

Mediation: Styles Used in Cases Concerning Divorce

Dana SABĂU
Ciprian SANDU

Abstract. *In the last few decades, different forms of alternative dispute resolution for conflicts between divorcing, separated or divorced couples have expanded quickly, especially for disputes concerning children. The present article is aimed at exploring how the theory of mediation styles in cases concerning divorce translates into practice in the case of Romania. Additionally, the paper wants to discover how mediators conceptualize the topic of mediation style versus the actual techniques they employ in divorce mediation. This research links divorce mediation experience with a relevant theory concerning the topic of mediation styles or style, an issue highly debated by practitioners and researchers even nowadays.*

Keywords: *mediator, mediation, approach, mediation style, mediation practitioners, divorce mediation practice, mediation techniques.*

Dana SABĂU
MA Student
College of Political, Administrative
and Communication Sciences
Babes-Bolyai University
E-mail: dnsabau@gmail.com

Ciprian SANDU
Mediator, Transylvanian Institute
of Mediation
E-mail: ciprian.sandu@fspac.ro

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It is widely known that mediation represents a dynamic, flexible alternative resolution form. Similarly, according to the theory in the field, the styles adopted in the mediation process are likely to vary depending on a multitude of factors including mediator's professional background, experience, training and personality. In divorce mediation, things are no different. Even though according to researchers such as Baitar *et al.* (2013, p. 57), mediation processes have received little attention from the literature in the field, the role of the mediators' styles in the process and outcome of the mediation cannot be denied (Butts, 2010, p. 1).

In order to classify mediation styles, theoreticians have expressed their preferences for the polar opposite classification technique, thus the possible styles range from: resolution-oriented versus dialogue-oriented, task oriented versus socio-emotional, facilitative versus evaluative, dealmaker or orchestrator, positional versus interest based and so on (Kressel, 2000; Butts, 2010; Picard, 2000, p. 38).

Nonetheless, the mediator styles that have been most recognized in the literature include the facilitative, the original; the transformative, the evaluative, and most recently the narrative style.

Before moving on to the discussion about the mediation styles, we must have a brief description of family mediation and divorce. Family mediation is a form of alternate dispute resolution in family matters. It is a process where the basic principles of mediation are applied in order to reach the resolution of conflicts that arise in families. Christopher Moore's definition of mediation gives us a good image of this process, which involves an "intervention in a standard negotiation or conflict of an acceptable third party who has [...] no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute" (Moore, 1996, p. 15).

Moore's definition contains some of the main principles that are the basis of mediation and are applied in family mediation. First of all, there's mediation's voluntary character, meaning that the parties have to engage in the process willingly and can withdraw from it at any time. Secondly, the third party, the mediator only assists the conflicting parties in reaching an agreement; he does not have any power over the outcome as the decision lies in the hands of the parties. This is known as the principle of self-determination. Moreover, another core principle of mediation is its confidentiality which applies to all information exchanged during the mediation process and must be respected by both mediator and parties. Last but not least, the third party is required to practice mediation based on the principles of impartiality and neutrality.

Regarding the divorce, in the last few decades, different forms of alternative dispute resolution for conflicts between divorcing, divorced or separated couples have expanded quickly, especially for disputes concerning children (Emery, Sbarra, & Grover, 2005). The rise of divorce mediation was a direct result of the "general dissatisfaction with the traditional adversary methods for settling these disputes through attorney negotiations or litigation" (Emery *et al.*, 2005), its long-term effects on the ongoing relationship between the conflicting parties if they had children and increasing court costs and delay.

Divorce mediation is a non-adversarial dispute resolution form that helps people involved in a separation or divorce to settle their disagreements sensibly and with minimal involvement of the legal system. The mediator, an impartial and neutral party employs all the appropriate strategies and tools during the mediation sessions, in order to help disputants reach decisions that they both find acceptable and can leave with.

Even though there is substantial support for divorce mediation and it has a high rate of success, this form of dispute resolution, it is not suitable for every case dealing with divorce and has its weaknesses. The mediator should present these to the conflicting parties before they engage in the process, along with this alternative dispute resolution form's strengths.

In order for mediation to be successful, both parties have to be motivated to negotiate with each other in order to reach an outcome in the end and not only be willing to participate. In this respect, mediation may not be able to produce the expected result in the early stages of divorce or separation (Kulerski & Cornelison, 2012).

