

CO-MEDIATION: DEFINED

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Co-Mediation is a style of mediation that involves multiple mediators, usually two, which in some way may compliment each other by gender, personality, culture, professional background, or by other ways in a manner that can improve the quality of both the mediation process and its outcome. Interdisciplinary mediations, that is, mediations performed by mediators with different professional backgrounds and disciplines.

At its best, Co-Mediation is the harmonious working of complimentary mediators who offer a diversity of skills, experience, and personality. For Co-mediators to successfully work together they must meet two criteria, 1. Complementary in Personality, 2. Complimentary in Background. Co-Mediators need to have mutual respect and trust in each other in order to work as a team; thinking and acting as a unit. Complimentary in background is not the same thing as the same background. Co-Mediators that are a lawyer/ non-lawyer team are the most successful. This sort of team is found to be even more successful if the non-lawyer is some sort of mental health professional. Mediation is a complex activity. In some instances, the co-mediators are creating a symbiotic dance together. Mediators need to be attuned to the clients' personalities, body language, tone of voice, and words. At the same time, Mediators are thinking about their next move or the words they will use on the next move. Mediators continually have to check and balance their own behaviors and reactions.

Why Co-Mediation?

There are situations where co-mediation may be more helpful. These may include:

1. When knowledge of the field, the law, the culture(s), or other contributing factors is necessary, and no one mediator possesses these skills.
2. Multiparty cases where handling all the parties involved might be too difficult for one mediator.
3. Lengthy mediations where the division of labor decreases mediator fatigue.
4. Clients who view the size of the mediation team as a ratification of their importance and that of their dispute
5. Many clients who are going through the pain and stress of a family dispute may feel comfortable with a mediator of the same gender. A male/female co-mediation team allows for this.
6. Stylistic differences in mediators. Such as: empathy skills, tone of voice, body language. Having co-mediators increases the chance

- that one of the clients will have a connection. A connection with one or both mediators can increase the chances of resolution.
7. Balance. Co-mediators can create an atmosphere of comfort. Comfort in the mediation process can be increased when there is client trust with the mediator(s).
 8. Advantageous resources. The clients' issues and needs are thoroughly covered. The client has readily available two professionals of varying backgrounds helping them move toward resolution.

Co-Mediation

Lawyer/ Non-Lawyer Model

The underlying goal of mediation is conflict resolution. Mediation is a negotiation process that requires a 'give and take' approach to ironing out an agreement. The research in co-mediation emphasizes the approach of a lawyer/non-lawyer co-mediation team as being ideal. A lawyer mediator may be concerned with issues pertaining to the law and trial process. A lawyer can delineate with some authority, the chances the parties may be taking if they do not resolve their conflicts and go before a Court of Law. Mediators are sometimes in the position of selling the parties a 'bill of goods'. However, there are often emotional issues that can get in the way of resolution. Often, a non-lawyer co-mediator can assist with helping the parties field their emotional concerns. A non-lawyer/co-mediator with excellent empathy skills can assist the client in moving through the emotional barriers that prevent conflict resolution. This is not to say that lawyers, especially family lawyers, do not have empathy skills. The idea is to tailor the mediation experience to maximize the likelihood of its success and create enduring resolutions.

Why Use a Lawyer/ Non-Lawyer Model?

1. Highly Emotional Dispute: in divorce, custody, and other Family Court matters, the parties are likely to reach resolution if their emotional needs are met. This is not to say a Mediator must become a therapist. Often, a co-mediator can offer to listen. Listening with an empathetic ear is different than sympathizing with a person's pain. Listening to a person, acknowledging what they are saying, and then encouraging them to move forward can be extremely beneficial to a successful resolution. Often times, a client may not be receptive to legal advice. This is especially true when the advice does not lean in their favor. The Lawyer mediator may give such legal advice or opinion and the non-lawyer mediator can help the client receive the news even if it is emotionally upsetting. This team

approach can help the mediation process by preventing a client from shutting down and no longer engaging in the process.

2. The successful outcome of mediation often depends on the level of trust and compatibility a client and their lawyer have with a mediator. An empathetic person often secures client trust. Co-Mediation doubles the chance of a connection to at least one of the co-mediators. The connection and trust with a mediator by establishing rapport can be essential to successful outcomes.

Co-Mediation In Action

Co-Mediation can be done in at least three ways:

Driving: Front Seat/ Back Seat: Greg and I often call this approach "Front Door/ Back Door"

Typically, the more experienced mediator "lead" takes the control and drives the mediation. However, this is not always the case. Co-Mediators must be able to switch the lead position back and forth according to the emotional climate in the room. If the goal is to achieve balance, the co-mediators need to know when it is their turn. In other words, achieve a balance that best serves the client.

