

Diversity In Mediation – Domestic and International Challenges

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Mediator and Arbitrator

Cross-cultural mediations can be more complex because of the impact cultural differences may have on negotiation styles and strategies. Mediators involved in a cross-cultural mediation should be culturally informed to improve the likelihood of success and minimize any negative impact of cultural factors on a mediation. Florida mediators are likely to be involved in disputes between people of different ethnic, racial, or national origin cultures. Likewise, cross-border disputes are increasing in Florida. Mediators should investigate the potential for any cultural, foreign legal system or tradition to bear on the dispute. Mediation is not understood, practiced, or accepted everywhere in the same manner and same process as it is in the U.S. This discussion will address the principal studied and recognized cultural differences on negotiation approaches and strategies, their potential impact on mediation, and how a mediator may prepare to cope with such cultural differences.

I. What is Culture?

“Culture” is comprised of values, norms, beliefs, activities, institutions, communication patterns, and standard practices particular to a group, such as: individual experiences, socio economic status, occupation, gender, race, religion, national origin, languages. These various factors can come into play not only with individuals from other cultures, but even with sub-cultural groups. Culture is pervasive and invisible. Culture can be compared to water around fish, or air around people. Cultural differences can play a role in domestic (i.e. intra-state), and cross-border mediations, especially if the parties, counsel or mediator come from different cultures. A person’s culture can impact that person’s attitudes toward and during a mediation, and the outcome of a mediation. Cultural differences can create friction and make parties question whether they want to negotiate with members of another culture.

II. Communication Context

Living in Florida makes it clear that using and hearing multiple languages is the norm, not the exception. Therefore, a mediator needs to be aware of

any language and cultural concerns. A discussion of cross-cultural factors in mediation should begin with the concept of “Low-Context” and “High-Context” communication. The concept of Low-Context and High-Context communication was pioneered by Edward T. Hall. Communication differences is an important cultural factor in cross-cultural and/or cross-border mediations. Low and High Context refers to how people interact and communicate with other members of their culture.

In “Low-Context” cultures, people communicate directly and rely on verbal communications, as opposed to non-verbal communication to express themselves. The discussion is straightforward and to the point. Important issues are explicitly discussed no matter how sensitive the subject matter is. Low-Context cultures are more present and future-oriented, and value change over tradition. People from the USA, Canada, Australia, Europe (with the exceptions noted below), Israel, and Scandinavia use a direct, explicit, low-context communication style.

In “High-Context” cultures, the information lies in the context, is not always verbalized, and the conversation goes around like a circle. Much of the meaning of the communication is “programmed” into the receiver of the message as a result of the shared experience, connection and history of the sender and the receiver. People are more likely to infer, suggest and imply than say things directly and to the point. Often no words are necessary – a gesture or even silence is sufficient to communicate meaning. High-Context cultures are more past oriented and value traditions over change. Asian, Indian, Mexican, most Middle Eastern, French, Spanish and Greek people use indirect, implicit High-Context communication.

If one party in a mediation is a High-Context communicator and another is a Low-Context communicator, the mediator needs to act as a communication “translator,” in helping the parties understand messages. People from Low-Context cultures are more focused on facts, whereas people from High-Context cultures will be generally implicit, indirect and assume the mediator and the other party understand the nuances of communication as well as they do. These two prominent cultural communication styles can have a significant, and at times negative, impact in mediation negotiations and outcome. Members of High-Context cultures

are often uncomfortable with direct confrontation and prefer negotiations with more caucusing, rather than direct negotiations. People from Low-Context cultures are generally focused on facts, and people from High-Context cultures will be generally implicit and indirect.

III. Individualist vs. Collectivist Negotiations

Dutch psychologist, Geert Hofstede, in his *“Culture and Organizations: Software of the Mind”*, notes that in general, people from the U.S. and Northern and Western Europe are “individualists” whose pattern of negotiation emphasizes the individual’s personal preferences, goals, rights, needs and interests, all of which tends to be self-reliant and competitive. Hofstede observe that these cultures tend to be very rules-driven, with laws spelling out what is and is not acceptable. At mediation, “individualists” parties generally insist on getting down to business, because in these cultures “time is money.” In joint sessions and private caucuses, communication tends to be direct and to the point. They ask direct questions, their language is often colorful, loud and forceful.