Understandably, in the initial phase of most cases of divorce or separation, emotions cloud the spouses' capacity to be reasonable. Moreover, it is very likely that only one partner is ready for divorce, thus wishes to begin the negotiations. The other one might refuse to accept the breakdown and wish to work on saving the marriage. Discrepancies in their motivation can stand in the way of reaching an outcome. In addition to this, generally speaking, the risk of one or all sides abandoning the mediation table is present throughout the process and consequently, the conflict can end up in the courtroom very easily, adding more costs than only choosing court proceedings to solve the conflict from the beginning (Pop, 2014). Even if the parties are committed to settling their differences, this does not mean that the mediation will be a success, as it provides no guarantees that the process will end in a solution or settlement, opposed to the situation with traditional litigation.

A distinct situation where mediation is not recommended refers to physical, mental, verbal or any kind of abuse inflicted by a spouse. Intimidation by any of the parties in conflict falls under the same category. The need for a non-adversarial and non-threatening environment during the divorce mediation process is crucial given the fact that the parties have to feel comfortable enough to discuss delicate matters.

There are several objections that raise the appropriateness of mediation in cases of abuses, especially since some consider that it promotes a conciliatory manner of solving conflicts, thus the party responsible is not held accountable like as in court proceedings. Nonetheless, there are mediation practitioners that undertake the challenging task of mediating these types of conflicts as well. However, another issue to carefully consider for mediation that is placing a party that has suffered abuse with the abuser in the same room for mediation it not appropriate, for evident safety issues (Kleist, 2003). In these sensitive situations, separate meetings might have the potential to work.

After this brief introduction on the family mediation and divorce topic, we can continue the discussion about the mediation styles. Due to its undeniable influence on the mediation process and its outcome, the topic of mediation style has sparked considerable interest among mediation practitioners and academics. As stated in numerous studies, there is a variety of styles that can be enacted in mediations (Butts, 2010; Kressel, 2000).

The mediation style has been described both as “a set of strategies that characterize the conduct of a case” (Kressel, 2000), a continuum from a passive role to that of a leadership role or active problem solver, according to Gulliver (as cited in Wood, 2004) and, in Coltri’s view, as the role the mediators see themselves play during the mediation process of a conflict (as cited in Butts, 2010).

Even though the mediation styles that most received recognition are the facilitative, evaluative and, more recently, transformative and narrative styles (Butts, 2010), a wide range of styles were identified aside from these primary ones, with some of them being variations and combinations of other styles (Harding, 2014).

The facilitative mediation style

The facilitative mediation style is the original style of mediation and thus, the most recognized by practitioners. Mediators using this style structure the process in order to assist the parties in reaching a mutually satisfying understanding on some or all the issues in conflict in a cooperative manner (Zumeta, 2000).

The characteristics of this style include facilitating the communication between parties at the mediation table by asking them questions; validating their points of view, searching for the interests hidden underneath the conflicting parties’ positions. Once the interests and needs of the parties are brought to light, the mediator assists them in finding the best outcome that they can live with and which covers those specific needs.

In facilitative mediation, parties have complete control of the outcome of the process. Consistent with the principle of neutrality, the mediator has no advisory role: he can’t make recommendations, express his own views or influence the resolution. The mediation provides a structure and agenda for the talk where the parties address their differences. Simply put, the mediator controls the process, whereas the parties control the options for resolution, assisted by the mediator.

The evaluative mediation style

According to Zumeta (2000), “evaluative mediation is a process modeled on settlement conferences held by judges”. Thus, its main concern is evaluating the parties’ case and directing them towards resolution or settlement. For this purpose, a mediator that uses this style by evaluating the strengths and weaknesses of their arguments and providing advice as to what would happen if the case goes back to court. This style is often used when money represents a significant issue in the dispute (Foster, 2003).

This style involves making recommendations to the parties as to the resolution, mostly using separate meetings with the parties and their attorneys, if present (Zumeta, 2000). Not surprisingly they most often than not have expertise in the nature of the conflict or the legal side of the issues brought to the mediation table.

Evaluative mediation first appeared in response to the court-mandated or court-referred mediation. Due to its connection with the courts, many mediators that practice this 'settlement oriented' style are attorneys. Thus, great emphasis is placed on the parties' legal right and on reaching a 'fair' solution. In short, in evaluative mediation the mediator not only structures the process but has a direct influence on its outcome, as he's more involved in the development of the potential solutions so the parties can reach an understanding (Mitroi, n.d.).

