

# Kluwer Mediation Blog

## Everything Everywhere All At Once. Does it work?

Andrea Maia (Mediar360 – Dispute Resolution ) · Monday, May 8th, 2023

The inspiration for this month's post came from the recently released news on social media, which attracted a lot of attention because it involved the mediation carried on during the divorce process of a famous couple. This mediation procedure has been questioned and has generated a lot of debate in the mediation community.

My comments on this specific case are based on what is in the media so far; however, I believe we have already enough information to reflect and contribute to this debate. In other words, the starting point to our discussion is **the limit between the professional's role as a mediator and as a lawyer.**

The topic is quite extensive and, in this post, I will highlight just some of the related issues. At the same time, for those who wish to learn more and go deeper into the subject, I suggest the webinar promoted by CONIMA (National Council of Mediation and Arbitration Institutions), available at that [link](#).

The webinar start with a talk where [Professor Fernanda Tartuce](#) mentions the difficulties society and mediators (as well as lawyers, teachers etc) are faced nowadays, i.e., being multitask and strive for high performance, status, high consuming habits, for instance, and which are associated to the idea that we can do (or have) everything at once.

This multitask and omnichannel world, experienced in several dimensions, is very much in line with what is portrayed in the recent Oscar-winning film: [Everything Everywhere All At Once](#).

In this scenario is possible to rush through things and do not skip the necessary time to communicate with clients, explain the role of the mediator and organize the mediator's plan.

If there is a difficulty in managing all of this roles for the professional trained in conflict management and resolution, the same applies to the parties who is experiencing a conflict and already vulnerable, confused and weakened.... how to understand and separate the role of the mediator original profession background?

Regardless the attempts to explain a successful formula for this dilemma, I lost count of how many times I heard from parties: *"But Ma'am, as a lawyer, what do you think of what he did?"* or *"But do I need a lawyer accompanying me? Can't you perform both roles?"* Therefore, I would like to point out the following questions:

## **How to distinguish and explain why the roles of a mediator and those of our original profession can't be combined?**

It is necessary to clearly present the role of the mediator and be familiar with the law and the codes of ethics in Brazil and abroad.

In addition, a well-structured and clear mediation term helps to establish roles and boundaries. The ground rules are the basis of mediation and the moment to present realistic expectations and establish performance and limits.

Knowing how to present other alternatives is also important, such as the possibility of collaborative advocacy (another tool).

## **How to say no to clients?**

In the above mentioned seminar, [Professor Sandra Bayer](#) points out that the beginner mediator has a tendency to “spare the parties” from the dispute, a desire to pacify conflicts, improve the life of clients and sometimes ends up selling something that he has no control over because parties are responsible for settlements.

The mediator acts as a facilitator and it is necessary to make it clear to the parties that for settlements take place during mediation, parties must take advantage of this moment to work on their positions and interests and maybe solve the dispute. Mediators help the parties to strengthen and become main characters of the dispute, saving themselves from litigation. In other words, it is the parties' goal, not the mediator's, to come to an agreement.

In this context, the mediator does not act as a lawyer, psychologist, engineer or whatever his profession of origin may be. He needs to say no to the parties' request and truly act as a mediator, staying away from giving opinions or adding services, among other conducts. By the way, this is why, according to the Brazilian law, mediators are not allowed to represent clients as lawyers in the same conflict they have mediated before.

Saying no means giving up money or a case and for that we need a lot of firmness and self-confidence.

One remedy to this is to think that when you say no to your client demands that overcomes the limits of the mediator role, you say yes to your reputation and make a service to the mediation reputation too.

In conclusion, my advice for those who are starting a mediation career is to be aware that access to training and education, although extremely important, are not enough, as nothing replace on-field experience and a good mentoring.

In addition to making a self-evaluation of your strengths and weaknesses and always maintaining yourself up-to-date with the latest developments, trying to find a mentor to guide you through the entire mediation journey and volunteering for taking part in mediation with more experienced professionals, are also very important in order to have a good start.

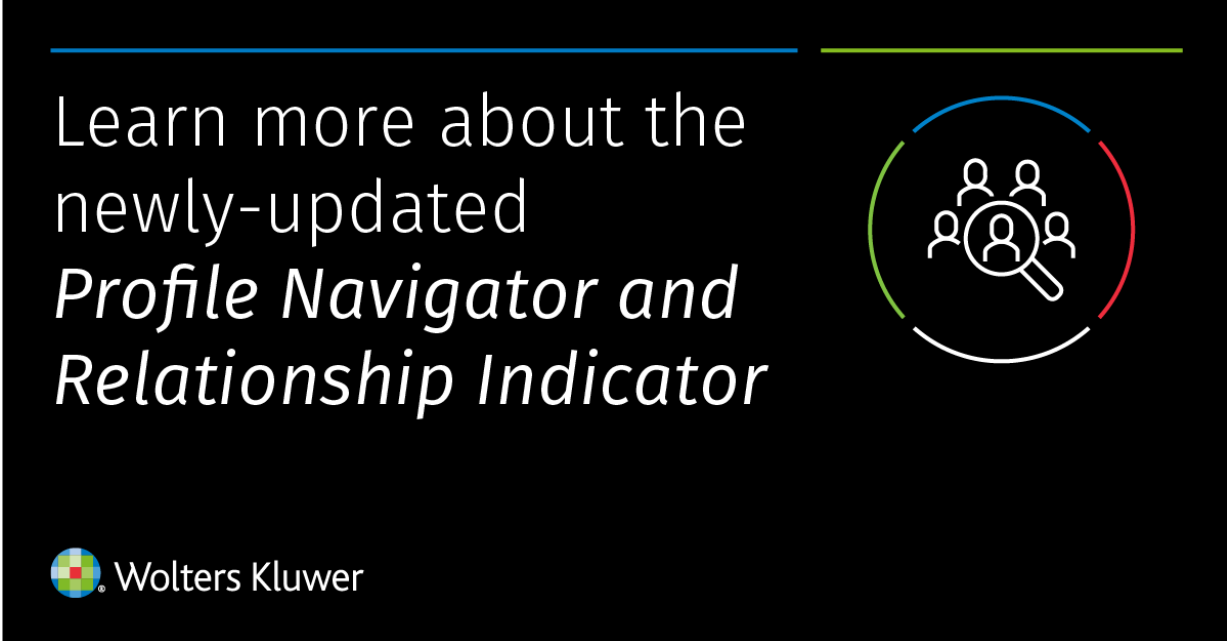
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