

Kluwer Mediation Blog

Reputation bias

Constantin-Adi Gavrilă (ADR Center Romania) · Sunday, January 14th, 2018

This post was prepared in cooperation with Dan Mirea.

J.J. Norwich writes in his book *Four Princes* that one time in the 16th century the German Protestant states “*Hesse, Saxony and Wuerttemberg actually sent a joint delegation to England – not to ask directly for aid, but with an offer to mediate between Henry (VIII, King of England, a.n.) and Francis (I, King of France, a.n.) in order that the two kings [...] might then join them in an alliance to resist imperial (the Spanish Empire, n.a.) attack.*” (In fact, it is the only time the word “to mediate” appears in the book.)

Moving away from theory to the more fluid practice, consequently, one can ask this question: Do we mediators have our own interests in the mediation processes in which we are involved? And if so, should we announce them explicitly to the parties? How? In which cases? And what would be the factors determining whether to be transparent about our own interests?

As we were discussing this, we remembered a multi-party company – community dialogue process in which we are co-mediators, where the issue of which party is more important for us mediators showed that we didn’t have similar perspectives (as to whether they are or not equally important). Interestingly, the principles of neutrality and impartiality may not hold absolute control over the mediator’s behavior.

At this point we thought about the mediator’s own interests in the process.

The most general, direct and understandable of these (mostly in a scarce market) is the mediator’s desire to retain the party/parties as future clients or referrals (envisaging of course a closure through significant progress). The question is whether this willingness could introduce a bias in the process (by determining the mediator to perform as to avoid “upsetting” the party/parties).

But what if, in the course of the process, the mediator anticipates a failure? Must he readjust his interest? And would this occurrence not introduce a new, different bias in the process (for example, as a consequence of one of the parties suddenly becoming “more important”)?

We started wondering what effect a direct and sincere announcement of the mediator’s personal interest at the onset of the mediation process would have. Would it diminish the bias? Or would it also result in an additional concern in the parties’ minds and the erosion of the respective rapport accordingly?

In any case, every time a mediator enters mediation, he plays with his reputation on the table. And because the reputation is the professional's most valuable asset (which he strives to preserve by all means), the process is inherently biased from its very beginning.


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The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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