According to Della Noce (2009), the use of the evaluative style is highly debated with both detractors and supporters as it is believed that they put pressure on the parties, thus affecting their self-determination (as cited in Baitar, Buysse, Brondeel, De Mol, & Rober, 2013, p. 59). Nonetheless, in extreme cases such as those involving abuse, these are seen as inevitable.

The transformative mediation style

Transformative mediation keeps the structure of the facilitative style (Foster, 2003), but focuses on transforming the parties and their relationship through empowerment and recognition of one another so that this can naturally lead to the end of the conflict, even with long-lasting results.

The key concepts of empowerment and recognition imply that the mediator has to "strengthen people's capacity to analyze situations and make effective decisions for themselves, [...] strengthen people's capacity to see and consider the perspectives of others" needs to be made full use of (Folger & Baruch Bush, 1996, p. 264). In order for this to happen, evaluative mediation relies on the interaction and communication between the parties. In this situation, success is not measured by whether the parties reached a resolution or not. All in all, transformative mediation offers much more control to the parties as they structure both the process and its outcome. Here, the mediator follows the flow of the discussion, intervening mostly to point out different moments of 'recognition of the opinions of one another' (Mitroi, n.d.).

It can be claimed that, in the specific case of divorce mediation, the conflicting parties' preference for a topic, structure, timing receives constant support from a mediator that uses the transformative style. This in turn maximizes its potential of improving their sense of connection with one another (Simon, 2011, p. 1).

Moreover, among other applications of the transformative style in divorce mediation, "helping the couple maximize their strength and responsiveness in relation to each other in the moments when we [the transformative mediators] are with them" (Simon, 2011, p. 16) is of utmost importance in the hope of them working with each other in a beneficial manner in the future as well, especially when the case involves children.

The narrative mediation style

Narrative mediation is a relatively new style that developed the idea that each party perceives the conflict in a different way than the other, thus they have their story concerning the issues that need to be addressed in mediation.

This mediation style focuses on storytelling as a way to get the parties to 'detach' from the dispute, to view it from a distance. In this way, they can feel comfortable enough to share their stories with one another and at the same time, their own perception of the conflict, their different needs and interests as well.

The mediator will try to discover in all these stories a common ground in order to work with the disputants to create a new narrative and reshape the conflict. This new alternative story of their relationship should be one that the parties can accept and ultimately lead to the end of the dispute (Mitroi, n.d.). Hence, the primary aim of this style revolves around the relational needs of the disputants, the substantive matters being a second priority (Hansen, 2003).

The last thing we have to discuss inside this article, before moving on with the research, is about the mediations where children are involved and also about the power balance between parents in mediation.

One of the key features of divorce mediation involving children is the "continuing and interdependent relationship" of their parents (Roberts, 2008, p. 192). Apart from being the common interest between them, the children also represent the incentive to renegotiate their relationship and leave room for future cooperation especially since their children's needs evolve in time, thus any agreement previously reached between parents may need revision. According to Davis and Roberts (1988), in the eyes of the disputants, children can play various roles; they can represent the cause of the conflict, the weapons of conflict, the main victims of conflict but, more importantly, also the best reason for ending the conflict (as cited in Roberts, 2008, p. 192).

As mentioned above, the relationship of the parents in conflict will go on throughout their lives, even after the divorce is final. In these cases researchers support the use of a process-oriented mediation design that enables the conflicting parties to vent their frustrations and to be heard by one another which more often than not leads to them moving forward with the decision-making process in the best interest of the children and their relationship.

As Friedman (1993) suggests, the direct participants in the conflict are usually more apt to make decisions which fit their current situation and are in the best interest of the children and theirs than outside parties (as cited in Amadei & Lehrburger, 1996/2005, p. 6). Additionally, any imposed solution on the conflicting parties has the potential to affect their ongoing relationship and thus, their children's best interest.

Moreover, according to Emery *et al.*, “encouraging former partners [in marriage] to develop businesslike boundaries around their on-going co-parenting relationship [...] is the most workable alternative to splitting up the ‘natural way’ which in their view does not include conflicting parties working together in a collaborative manner as co-parents” (2005).