On the other hand, “Collectivists” predominate in much of Africa, the Middle East, most of Asia, South America, Mexico, Nepal, and parts of Eastern Europe. Israel is in mid-scale, according to Hofstede. These cultures tend to be more focused on group harmony and solidarity based on communal duty and responsibility. Their framework focuses less on rigid standards of behavior and more on how the behavior itself impacts group harmony and solidarity. Preservation of relationships is very important. There is a sense of communal duty and responsibility to the family, to the company or to society. There is a correlation between High-Context communication and Collectivist cultures.

The implications for mediators is that mediations among so-called Individualists follow a more “lineal” model, focused on the negotiation task starting with fact gathering, then issues clarifications, then to needs and interests identification, ending with the generation and selection of options. Collectivists will approach mediations in a more relationship-oriented way, initially establishing a basis of trust in the mediator and each other upon which to build negotiations. Maintaining harmony and avoiding discomfort is very important for this group. In mediation, Individualists are focused on the negotiation task; Collectivists are focused on building and maintaining a

relationship within the group. An experienced mediator should be able to find a common thread between these poles to benefit the mediation process and the ultimate outcome of the mediation. In dealing with “Collectivists” it is also important to keep in mind that all decision makers may not be at the mediation table, and that negotiating teams may not have authority to make concessions to reach a final agreement.

IV. Assertiveness vs. Cooperativeness

Also related to Hofstede’s work is what he calls “Assertive” vs. “Cooperative” cultures. A culture of Assertiveness values achievement, control, power, the accumulation of money and wealth, independence, recognition, “hardball,” aggressiveness, dominance, challenges, ambition, competition, physical strength, and can be summarized with the phrase “win at all costs.” In these cultures, their ethic is one of a “live to work” orientation. Countries with a tendency to be more assertive are: Australia, China, Japan, Slovakia, Switzerland, Austria, Venezuela, Italy, Mexico, Ireland, Jamaica, Great Britain, Germany, and the Arab World. The U.S. and most European countries and Israel appear to be in mid-scale, according to Hofstede’s research.

A culture of Cooperativeness has a more “win-win” approach to negotiations, and values not raising your voice, small talk, agreement, and being warm and friendly in conversation. These cultures value cooperation, nurturing, and relationship solidarity, and the ethic is more one of “work to live.” The Scandinavian countries, as well as Finland, Thailand and South Korea tend to be more cooperative.

These cultural differences can have an impact on mediation, since Assertive negotiators will attempt to dominate the others through power tactics, and will be reluctant to make concessions, as opposed to Cooperative negotiators, who will prefer to discuss interests, offer concessions, try to separate the people from the problem, and consider the dispute in a more neutral way. Mediators should familiarize themselves with, and consider, the way these cultural roles may play out in the cultural context of the mediating parties.

V. Uncertainty Avoidance

Another of Hofstede's cultural indices is whether people in a culture are prone to avoid risks or to take risks, and therefore, how well they may adapt to change; that is, the level of tolerance for uncertainty and ambiguity within a culture. This index measures the extent to which people feel threatened by unstructured or unknown situations, compared to the more universal feeling of fear caused by known or understood threats. This index focuses on the level of tolerance and the importance of truth in a culture, as compared to other values.

A High Uncertainty Avoidance culture creates a rule-oriented society that institutes laws, rules and controls in order to reduce the amount of uncertainty in the environment. People from these cultures tend to dislike risky and unclear situations, and prefer rules and structured circumstances. Precision and punctuality are important. In general, negotiators from a High Uncertainty Avoidance culture prefer to keep the mediation structured, and will follow the ground rules indicated by the mediator, since they are not comfortable in unconventional situations. They value precision and leave very little to chance, and will choose strategies that offer lower rewards, but have a higher probability of success. They prefer to have precise answers to questions, precise instructions and, will distrust negotiating partners who display unfamiliar behaviors, and have a need for structure and ritual in the negotiation process. Negotiating teams from High Uncertainty Avoidance cultures put a premium in the maintenance of harmony and the absence of discord. Countries which have High Uncertainty Avoidance cultures are Greece, Israel, Portugal, Guatemala, Uruguay, Belgium, Salvador, Japan, Yugoslavia, Peru, France, Chile, Spain, Costa Rica, Panama, and Argentina.

