want to lash out at each other. They have had to struggle with feelings similar to those being experienced by the first couple. They do not always agree, but they are committed to work through their co-parenting issues in a problem solving way. They realize that they will be connected through their children for a lifetime. Looking ahead they also appreciate that they are role models for the future intimate relationships their children develop. These insights push these parents to productively co-operate.

Whether you practice in the area of family mediation or not, the descriptions of these two representative families may remind you of people you know. They may also describe one family at two times in their transition from conflicts to a state of co-operative partnership. Helping people move from an environment of perpetual conflict to a co-operative, harmonious approach is part of our hope as mediators. Emotions have a role in both situations. Looking at emotions and ways to use them productively is our task.

Although some mediators are trained in family therapy, few lawyer-mediators have this training. Nevertheless, some tools for working with the emotions of disputants can be borrowed from the counseling field. Counselors, lawyers, and mediators are helping professionals. We know that all helping professionals utilize basic rapport building skills, such as developing respect and trust in order to build good working relationships. Similarly, all helping professionals must deal well with strong emotions, particularly when they work with people who are in the grip of conflicting emotional contexts. Regardless of their specific disciplines, helping professionals find it valuable to learn basic helping skills because they are called upon to listen attentively to understand the context of people's stories and the emotional complexity of their experiences. Being able to exercise the skill of conveying empathy accurately is a critical skill for helpers. Being able to empathize with others lets them know that their message is not only heard, but their emotions are recognized and understood.

Research studies on the effectiveness of both mediation and counseling techniques demonstrate that to be heard and understood by another human is a key component of initiating a resolution of internal distress within that person. The opposite, not to share traumatic events, but to keep them private, has been found to relate to an increase in health problems. Mediation is a process that creates opportunities for people to share their stories about difficult events and to have another human witness their experiences.

The very structure of a typical mediation creates an environment that invites each party to recount his or her understanding of events and the personal and emotional impact of those actions in the presence of the mediator and before those with whom the dispute is being waged.

The Power of Telling One's Story

The first telling of one's story holds within it seeds for increased understanding. Telling one's story to an impartial person, the mediator can influence the way a person understands his or her own story. This special opportunity to relate one's story of a conflict and its influence on the teller's life encourages the teller to include information that a much retold story may delete or ignore. The story teller's awareness that the other party to the dispute will be listening may influence the telling somewhat. An often repeated conflict-laden story may evolve, emphasizing some parts, leaving out others. Telling the story in mediation provides an opportunity for the storyteller to hear her or himself perhaps differently than through repeating this story to family, friends, or even one's lawyer, because each of those recipients of the communication is likely to be biased for or against the assertions of the teller. Telling a story to an impartial person is likely to result in a more objective understanding of the conflict or dispute because it is human nature to hear what one is saying through the projected lens of the person listening. Since the listener is an impartial receiver, and therefore more likely to be perceived as objective in listening to and understanding a story, the story teller may not only tell the story in a more objective way, but begin to understand the story more objectively.

Though the story may be more objective, it is still likely to contain the emotions that are woven into the fabric of the conflict. Expressing these emotions is a critical part of any story. Listening for these emotions helps mediators understand the conflict more clearly.

Listening to Another's Story

When each person's story is told in joint session, there are opportunities for other parties to the dispute to listen and experience the story through the lens of the teller. Just as the teller is likely to be influenced by the mediation setting, so the others listening to the story will also be aware of how an impartial party might perceive and respond. While the story is likely to be quite familiar, by listening without being called upon to interject a defense of themselves and their rights there is a potential for hearing the story of counter parts differently. This process includes an opportunity to hear the story and the responses of an empathetic, focused listener, the mediator.

As the teller gives a more objective recounting of events, it is possible that the other party to the dispute may hear the perspective of the story teller or some part of the story in a new way. Many mediators give the non-speaking party some paper and a pen so they have the opportunity to make notes during the recitation by the other side. Taking notes can focus the listener on previously unheard information, misunderstood emotions, and unrecognized common interests.

The Power of Healing through Having One's Story Heard

We might ask the value of this part of the process of mediation, just telling one's story. It may seem to be one of the times the mediator does the least. The mediator, after all, is 'just listening' to the story. However, an experience I had in Uganda reinforced how powerful listening attentively to another's story often is.