Mediators in Romania have a specific approach in regards to divorce mediation cases involving children. According to the provisions of the 65 and 66 article of Law no. 192/2006, the key priority of divorce mediation is ensuring that the superior interest of the child is protected, no matter the outcome of the mediation process or the issues in discussion. Consequently, it is the mediator’s duty to have the conflicting parties focus primarily on their children’s needs when discussing any aspect of their divorce or parenting responsibility.

Most importantly, even though the mediator is bound to the principle of confidentiality by law, the same law compels him or her to break it should he discover or receive information about facts that endanger the best interest of the child in any way. In these extreme cases, the mediator is required by law to inform the competent authorities about the situation (Act 192/2006).

Regarding the subject of power balance, according to Kelly (2005), the factors that directly influence or create the power dynamics between the disputants in divorce mediation include “the history and dynamics of disputant relationship, personality and character traits, cognitive style and capabilities, knowledge base, economic self-sufficiency, gender and age differences, cultural and societal stereotypes, and training and institutionalized hierarchies” (as cited in Monahan, 1998, p. 10). Considering all this variety of factors that impact power relations, there is little consensus on the issue of power imbalance as the mediation process’ capacity to address it is put into question (Monahan, 1998; Cotler-Wunsh, 2007, p. 8).

There is significant disagreement among scholars about whether and in what way mediators should intervene to try to even out parties’ power of bargaining where the imbalance is not considered excessive, given that power balancing can be viewed as not acceptable under the mediation principle of impartiality (Allen Beck, 1999, p. 66).

While researchers such as Grillo (1991) dismiss mediation’s ability to balance out power disparities if the mediator acts with complete impartiality (Cotler-Wunsh, 2007, p. 16), “there are ways to assist mediators in tackling possible imbalances that present or surface in the process” (Ibid, 2007, p. 63). A first possible approach is leveling the power imbalance between the parties can be done by using the spectrum of mediation styles that exist, in response to the particular type of issues in conflict and the power disparity present or that may appear during the divorce mediation process.

Moreover, Cotler-Wunsh (2007) argues that the power dynamics between the conflicting parties can be affected not only by mediator's intervention, but even by his presence in front of them, as an authority, the effect of his presence depending on the personal and professional characteristics of the mediator as well. Even though the mediator doesn't use specific power-balancing techniques, some researchers argue that the mediator's responsibility to investigate whether the disputants' participation in the mediation process and its resolution is done completely freely or there's coercion involved (Roberts, 2008, p. 146; Cotler-Wunsh, 2007, p. 13).

Additionally, the mediator can remind the parties of their right to not participate or conclude the session at any given time whenever he considers it to be necessary so he can make sure that they have all the relevant information they need (Roberts, 2008, p. 168). Last but not least, the mediator can advise the clients to seek legal advice and have someone review their agreement before it's signed (Allen Beck, 1999, p. 70).

As mentioned above, extreme power imbalance can also result from domestic violence or abuse. Although the general consensus is that divorce cases involving violence shouldn't be settled in mediation *at all* (Cotler-Wunsh, 2007, p. 37), others claim that these cases can be mediated 'successfully', depending on the issues in conflict. Without a doubt, divorcing couples who have a history of domestic violence and/or abuse have a complex power dynamic that must be diagnosed by the mediator using specific screening techniques and examining the parties' behavior (Monahan, 1998, p. 20). There are cases where victims of abuse are unable to express their interests and negotiate effectively and the mediator can find himself in a difficult position. In these cases, without breaking the principle of neutrality, the mediator can take different measures throughout the process in order to empower them so as to be able to negotiate on their behalf (Monahan, 1998, p. 21). These measures include and are not limited to caucuses, where the victim can feel comfortable enough to express their interests and concerns; the company and support of a friend, relative or even of a lawyer, et cetera.

In this paper, we wanted to investigate the relationship between theory and practice in what concerned mediation styles in divorce mediation cases and how these styles are interpreted and implemented by divorce mediators. In doing this, I wanted to see if there is a difference in the interpretation of the concept of mediation style depending on the professional experience and background of the mediators, among other factors, given that both theorists and practitioners have tried to reach consensus in regards to this topic but the theory is highly debated still.