Example: I usually prefer that Greg opens/introduces the Mediation with stating the purpose, goals, and rules of Mediation. He gives them the Mediation Agreement to sign. I want the clients to view Greg as the fact or rule person. He is the legal expert; I am not. The clients need to have confidence in his legal knowledge. On the other hand, I prefer to take the lead when and if during the negotiation process, there is a fact or issue that is difficult for a client to emotionally reconcile. It is important at this point for me to help the client process the emotional content behind a certain issue. Empathy and active listening can often help a client differentiate between feelings and reality.

Division of Labor-" My Job/ Your Job"

Similar to the front -seat/back-seat co-mediation style is the division of labor where the co-mediators delineate specific duties and functions to be carried out by each mediator in the co-mediation process. This labor division could encompass two mediators complimenting each other by each taking charge of a different aspect of the mediation, such as: Financial Issues, Legal Issues, Fact Pattern, Emotional Issues, the process vs. the product.

Taking Turns:

This is perhaps the most common practice among experienced interdisciplinary, co-mediators. Often, co-mediators will take turns at leading the mediation through the entirety of its process. Another approach is to “go with the flow” where the co-mediators will take turns as appropriate to the situation. In a “go with the flow” approach, mediator “A” may speak while mediator “B” observes or writes. If “B” notices through observation, that a client’s reaction is negative, “B” may take the mediation on a slight diversion or use certain skills to get the client back on track. If the mediators start to notice that one client is connecting better with one of the co-mediators, it may be decided that the ‘better liked’ mediator assume more of a lead role in order to achieve a better outcome.

“Getting Past No” by William Ury (Bantam, 1993), states that the key to a successful mediation is breaking through the barriers to illicit cooperation. William Ury states that in order to break through barriers one must recognize the impact of being in a world of strongly felt emotions and strongly felt differences. Co-mediators have a higher rate of achieving this goal than single mediators. The researcher states that the team mediation process allows for more roles to be played in order to move through the strong emotions. He calls these strong emotions barriers. Under stress, even the kindest person can become angry and intractable. Mediators have to keep check on their own reactions. Ideally, a mediator will position himself or herself: “on a balcony”. That is, they can place themselves in a position to see further and wider. Co-Mediators can assist each other by stepping-in when the other mediator has a strong personal reaction. When they have in fact “stepped off the balcony”. At times, a mediator will need to step back from the situation and temper their reaction. This is so much easier to accomplish if you have a co-mediator to take over, call for a break, or reframe. It is difficult for a single mediator to see all that is going on.

Co-Mediation: Drawbacks:

1. Co-Mediator Disagreement/ Incompatibility:

While differences in co-mediators may add balance and synergy to the process, some differences may achieve the opposite. Disagreement between co-mediators could result from: power struggle, lack of participation, lack of communication, cultural differences, or failure to clarify assumptions about the process or each other's roles. Co-Mediators need to avoid these pitfalls by anticipating the main issues of disagreement and obstacles they will face in the mediation. Preparation done prior to the scheduled mediation is the key to decreasing co-mediator conflict. Co-mediators need to know each other, their negotiation styles, and their conflict resolution styles well. They need to know if they are a good fit. Differences in co-mediators are important, but they must not cause obstacles in of themselves.

2. Cost.

Some co-mediators charge more than a solo mediator. These real or perceived costs may drive potential clients away. However, studies do show that co-mediation is in fact more cost effective in most cases. Co-mediation may actually shorten the process thus saving the clients money in the long run.

2. Ethical Considerations:

Non-Attorney mediators must not give legal advice. Therefore, it is vital that the non-attorney mediator avoids discussing the nuances of the law with the clients. All types of mediators must know their boundaries professionally, legally, and personally.

Co-Mediation: A Conclusion:

It has been said that, two mediators are often better than one in that they can complicate each other, increase the quality of the mediation, and add synergy to the process. Co-mediation teams are about complementary differences in personality, gender, worldview, professional background, professional disciplines, and personal history. As such, the Co-mediation model has been largely recommended by social science and legal researchers as process superior to solo mediation. This is found not just in the arena of Family Law but also commercial, medical malpractice, workplace, and just about any other type of dispute.

However, if co-mediation is so good, why is there such apparent little demand for it? Perhaps its consumer ignorance or lack of knowledge. It is important

to distinguish co-mediation from solo mediation. It is important to educate the public that a team approach may offer an increase in comfort for all parties involved. Public awareness is key to increasing the use of something good.