In 1995 I went to Uganda to attend a conference on Human Rights and Peace. This conference marked the beginning of a new time in Uganda. The people had just voted to adopt a new constitution, which was regarded by many as being the most human rights oriented constitution in the world. This document reflected the hopes and aspirations of the Ugandan people who in 1995 were struggling to find ways as a society and individually to overcome the traumas of years under the rule of dictators whose leadership was the antithesis of human rights. History remembers Idi Amin and Milton Obote, for their cruelty to and torture of civilians. This, though, was a new time, a time to embrace what had been lost and to focus on inclusion, on human rights, and on healing.

One of the NGOs we visited pursued a mission of helping Ugandans who had been subjected to torture to heal from their horrendous experiences. I listened to the description of their clients' needs and of what the organization was trying to do for them. When the time for questions came, I asked what initiative they had found that most helped people who had been subjected to such extreme trauma to begin their recovery. They said that listening to each person's story, focusing on understanding their experiences, and being able to hear their pain was the most valuable approach they had to start the healing process. In some cases it was all they could do and yet, it was through this process of being present with another person as she or he recounted physical and emotional pain that a true process of healing began.

This response reverberated with the core counseling theories I had studied and with my own experiences as a counselor and educational psychologist. The importance of listening to stories as the people telling them worked to resolve their conflicts within themselves as well as between themselves and others in their lives, helped me to recognize the value of mediation as a positive initiative for dispute resolution in all areas, but especially within family contexts.

Although the unresolved family conflicts that come to mediation hopefully do not have stories that include the extreme trauma caused by torture, many people involved in family conflicts are mentally tortured by the events that lead them to us as mediators. The structure of mediation provides a promising direction to heal this pain and build functional family and, in divorces with children, co-parenting relationships.

Role of the mediator

Especially because family conflicts can involve personal and group histories, personal identity, and delicate dynamics between or among parties, a mediator needs to be clear about her role. There are limits on a mediator's power. Mediators can facilitate, but it is the disputants who hold the power to create change. How mediators frame their roles influence each step in the mediation. If mediators see their primary role as getting settlements, then they can find themselves listening to a story less for what happened and the resulting emotional impact than for negotiation leverage opportunities and compromise possibilities.

Mediators who are working to restore harmony in relationships see their roles differently. They focus on the parties and their processes of working through the content and emotional blocks within their conflicts. They empower parties to develop their own solutions rather than brokering settlements. Those who see their roles as facilitators work on developing a relationship of respect with each party while maintaining neutral, impartial stances. Admittedly, doing this effectively requires a delicate balancing, but is essential for working in such potentially vulnerable and sensitive contexts.

Importance of Dealing with Emotions

Dealing with emotions and emotional content is not only a good way to build a working relationship within a mediation session; it is the path to good decisions. The brain is wired to favor emotions. The emotional brain connects to almost all the parts of the brain. Emotions are therefore connected to the cognitive processing parts of the brain as a rich network of connections. What this means for people dealing with conflicts is that the emotional aspects of their brains influence their focus and, also, their interpretation of their experiences. People often need to test their cognitive, logical processing against their experiences to assess potential outcomes and know how to move forward with making and implementing a decision. Looking to logic alone provides theory without the benefit of the knowledge gained from experiences. Research by Antonio Damasio and his colleagues at the University of Iowa on decision-making found that those people who are best able to block their emotions and who tend to look to logic as a primary basis of their decision making made the most ineffective decisions.

Damasio also described somatic markers, physical sensations that are sometimes strong enough to be felt as positive or negative feelings by a person and though measurable by the study's instruments were not always consciously experienced. These sensations help people evaluate decisions through quickly measuring results of possible actions against potential outcomes. When subjects had somatic sensations, with or without an awareness of bodily responses, they rejected those choices that tracked likely negative outcomes and affirmed choices with potentially positive results. These somatic markers or subtle feelings seem to help people make more effective decisions.

Emotions lurk in the background of much of human brain activity and when mediators ignore emotions or try to suppress emotional content, they may significantly interfere with disputants' abilities to assess and make difficult decisions. When mediators attempt to substitute logical solutions before disputants have opportunities to process the emotional content and contexts of their conflicts, mediators decrease the likelihood of disputants' acceptance regardless of the potential value of their suggestions. Although ignoring or de-emphasizing emotions may be more comfortable for many mediators, it usually is counterproductive for disputants.