This research paper addresses the following questions concerning mediation styles in cases involving divorce:

- **How do mediators see themselves in what regards their role and styles they use in divorce mediations?**
- **How does the theory concerning mediation styles translate into practice?**

- **How much do styles vary within divorce mediation and depending on what factors? Is there an appropriate style that works best in these cases?**
- **Do mediators' self-professed mediation styles match the approaches/techniques they use in divorce cases?**

In choosing the methodology that was most appropriate to use for the purposes of this paper, we initially decided to select mediation practitioners from both genders, who have different amounts of experience in private mediation and come from a variety of backgrounds. For clarification purposes, we will mention once again that this research paper focuses on private mediation only, as in Romania mediation is not mandatory, even though courts can suggest conflicting parties to try this form of alternative dispute resolution. Due to unexpected difficulties that we encountered along the way, such as lack of time on the practitioners' part, low level of response to my request and lack of interest in the project's topic, I finally ended up using the "snowball" sample technique.

Consequently, we approached a mediator we already knew that met these criteria and explained to him what we had in mind in regards to the research paper. He agreed to participate in the interview and offered to put me in contact with other mediators as well that he was acquainted with from their practice and initial mediation courses.

In the end, we were able to reach six more mediators who wanted to take part in the interview and research paper, once we explained them its purposes and potential usefulness for further studies. Among those six mediators, two of them were not practicing mediation at the time, but the rest of the respondents practiced mediation at least half of their time spent working and some even more than that. We chose to conduct a qualitative research study since this kind of approach goes much deeper into the issues in discussion and, although the research questions could be answered using a survey that only allows either short, exact answers or yes or no ones, we considered it to be very limitative. Moreover, when choosing a qualitative over a quantitative research design, we took into account the benefits that open-ended questions bring to the research, which include references made by respondents to other relevant topics concerning which the issues researched, that otherwise might not be considered by the interviewer due to various reasons and undoubtedly clearer insights into mediators' experiences with divorce mediation issues. Consequently, qualitative research seems the best option to investigate mediator's views in regards to mediation styles applied in divorce cases and the way these relate to the theory in the field.

These above questions were used to explore the mediators view on the mediation styles they used the common ground between the theory and the practice of divorce mediation. Additionally, another objective included seeing how the theory translated into practice, how realistic it was compared to the practice in each of the cases explored in the interview. For this purpose, we started with a list of questions which we grouped into sections depending on their focus. However, there were many instances where the

interview strayed from the list, thus the topics discussed naturally expanded. Like we mentioned earlier, we separated the questions into the following sections: the profile and experience of the mediator, his/her experience in mediation, roles and goals in mediation, divorce mediation styles and techniques employed in divorce mediation.

The last section – techniques employed in divorce mediation, had the purpose to explore mediators' approaches to several case scenarios in order to compare the techniques they used in the way they perceive their mediation styles and roles. The case scenarios focused on specific issues that can surface in divorce mediation including spousal abuse, power imbalance, and the use of children as weapons or instruments of revenge, all linked to their views on the concepts of neutrality and impartiality. All the mediators involved in the interview carry out their activity privately, in dispute areas that include not only divorce mediation but other types of family conflicts; commercial conflicts; conflicts in the work environment; conflicts concerning car accidents and community disputes. However, three out of seven respondents claim that more than half of the time spent with mediation is spent with cases involving divorce. Although we could not tell what amount of mediate cases a mediator can have in order to be considered very experienced as this represents a very challenging task in Romania, we assume that over 200 mediated cases are reason enough to consider many of them as very experienced. The mediation experience of the participants in the interview ranges from no cases at all to almost three hundred cases.

In the analysis of the interview we focused on the issues we wanted to explore with this research paper: the mediator's perception of the mediation styles they use in divorce mediation cases and their determinants and how these relate to the theory in the field. Another topic we hoped to address is the impact of the client characteristics in the mediation style versus mediator characteristics.

We also wanted to see if their description of the mediation styles they are using differs from or matches the techniques they employ when dealing with specific sensitive issues that are addressed in divorce mediation cases. This is because we have no way of verifying if the mediation styles they are saying they use are the ones that they use in the real practice, or their perceptions do not necessarily correspond with the reality.

The role of the mediator in divorce mediation

Before discussing the topic of mediator style or styles in divorce mediation we will take a look at the interviewees' responses concerning their view on their role as mediators in divorce mediation.

