

Kluwer Mediation Blog

Co-Mediators As Disputants

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It is no secret that professionals are proud and independent minded. The best professionals in most fields, mediation inclusive, tend to develop uniqueness attributable specifically to their practice and guard their space with the most passionate force they can muster. This is because most professions have an element of art attached to it. It is for this reason that most professionals, especially in law, seek to work alone or with self-selected partners or associates. When a mediator gets called in to work with another mediator as a co-mediator, the dynamics often result in an unspoken tension and potential dispute.

Even though the challenges are not very evident in mediation as in other fields especially most disputes are resolved by a single mediator, situations may arise when the parties feel, and justifiably so, that the desired mediator would require support for the effective resolution of their dispute. Such situations may be predicated on language barriers i.e. the parties may have a language preference which is alien to the preferred mediator and thus a co-mediator with knowledge of the preferred language is appointed along with the preferred mediator. Technical experience could also necessitate the appointment of a co-mediator where the preferred mediator is not familiar with the technical details of a dispute and time is of essence in resolution. Okay, so whatever the case, we have this marriage of two independent professionals and in my experience if the relationship is not managed effectively the entire dispute resolution effort could be torpedoed. What's the way around this?

- a. **Mutual Respect:** Both parties must operate in an atmosphere of mutual respect for one another. This is easier when the lead mediator is allowed to choose a co-mediator suitable to his/her preference. However, if for any reason this is not the case the responsibility is on the lead mediator to show leadership by bringing the later appointed mediator to confidence by affirming confidence in his person and abilities.
- b. **Subtle Ground Rules:** The disputants or appointing authority ought to clearly state the head of the team as the age old aphorism indicates 'you cannot have a ship with two masters'. The lead mediator must in a very adept and subtle manner set out clear guidelines for their operation. In doing this, he needs be stylish, mature and decent. The views of the co-mediator and his style should be accommodated as much as possible.
- c. **Communication:** In order for a successful pairing, the mediators must establish and maintain an open and effective line of communication; before; during and after each mediation session. Flowing from the above points, such communication should be frank, fair and intelligent. If this is properly harnessed the mediators may actually be the better for it.
- d. **Flexibility:** It lies with the lead mediator to allow the co-mediator some room in the mediation

process so as not to make the office or person redundant or reduced to a mere interpreter or expert opinion. This would stem from the earlier points mentioned but such contributions ought to be in tandem with the direction from the lead mediator and subject to his/her leadership.

e. Good Faith: Both mediators must at all times operate in utmost good faith to each other and to the appointing parties. The attitude throughout the process must be one of collaboration and cooperation with a single focus, which is the effective resolution of the dispute for which they were appointed.

Anyone who has gone through the challenges of paired mediation would appreciate the effect simple actions like this have on the mediation process and the mediators. I cannot claim to have laid down a complete set of actions as like every art, ingenuity and perfection comes by continued practice and learning. To turn the dispute on its head into one between the mediator and co-mediator does little to the growth of the fledgling profession.


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