Lawyer-Mediators' Resistance to Dealing with Emotions

Lawyer-mediators describe feeling uncomfortable with emotional expressions of clients. They often fear that if they do not control clients' emotions, they may find themselves in situations beyond their skill and comfort level. Common methods that lawyer-mediators use to control clients' emotions include ignoring the emotions that clients express by changing the topic, de-emphasizing the emotions by responding to the content of a statement instead of acknowledging the expressions of emotion that accompany the content, and by separating clients when emotions begin to emerge by using caucuses. The expression of emotions within mediations may be more regulated by the personal comfort levels of their mediators with emotional expressions and content than the by clients' needs to fully express themselves.

Lawyer-mediators' responses to emotions may be influenced by a number of factors. These include their perceived skill level for dealing with emotional content, their definition of their roles influenced by their legal training, the emphasis within their mediation training on dealing with emotions, and their personal experiences and reactions to emotions. Developing the skills necessary to recognize and acknowledge emotions and to demonstrate accurate empathy takes training and practice not only for lawyers, but also for counselors.

Research on teaching law students legal interviewing and counseling skills finds possible connections between the psychological type preferences of students and their frequency of using communications skills that respond to emotional content. While the theoretical foundations of psychological type can be traced to Hippocrates in the 5th century BC the current construct that refers to human differences in processing information, making decisions, and regulating communication is credited to Carl Jung's text, *Psychologesche Typen*, and its English version, *Psychological Types*. This theory is the basis of the Myers-Briggs Type Indicator® (MBTI®), the most frequently used instrument for working with psychological type theory in use today.

The research found that law students who preferred to use a decision making process reflecting a subjective, values based process called "feeling judgment," responded more frequently to emotional content expressed by their legal clients, while law students who preferred a mental process for making decisions that is based on objective, logical assessment called "thinking judgment" were less likely to respond to emotional content. The students who preferred thinking judgment were more likely to ignore clients' expressions of emotion or emotional contexts or to change the subject when clients showed emotions or described contexts that were emotionally laden. Psychological type theory posits that people's preferences are integral to people throughout their lives. However, psychological type preferences do not limit or preclude a person from developing the skills they need or want. Research on the distribution of psychological type in law school and lawyer populations in the United States indicates that law students and lawyers prefer thinking judgment much more frequently than is found in the general population. That means that as a group lawyers favor approaches that emphasize logic. Even with a tendency toward thinking judgment, law students, lawyers, and lawyer-mediators can effectively learn skills for working with emotional content. Also, not all law students, lawyers, and lawyer-mediators prefer thinking judgment. For those who prefer feeling judgment the skills may come somewhat more easily, but these are skills that require sufficient training and a great deal of practice.

Law training with its focus on the analysis of rules and facts provides another inhibitor for lawyers to respond to emotional content, whether they prefer thinking judgment or feeling judgment. Emotional responses are seldom acknowledged in typical law classes. The clinical courses where law students represent clients and the lawyering skills courses that focus on teaching students to interview, counsel, negotiate, and/or mediate may teach the importance of responding to emotions. Even in these courses, there is less emphasis on being able to work with emotions than with gathering information, especially legally relevant facts. Whatever lack of comfort with emotions law students may bring to law school is generally not made more comfortable through training in law schools. Even though mediation training acknowledges the

importance of emotions, the training in skills related to emotional content does not generally meet the needs of mediators who have not been previously trained in counseling skills.

Lawyers can be trained to be more effective in their use of empathy and in their comfort with emotions. In addition to the value of skills training, brain research points to a potential means of increasing lawyers' comfort and building positive relationships between lawyers and their clients. When a person can name the emotions they themselves are experiencing, they move those emotions from the right side, or more abstract, emotional part of the brain, to the left side of the brain, the more linear, concrete part of the brain. This movement gives a person a greater feeling of control and thus more comfort with the emotions they are experiencing. Thus, when lawyers can accurately express empathy by helping clients name their emotions, they actually can help themselves by increasing their own comfort level. By assisting their clients in gaining control of these emotions, lawyers help their clients to deal with these emotions. The process of helping another person name their emotions has the added benefit of building a more positive relationship with that person.