Respondent number one claims that primarily, the mediator has a process control role since as mediators they would have to create a controlled venue where both sides can disclose their interests, goals, and needs and make offers to each other so they can ultimately reach a resolution. At the same time, the mediator also acts as a facilitator of

the communication between the parties involved and also a facilitator of the presentation of their interests, needs, options, and offers. He considers that the mediator has to have a considerable positive influence on the communication between the conflict parties, in his view, an important factor that might have led to the conflicting situation. Consequently, his facilitator role implies that the time that the parties stand in front of him at the mediation table should be used to bring into focus their communications issues and improve this aspect.

Respondent number three also supports the view that a mediator's role involves the facilitation of the communication between the parties and managing the strong emotions that are usually associated with divorce cases. Respondent number four's view of the matter includes the mediator's role as a facilitator, but a facilitator of the process, even though he also argues that the mediator can intervene in both the process and its outcome should the participants wish so. Contrary to his statements about the mediator's facilitator role, he also claims that even though sometimes he discusses with the parties his own design of the process, the parties can also come at the mediation table with process design proposals and ultimately their wishes are the ones that count. Nonetheless, in his opinion, more often than not, the parties that enter divorce mediation lack this process design ability or knowledge, thus the mediator will only put it into practice if they reach an understanding as to what it is and they agree to it.

Respondent number five confirms that his role in the mediation is 'purely' facilitative, especially since the ethical code of the profession comes closer to this mediation approach. He adds that this facilitator role is highly appropriate especially in divorce mediation cases where a great range of emotions are flying and he suggests that he sees himself as a facilitator of the communication between the parties like the other respondents so far.

For respondent number two, a mediator's role involves transforming the relationship between the parties and one of 'reality checker'. Similarly, respondent number seven considers that the mediator has a role in establishing a state of balance between the parties in the mediation process. Like the respondents before her, she also argues that the mediator has to raise awareness of the interests of each party involved, but her role also includes the duty to clarify the causes that lead to the conflict.

Respondent number six also believes that the mediator should focus on his role as a facilitator of the communication between the parties.

To further clarify the mediator's view on their role in divorce mediation, we asked the respondents what is the most important objective in mediation.

Respondent number one said his primary goal was resolving the problem that brought the parties to mediation and ensure the satisfaction of the interests of the parties. Should the case involve children, the mediator will focus on satisfying the parties' interests

and needs but the children's best interest will come first. The last statement also applies to respondent number two's case, for which the satisfaction of the participants is what matters most. Similarly, respondent number four's views on the matter involve fulfilling the interests and needs of all the parties involved, especially if the divorcing couple has children, in which case, their interest would come first. In the same manner, respondent no five also aims to satisfy all the needs of those involved in the divorce mediation, according to the principles of the facilitative style.

Given the fact that in all divorce cases which involve children the parents' relationship will continue for the rest of their lives, respondent number three's main objective is restoring the relationship of the parties involved in the divorce mediation. Following the same thinking, respondent number seven considers that mediators should primarily focus on restoring the balance in the relationship between the parties.

Respondent number six also puts all her efforts into satisfying the parties' wishes so that they leave the mediation table content not only with the outcome but with the way the process evolved as well. She argues that this doesn't necessarily happen in the courtroom where at least the 'losing side' gets out ruffled or the way things ended do not respect the scenarios it had in mind. In mediation, the parties mutually agree to the dissolution of their marriage, entrusting the children to one of them, to setting the child support and parenting plans.

One can conclude that most mediators see their role as facilitative; however their interpretations imply that they mean different things. The word is linked to both the structure of the mediation process, improvement of the communication between parties and ways of solving the conflict.

Measuring success in divorce mediation and the importance of agreements

The theory in the field describes mediation styles in many different words especially using the polar opposite classification approach. They range from evaluative to facilitative, settlement oriented or restorative etcetera. A distinguishing feature of these styles can represent the importance or lack thereof, of reaching an agreement as the final and desired outcome of the divorce mediation process.

In this section, we want to see the part that the agreement plays in each mediator's agenda and how this influences his way of approaching specific issues in divorce mediation.

According to respondent number one, the importance of reaching an agreement, written or not, depends exclusively on the parties wishes, if they want to reach an agreement, the way they want to do it and for what purposes they need said agreement, should that be the case.

The mediator has to facilitate the fulfillment of the interests of the parties involved. Thus, his objective is not reaching an agreement as he can't force anything. Moreover,

whether the parties reached a written agreement or not, is not something a mediator should be concerned with since the understanding, or the partial agreement that the parties came to in the mediation process could range from a gentleman's agreement to written one that can be authenticated by a notary.