Cultures which have a Low Uncertainty Avoidance usually tolerate a greater degree of uncertainty, are less rules oriented, and are open to new situations and new ideas, are more creative in their problem solving approach, show more tolerance for a variety of opinions, and accept more risks and change. These cultures value risk-taking, problem-solving, and tolerate ambiguity. Negotiation teams from these cultures are more motivated by the hope of success, and tend to be less expressive and less

openly anxious. Countries with Low Uncertainty Avoidance are: the U.S., China, Jamaica, Denmark, Singapore, Hong Kong, Ireland, and Great Britain.

These cultural differences are important in mediation, since the parties may find trouble negotiating if one side is constantly proposing new options toward settlement, and the other is unwilling to change its position, or to consider more creative or riskier or unusual solutions. These cultural differences could affect a mediation's outcome, and potentially lead toward failure from the outset.

VI. **Long-Term v. Short-Term Orientation**

Long-Term Orientation focuses on the extent that a culture embraces traditional, forward thinking values and exhibits a pragmatic future-oriented perspective, rather than a conventional historic or short-term point of view. These cultures are more likely to make long-term commitments and have a great respect for tradition. There is a strong work ethic, and long-term rewards are expected as a result of today's hard work. These cultures tend to respect thrift, status, perseverance, order, sense of shame, and have a high savings rate. There is a willingness to make sacrifices now in order to be rewarded in the future. Asian countries score high on this dimension.

Long-Term Orientation cultures may experience people from Short-Term Orientation cultures as being irresponsible, and as willing to throw away money. This perception can be an important factor that a mediator should keep in mind. Also, Long-Term Orientation cultures may engage in extended negotiations. During the Vietnam Paris Peace Talks, the Americans came to Paris and rented hotel rooms for a month; the Vietnamese rented rooms for a year!

In a culture of Short-Term Orientation, change can occur more rapidly because long-term traditions and commitments are not impediments to change. A Short-Term Orientation expects that efforts should produce quick results, has a concern for saving face; they may experience people from Long-Term Orientation cultures as being stingy and cold. Most Western countries, the Philippines and Australia score high on this dimension. Negotiators from Short-Term Orientation cultures should be mindful that parties from Long-Term Orientation cultures may see the past or the distant future as part of the present. Likewise, negotiators from Long-

Term Orientation cultures need to remember that a present orientation can bring needed change. This is an important difference in perspective for mediators to keep in mind.

VII. Monchronic Culture vs. Polychronic Culture

A Monchronic Culture perceives time as linear, quantifiable, and in limited supply; they believe that it is important to use time wisely and not waste it. Efficiency is important, and the needs of people are adjusted to suit the demands of time, resulting in developing schedules and deadlines in the manner considered most efficient to do one thing at a time. Unforeseen events should not interfere with plans, and interruptions are seen as a nuisance. A monchronic culture's approach to time is linear, sequential and focusing on one thing at a time. These approaches are most common in the European-influenced cultures of the U.S., Switzerland, Japan and Scandinavia.

A Polychronic Culture orientation involves simultaneous occurrences of many things and the involvement of many people. The time it takes to complete an interaction is elastic, and is considered more important than any schedule. Time is perceived as limitless and not quantifiable, and time is adjusted to suit the needs of people. Schedules and deadlines get changed as needed, and people may need to do several things simultaneously. It is appropriate to split attention between several people and tasks, and it is not necessary to finish one thing before starting another. Mediterranean and Latin American cultures, as well as African and the Middle Eastern cultures rank high on this orientation.

VIII. Conclusion

For the mediator to be insensitive to the cultural or ethnic differences discussed here could result in missed opportunities. If the mediator recognizes cultural differences and learns how to address them, a new set of "tools" becomes available. Cross-cultural or sub-culture mediations are more complex because of the differences noted above. However, in these settings, mediators can apply the information discussed here to improve the likelihood of success.

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