Another way that lawyers can become more skilled at working with emotional content is through becoming aware of their own reactions to different types of emotional expressions and contexts. Self-awareness of mediators to their own reactions to emotional contexts and displays provides a means for mediators to intervene in their own responses rather than reacting in a knee-jerk way. For example, a mediator who is aware of needing to leave a room when someone begins to cry or who begins to become angry when a disputant raises his voice, can choose to respond in a different way because of that awareness. When people are not aware of their reactions or patterns, they have little control over their responses. They respond as they are accustomed to respond and do not question whether that way is effective. Another kind of emotional response of which mediators need to be aware is their own reactions to disputants. Does the mediator respond differently to the disputant who is like a favorite grandmother or than to the disputant that seems to respond just like a troublesome cousin? Especially because mediators are human and have a variety of learned patterns as well as varied experiences that may be triggered by situations in mediation settings, self-awareness is an important skill to develop so that these personal experiences do not insert bias into a mediation setting. When mediators experience emotional reactions within mediations, they may find it useful to check on the source of the reaction. One clue that a reaction has a trigger within personal experiences is a response that seems more potent than the situation warrants.

Harmonizing Relationships

Remember our families? The family that has a more amiable working relationship actually used mediation to work through their divorce conflicts. This family also engaged in a therapy process to help with the establishment of a positive co-parenting relationship. These two steps have helped the parents and their children to establish a positive, respectful working relationship. The team approach to problem solving that mediation promotes was helpful to beginning a collaborative parenting process. Through the mediation these parents were able to hear each other's concerns and perspectives more clearly than they had when they tried to sort out these emotion-laden decisions on their own. Mediation provided new patterns for interacting to promote problem solving strategies. Their mediator was able to emphasize common interests, particularly the needs of their children. This family was able to shift the definition of family to include two interconnected families. The mediator and the therapist motivated these parents with the knowledge that their relationship will continue through the developmental years of their children's growth to continuing events and celebrations that involve their children as adults. The result is a more supportive environment for their children and for themselves.

How might mediation have helped our other family, the one that is still struggling with anger and pain and erupting in conflicts frequently? What could a mediator have done to move in the direction of harmonizing their situation?

This family, like so many families, fought through their divorce issues. The adversarial process inherent in becoming two sides of a law suit accentuated a distrust of each other and of those with whom they were working. Had they chosen mediation, they likely would have still started with distrust, but through the mediation process there would have been greater transparency and, instead of a tug of war to win property or custody, mediation would have encourage a problem solving process, one in which they would have been empowered to co-operate. Their common interests would have been emphasized. They would probably have been reminded of their children's interests and needs and their own long term benefits from finding ways to work together.

Their heated emotions instead of being fueled by the adversarial process might have been expressed and acknowledged. These emotions would not be expected to disappear, but their intensity might lessen. This couple may not have settled in mediation, but that does not mean that the process of harmonizing might not have begun even if they were not ready to resolve their conflicts through the mediation at that time.

What is difficult for this family to see is that they are working together, but in a cycle of destruction. In their intense emotional reactions to each other they are bound together. One acts and the other reacts. Litigation can divide their property, but it is not likely to move these parents beyond their emotional investment in hurting each other and, however unintentionally, their children.

Even when the parties recognize the need to divorce, they are often still caught by emotions. Grief and disappointment that one's hopes and dreams for making and having a loving family were not realized are difficult to let go. The stories of families who have been able to resolve their conflicts and move into relatively successful restructured relationships emphasize communication from one or both of the parties of forgiveness, of appreciation for something that was done to help the person, the process, or the children. There is acceptance of each others' emotions and a willingness to acknowledge them and work with them.

Resolving family conflicts in mediation is challenging. Breaking through the distrust and other emotional barriers to a level where not only co-operation, but harmony is possible is even more difficult. Getting there seems to require genuine acceptance, respect, and trust of the disputants and the mediation process. Mediators need to be willing to work with and, hopefully, through difficult emotions. Then, whether mediations reach agreements or not, having gone through the mediation process with a skilled mediator the disputants have been exposed to a new way of relating that has the potential to lead to harmonizing.

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