

Kluwer Mediation Blog

How to make good use of the mediator in a student mediation competition?

Alan Limbury (Strategic Resolution) · Thursday, April 22nd, 2021



I was delighted to be approached to collaborate on this post by Dima Alexandrova, mediator and attorney-at-Law, founder of AdimaLaw practice in Sofia Bulgaria. She has experience in the ICC Paris and other competitions both as a participant, judge and coach. She has some interesting ideas to assist students in such competitions to make best use of the mediator.

Over to you Dima.

Making good use of the mediator could be a real challenge in a competition setting where both parties are usually pretty well prepared to negotiate. Based on our practice in the different students' fora and mainly at the ICC Commercial Mediation Competition as coaches, judges and mediators we could present the following best practices in our opinion. In the present article we would like to follow the natural flow of the session's structure and provide ten tips how to make good use of the mediator:

1. For this reason, we will start with the opening where parties can use the mediator by explaining their situation to a neutral listening professionally and attentively to their story. In this case the parties naturally tone down when explaining to a third person. In summary, the parties provide context to the mediator and involve him/her in this way in the dispute. The students can always use the wording – 'for your benefit Mr/Ms Mediator' and add their story.
2. Second, the parties can ask the mediator to provide a neutral summary of the stories of both parties which serves as a good ground for the future discussion. And this leads to the next point – the agenda.
3. The contribution of the mediator is pretty valuable when setting an agenda and framing the issues in the agenda in an appropriate manner. Based on what s/he has heard in the opening statements the mediator can also easily add to the suggestions of the parties and moreover frame in a neutral

language what might otherwise sound adversarial and what might further foster the dispute between the parties.

4. Furthermore, the mediator can immensely help in visualising the dispute when asked to do so on a whiteboard. The mediators have different approaches to the latter, though in any case if asked to visualise the dispute this would be helpful especially when there are numbers or complex relations between legal entities.
5. Another way to make good use of the mediator is to ask for a neutral summary of where the parties are in the session and check whether they are on the same page, which is better than having a summary of a lawyer of a party which tends to be subjective and orientated to the interests of that party.
6. In case of a deadlock situation, the parties can ask the mediator for a piece of advice on how to proceed in the session whenever they need that advice. This can be done in a joint session or in a caucus setting.
7. The mediator can help by rephrasing and reformulating the parties' thoughts in the main session or in the caucus so the message is conveyed in an appropriate manner and the goal of the party is achieved.
8. A powerful tool to use the mediator is the caucus which can be employed when the process is not naturally moving forward and in the caucus the mediator can be asked how to proceed. In other words when there is an impasse in the negotiations the caucus can be called.
9. In addition, the parties can use the private meeting with the mediator to reveal their real interests and needs or share information for which they have signed an NDA. In this way they can have the mediator's help in structuring the session in a way in which this piece of information is taken into account.
10. Finally, the parties also can ask the mediator to provide them a third-party perspective both on the process on how they are moving and also a third-party perspective on the options and solutions they generate. In a nutshell, the mediator can be used as a sounding board as a person whose reactions to suggested ideas are used as a test of their validity or likely success before they are made public. (Oxford Definition)

To sum up, there are various ways to make good use of the mediator and we would highly recommend to do that. Please, do not consider the above list as exhaustive, it simply aims to illustrate how to use the mediator. We wish good luck to all students taking part in mediation competitions and we hope that this article will be useful for them.

Thanks, Dima. I would like to add a couple of comments.

One of the most contrived ways in which some students purport to make use of the mediator is to do no more than to ask the mediator to write on the whiteboard. Mediators can help in so many other ways as well and are usually busting to do so.

The key to a creative solution for both sides often lies in their confidential information, so one of the most useful ways to use the mediator, as Dima has noted, is to call a caucus to ask the mediator whether and, if so, how to disclose confidential information to the other side.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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