Respondent two's opinion consists of the same lack of focus on reaching an agreement, as for him this doesn't necessarily lead to a lasting solution to the conflict. Even if the parties reach a partial agreement or they don't at all, the important thing is that the parties acknowledge the problem and the how to resolve it. Moreover, the parties are convinced that the solutions agreed upon are in their best interest; there are few chances that anyone can make them change their minds.

Respondent number four places the same importance to reaching an agreement in divorce mediation as the parties involved. He claims that he's not tempted by an agreement at any cost if the parties do not want it. She considers that the most important objective in divorce mediation is reaching some form of understanding even though it's not materialized in a written form. It's really important for a mediator to see that the parties involved in the divorce mediation process are aware of the fact that the mediator has attempted to have the parties end the conflict even though it was not possible due to various reasons. According to her, most often than not, "even if the disputants go to court eventually, they have a different attitude after getting through mediation. And this is something I learned from my experience. The reason why the parties didn't reach an agreement in mediation could also come from the fact that the parties were too uncooperative and angry at first, but once they calmed down during the mediation process, they were able to reach a convenient outcome for both in court. This is not a frustration for me as a mediator; I personally take it as a success." (translated from the original interview transcript).

On the other hand, for respondent number five, agreements in divorce mediation are of high importance although it does not represent the ultimate objective since that would translate into forcing the parties towards some form of resolution even though they don't necessarily want it.

Mediation style versus mediation style in cases concerning divorce

In this section, we are going to analyze the mediator's descriptions of the styles they typically use.

Respondent number one typically combines the facilitative and the narrative mediation styles. His choice of styles derives from this wish "to go into as much details of the parties' stories as possible so I can find a binding agent between the two parties, a common starting point which could also lead to the resolution of the conflict" (translated from the original interview transcript). Moreover, the use of the facilitative approach

provides him the opportunity to turn into an interpreter of what the parties involved say, which can have many benefits for the communication as a whole.

Only respondent number three refers to theory when describing the mediation styles he employs. The facilitative approach is a common feature of his mediations as well although he prefers to combine the style with the transformative one as he considers it more appropriate for divorce mediations. He states that the transformative style is very useful to him as during the mediation process he focuses greatly on the parties change from enemies to collaborators, at least. For him, it's all about the transformation of the attitude of one party towards the other, meaning the relationship again. While most theoreticians agree that too few mediators are fixed on one meditation style and consequently excluding the others, respondent five is the only mediator who claims to use the facilitative style exclusively.

Respondent number four is the only mediator who admits using evaluative mediation as well, besides elements of transformative and facilitative, depending on what the parties decide they need. Similarly to respondent four's answer, respondent six argues for a set of techniques, rather than styles that she can use depending on the case and person in front of her. Even more interesting, respondent seven claims that her typical mediation style is 'free' of the typical theoretical delimitations; she can borrow any technique that would help her in the mediation process. Respondent five is the only mediator who claims to use the facilitative style exclusively.

It is not surprising that we can find the facilitative style in most mediators' repertoire since it is claimed that originally, mediation in its purest form was facilitative. Moreover, from the analysis we can safely state that mediators are or have to be always ready to change their mediation style depending upon the nature of the conflict and to a great extent, upon the parties involved in the mediation process.

It is surprising though, that although mediators claim that they prefer one style to the other, they feel very comfortable with using techniques seemingly pertaining to different ones. One thing I have add: if we take into account the mediator's responses regarding mediation style, we can conclude that the opposite polar classification is not deemed necessary according to them as many style features interconnect at times.

It is clear to many of the respondents that mediators have stylistic inclinations; an opinion also supported by scholars in general. Nonetheless, respondent number six warns that the one mediation style that mediators are most comfortable with actually limits their practice most often than not therefore they should try to contain the tendencies. At the same time, most respondents claim to be using at least two mediation styles depending on the specifics of the cases and the characteristics of the parties they are dealing with.

Even though respondent claimed that they were using different mediation styles or at least combinations, there was no reported difference in the frequency they used the

separate and joint session techniques although the separate session technique is not considered a feature of transformative mediation a style used by at least two respondents. Mediators' reasons for using the separate sessions technique was practically the same especially since it was most used in cases involving sensitive issues such as power imbalance, violence, abuse and so on.

