

# Kluwer Mediation Blog

## The Fiutak Mediation Circle: how to conduct a mediation

Christophe Imhoos (Esprit d'entente) · Sunday, October 7th, 2012

After a recent conversation in Singapore with Joel Lee, one of our colleagues from our Blog I had a chance to meet there, I find interesting to briefly mention what is the famous “Fiutak Mediation Circle” that we use as model in our mediation training at Groupement Pro-Mediation (“GPM”) in the French speaking-part of Switzerland and that is also taught elsewhere in Europe (in France in particular). What follows is an adapted English translation of an excerpt from an article explaining how such a model works in practice (in Mirimanoff J. & al. (Ed), *La gestion des conflits. Manuel pour les praticiens*, CEDIDAC, Lausanne 2008).

It is proposed to mediators to use a four-phase circle, adapted from the classic book of Fisher and Ury “*Getting to Yes. Negotiating Agreement without giving in*“. These authors present a circle into four phases.

This model of reasoned negotiation, Thomas Fiutak, an American professor from the University of Minnesota, has developed a method of in four phases, echoed by many French authors. His method was detailed and developed in a book “*Le médiateur dans l'arène? réflexion sur l'art de la médiation*” (published at Ed. Eres, Paris 2009). It is generally adapted so as to include preliminary and closing phases.

### Cercle de médiation Fiutak GB

#### **Preliminary phase**

Before starting mediation, the mediator determines the framework of his intervention. It depends on the context and scope of mediation for a given situation: co-mediation or not, possible contacts with the participants, preliminary individual meetings or not, participation of legal counsel, negotiating the mediation agreement (commercial) or consent to mediation (family), allocation of mediator's fees and costs between the participants.

Depending on the type of mediation, the mediator shall decide whether he will examine the file that may be submitted to him by the participants and/or their lawyers. Many mediators prefer not to have any prior information so as not to be influenced by how the problem is determined or submitted, bearing in mind that the mediator does not act as an expert.

#### **Phase 1 (parties' agreement to the process): “WHAT”?**

During the first phase of the mediation, the mediator plays a directive role. He presents the context

and framework of his intervention and, if mediation is delegated by a third party to him, the meaning of his mission.

He explains the process and principles of mediation and other conflict management options. He raises awareness of the importance of individual contribution and participation towards a negotiated settlement. He clarifies the expectations and perspectives of participants in relation to mediation and verifies that the participants fully adhere thereto. He obtains the agreement from participants on the content and scope of the confidentiality clause.

If this has not been done during the preliminary phase, he invites the participants to sign a mediation agreement and sets out the issues.

### **Phase 2 (mediation): “WHY”?**

This second phase is the most important phase of the process and also the most difficult. The mediator facilitates the expression of individual points of view and ensures respect of the speech of all. He asks the participants to submit their problems. He allows confrontation and supports the clarification of the conflict.

Confirming the word heard from everyone, he facilitates the reformulation of differentiated positions to stimulate participants to a change in attitude towards less clear-cut positions. He brings everyone to gradually distance him/herself from the conflict and to make concessions on his/her position by exploring their needs and interests.

When partners to the negotiation arrive at a common definition of the problem, while recognizing the convergences and divergences, the mediator may begin the negotiation phase.

### **Phase 3 (negotiation): “HOW”?**

This stage of mediation is most directly influenced by the negotiation. The mediator facilitates the search for creative options by encouraging the participants to “think out of the box.” He invites them to imagine – without restriction – solutions to the problem identified. The mediator invite participants to establish a list of non-selective options.

When the list is complete (usually without the help of the mediator, which can at most suggest either track if participants are blocked), the mediator encourage the participants to actively explore options.

Following this “brainstorming” participants identify innovative solutions.

### **Phase 4 (action plan): “HOW, PRACTICALLY”**

In the latter part of the mediation, the mediator facilitates progression towards the solution by allowing the selection of acceptable options for each participant.

The mediator helps them to assess the feasibility of the solutions adopted in relation to their context.

The parties negotiate their agreements, and identify implementation problems. They formalize their agreement by an oral or written depending on the field of mediation (business, family,

neighbourhood). In mediations that occur pending a legal action, the written agreement is submitted to legal advisers.

It remains to decide who and how the settlement agreement is transmitted to the judicial authorities or to the third party having compelled mediation.

Finally, the mediator determines whether it is necessary to evaluate and monitor the implementation of the settlement agreement and, if so, how this will take place.

### **Closing Phase**

When mediation is terminated, the mediator, when working in team, discusses the process and its outcome with his co-mediator.

Generally, mediators undertake to discuss their practice on a regular basis to their peers (interview) or supervisor.

Such a model enables not very experienced mediators and practitioners or beginners to better understand how a mediation process may be handled. It establishes phases that helps the mediator to determine where he stands throughout the process and aims at following an established method. This is particularly useful for training purposes.

---

*To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).*

### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

---

# Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Sunday, October 7th, 2012 at 2:43 pm and is filed under [mediation models](#), [Mediation Practice](#), [Understanding mediation](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.