
Kluwer Mediation Blog

Let's Talk about Co-mediation

Andrea Maia (Mediar360 – Dispute Resolution) · Sunday, January 8th, 2023

My participation in the Singapore Convention Week (SC Week, August 2022), at the invitation of the Singapore Minister of Justice and the UNCITRAL Academy, has raised my awareness about the advantages of co-mediation.

As I mentioned in [my previous post](#), among several relevant topics discussed on our panel, the one related to the benefits of the use of co-mediation in-cross border mediation, brought by Yoshiriro Takatori, certainly caught a lot of the public's attention.

At that same week, co-mediation was one of the highlights of another event - "[Complex Mediations in a Digital Age](#)" – organized by AAA-ICDR Asia Case Management Centre, which I strongly recommend to watch on YouTube.

With so many insights about, co-mediation, it inevitably occurred to me on arriving in Brazil that as we are a country with such cultural diversity, from one state to another, and an overloaded judicial system, co-mediation could also bring benefits to the present scenario and enhance the practice of mediation among us.

But let's pause for a moment. Before we proceed, it's worthwhile to analyze the meaning of co-mediation.

The prefix 'co' indicates simultaneity, such as in words as cooperating, coordinating, coexisting.

The prefix 'co' attached to the words mediate and mediation, form words as co-mediate and co-mediation, which in turn means to "perform/conduct together".

Thus, to act as a co-mediator is to mediate together, or conduct a mediation in cooperation and in a coordinated way, by two or more mediators, in order to create a favorable environment for conflict resolution.

That said, I must confess that before this trip to Singapore I only used co-mediation in two circumstances:

- 1) **Training of mediators:** in order to give the new mediators the opportunity to gain experience, training skills, and amplify knowledge in a controlled real setting .
- 2) **Mediating at professional associations:** like in the [Brazilian Bar Association Mediation](#)

Chamber, where one mediator is a lawyer and the other mediator has a different professional background to avoid the idea of bias from the parties.

But I started to think that I should broaden this range and explore other possibilities.

So, the first step when I came back to Brazil was to give a closer look to the Brazilian regulation regarding co-mediation.

The Brazilian National Council of Justice (CNJ), in its **Judicial Mediation Guide** (2016, p. 142), states that:

“Co-mediation consists of the model in which two or more mediators conduct the self-composition process. Reasons for adding another mediator include:

- i) allow the skills and experience of two or more mediators to be channeled towards the fulfillment of the purposes of the mediation, including the dispute resolution ;
- ii) offer mediators with different cultural profiles or genders, so that the parties feel less likely to be biased and avoid biased interpretations by neutral third parties;
- iii) supervised training of apprentice mediators.”

Besides that, there is the need of the agreement of the parties to the co-mediation, even if implicit, as provided in art. 15 of the Mediation Law and art. 168, paragraph 3, of our Civil Procedure Code.

The Brazilian Mediation Law – Law 13.140/2015, article 15 states that:

“Art. 15 – At the request of the parties or the mediator, and with their consent, other mediators may be admitted to work in the same procedure, when this is recommended due to the nature and complexity of the conflict.”

And the Brazilian Civil Procedure Code, article 168 states that:

“Art. 168 – the parties may choose, by common agreement, the conciliator, the mediator or the private conciliation and mediation chamber. “ ...

“§ 3 Whenever recommended, more than one mediator or conciliator will be appointed.”

But what could represent ‘whenever recommended’ ?

So I started to list a few possibilities where co-mediation would be recommended in my point of view:

- large groups, multiparty mediations;
- specific/complex cases, which require different expertise from the mediators;
- balance in gender, personality, culture, and professional background;
- more easily managing practical aspects, as: eye contact, monitoring engagement, and observing body language and visual clues.

And I also list the gains for the mediators:

- to combine skills and expertise;
- to provide balance of, gender, culture, or age, for example;
- to mitigate risks such as safety concerns and complaint management.

I would love to get feedback from readers to expand this list.

These are some preliminary reflections on the subject, and in the next post I will bring some comments on a co-mediation experience I had after my trip to Singapore!


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