Mediation styles determinants

Concerning the most important factors that influenced their styles throughout the years there were differences in response but, most respondents agreed that the professional experience has a crucial impact on what and how they are mediating currently.

The initial mediator training closely followed on their list. As respondent number three claims, it is not new that training schools do have a preference towards a specific style of mediation. Given that Romania's mediation law falls closer to the facilitative even prohibiting some of the main features of evaluative mediation such as giving recommendations or influencing the decision or the outcome of the mediation process, is not surprise that these training schools also prefer the facilitative style.

Next in line, the personality of the mediator is also seen as an important influencing factor in their mediating styles. To a lesser degree, mediator's professional background, life experience and continuing training are also credited to influence the development of their style, a fact consistent with the general literature written about the topic.

Mediation techniques employed in specific situations in divorce

One of the objectives we had in mind in this research paper involved confronting the mediator's self-professed mediation style with the techniques they say they use when dealing with more sensitive issues from divorce mediation cases.

With that in mind, we asked the respondents to describe their approach in cases involving power imbalance, endangering child interest, spousal abuse.

Not all the mediators have encountered controversial issues such as domestic violence or abuse in their cases. Therefore we could not say for sure if they would terminate the case or proceed with the mediation. Respondent three and six would definitely consider terminating the divorce mediation should they realize spousal abuse or excessive power imbalance played a part in the development of the parties' relationship.

The others were comfortable talking about these issues and not affected in the sense that they will stop the mediation since they, as mediators, don't have the preparation required or the guarantee that their impartiality and neutrality will not be broken. Their concerns involved the fact that the party who might have suffered abuse is coerced to participate or even to take part in the decision-making process by the other party.

The respondents that did deal with this issues accepted the case and used similar techniques such as caucus in order to dissipate the strong emotions brought to the mediation table and move further with the negotiations.

Mostly they wanted to focus on the issues that brought the parties to the mediation and not necessarily look deeper into the underlying ones. It is possible that the low rate of termination is related to the length of a mediator's experience or the types of cases he encountered in his practice.

Concerning the information the mediator can provide in divorce mediation, the respondents suggested and, in cases which involved sensitive issues such as power imbalance or abuse, even insisted that client had independent legal counsel apart from mediation. There is mediation theory that claims that mediation practitioners should never offer legal information or consultancy or act as therapists as their impartiality and neutrality will be affected.

Besides the results of our study, we can conclude that the majority of the mediators interviewed did not debate about mediation styles to the extent that the researchers did. Even though most were informed about the most common views in the theory of mediation styles, most of their arguments concerning the topic were a result of their own practices and experience with divorce cases than of the theory they interpreted according to their personalities. Their experiences taught them what produced the desired result and what not.

Most mediators viewed the issue of mediation styles as a choice similar to a judgment call and not necessarily a matter related to theory. In putting the theory into practice each mediator appeared to follow his own intuition and knowledge acquired out of the experience as long as he respected the legal aspects of his or her profession.

This is not to say that theory is not an important factor that molds their style, the research findings only suggest that personal characteristics and the professional background have more impact. Although they are aware of the theoretical aspects in speech, in practice their interpretations differ greatly from one another and there's no clear delimitation of the mediation styles.

Many responses concerning styles of mediation chosen by the mediators interviewed were reflected in the theory discussed in the first chapter. The mediators claimed highly similar mediation styles and techniques in their personal practice of divorce mediation but they had different interpretations of their use and the concepts related to them since there was a considerable amount of differences in some of their responses.

From the spectrum of mediation styles ranging from facilitative, narrative, and transformative to evaluative, most of the interviewed mediators used a style close to the one termed facilitative, most of the time in combination with another one. This was expected

as, like we mentioned above, the legislation in Romania is more partial to this style and even condemns several techniques considered to pertain to the evaluative mediation style. However, those that did claim they use the facilitative approach also 'borrowed' other techniques pertaining to other styles.

Every mediator mentioned different individual styles or combinations, but when we confronted their style description with the techniques they used, they clearly imply that most of the mediators are prone to use a "tool box" approach, always ready to change their style, or more appropriately, the technique employed.

Moreover, though mediators may adopt different mediation styles or approaches, they seem to want more or less the same thing, to see the cause of the problem and the interests of the parties so they can find common ground on which to build a resolution leaving the parties satisfied. This suggests that we are talking more about using the proper techniques than the proper, singular styles.

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