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The mediation process: A counselling studies perspective

Abstract: Adopting a counselling studies perspective, the article discusses mediation to highlight similarities of and differences between the two forms of helping. The stages of counselling and mediation processes are outlined, and the competences the counsellor needs to support the client in respective stages are delineated. Also, the key operational, social and communication competences of the mediator are outlined. This new take on mediation suggests possible ways in which the mediator may intervene in conflict resolution adopting counselling studies optics. Such view of mediation practice may also provide counselling practitioners with specific guidelines they repeatedly call for.

Keywords: mediation, counsellogy, counselling practice, mediator-counsellor competences

Courts increasingly tend to rely on mediation to help the disputing parties. Mediation is seen as a new way of support-provision for people who need assistance to come to terms with each other. Mediation can legitimately be viewed as a situation in which information, guidelines and psychological support are offered. Though not advising the parties involved to adopt a particular view of the matter at hand or to choose a particular solution, the mediator engages with the client in the capacity of a support-provider, who gives information and guidelines. Consequently, the mediator turns counsellor, as suggested by Patryk Kujan, who views the mediator's work in terms of counselling activity involving first of all highlighting a range of options from which to choose and/or possible paths of action to follow (Kujan, 2014, p. 69).

In her definition of the identity of counselling practice, Alicja Kargulowa observes (2007, pp. 56-57) that counselling is, distinctly, a rational action undertaken purposefully to achieve presupposed outcomes and aimed to improve the counselees' personality traits and behaviours as well as to foster their friendly self- and other-attitudes assessed as better than prior ones. The expected outcomes include behaviours which improve social relationships, promoting integration and removal of obstacles. The counselling contributes to solving life problems with which the

individuals are unable to cope on their own. The goals are achieved in and through an interaction which helps generate new values and a new social system based on the collaborative effort of the counselling situation participants, with counsellors supposed to provide competent and friendly support in interventions undertaken “vis-à-vis and for the sake of “cooperating” support-seekers. The counselee’s participation in the counselling situation is voluntary while the counsellor’s engagement is motivated by professional responsibility, kindness and/or a sense of social duty.

Arguably, mediation seems to share a number of the above attributes. The idea of mediation, like that of many counselling kinds, is informed by the belief that an optimal solution to a problem may be reached in and through an interpersonal interaction of collaborating individuals supported by a third party – a mediator, or a counsellor. In launching an intervention, the mediator also focuses on the participants’ attitudes and emotions, on communication techniques and on the problem under negotiation which is of concern to both parties to the conflict. Guiding the mediation participants through the process of reaching agreement, the mediator seeks to support them as they re-interpret the situation and become aware of their emotions, beliefs and needs.

Mediation and counselling processes: a general outline

Despite similarities, the two forms of helping – mediation and counselling – are by no means identical. The basic difference lies in that while the counsellor’s help is sought by one individual who, of his/her own accord or under others’ influence, concludes that such help is necessary, mediation is suggested by the prosecution or the court to conflicted parties whose dispute is subject to court proceedings. Mediation is a relationship that usually involves the plaintiff and the defendant – the victim and the perpetrator. Consenting to mediation, the participants hope for meaningful support from the mediator, who aims to help them find a mutually satisfactory resolution to the conflict.

Both in mediation and in the counselling relationship, the support-recipients realise that they make decisions relevant to their lives and accept responsibility for the obligations incurred, assessing their own capacity to fulfil them as well as the future outcomes of their settlement and actions they entail. It seems that for the participants to be ready to act and make positive change in their lives, they should have a sense of agency in proposing the solutions. The sense of agency, namely, is a factor conducive to consistent fulfilment of obligations and implementation of the settlement or other steps toward change.

On such a model of mediation, the support-provider – the mediator – does not assume the role of an expert,¹ with the intervention style resembling rather

¹ Excluding the evaluative mediation, in which the mediator acts as an expert and suggests the way to solve the problem and end the dispute.

the working script of a counsellor-negotiator (see Czerkawska, Czerkawski, 2005, pp. 49-52; Kargulowa, 2007, pp. 179-180), who supports the negotiating parties in independent decision-making about particular actions to undertake. The mediator participates in the life of help-seekers as long as they consider his/her part in the mediation process satisfying and necessary, that is, until it turns out that the mediator is no longer needed.

Because mediations, due to flexible procedures and a lack of formalism, are used in various types of conflict, it is very difficult to devise one scenario of the process to be applied in all circumstances, and mediators who as reflexive practitioners describe their experience accumulated in the mediational practice sketch only outlines of the scripts their interventions follow. Citing their practical experience, they emphasise that the course of mediation depends largely on what the disputants bring into the process, with its outcomes predicated to a considerable degree on their needs and capacities but also on a range of other factors: the stage of the conflict and the moment when mediation takes place; the nature of the conflict; the parties' capacity to actively participate in conflict resolution; the balance of the parties' "power"; the parties' negotiatory styles; the complexity of the dispute; the parties' expectations vis-à-vis the mediator; the mediator's concept of his/her role, etc. As all these factors affect the mediator's choice of intervention methods, it would be difficult to force them into any rigid, universal template (Gmurzyńska; 2009, pp. 129-130). However, all mediation practitioners agree that mediation is a structured activity that proceeds in consecutive stages, with the mediator's interventions differing across these stages.

Kenneth Kressel (2006, p. 738) claims, and research concurs and proves, that the number and characteristics of these stages may vary mainly due to the parties' attitudes to mediation, the complexity of the conflict and the mediator's skills. The most widely acknowledged models include a 12-stage conflict resolution model developed by Christopher W. Moore (1996) and often used by mediation professionals in difficult and complex conflicts,² and a simpler model proposed by Morton Deutsch and Ellen Brickman (1994), which outlines mediation as applied in attempts to solve less complicated conflicts.³ As these models are routinely presented in mediation training courses, I will not describe them in detail here because my goal is rather to demonstrate that mediation may be viewed as going through the stages that correspond to the stages of the counselling process. Therefore, I will

² The model is comprised of the following stages: establishing relationship with the disputing parties; selecting a strategy to guide the mediation; collecting and analysing background information; designing a detailed plan for mediation; building trust and cooperation; beginning the mediation session; defining issues and setting an agenda; uncovering hidden interests of the disputing parties; generating options for settlement; assessing options for settlement; final bargaining; and achieving the formal settlement (Moore, 1996, pp. 66-67).

³ The model includes the following stages: introduction, listening, solution, wrap-up (in Kressel, 2006, p. 739).

discuss the objectives of particular stages, consecutive steps taken in them by the mediation participants and the role the support-provider – the mediator – plays in them. In doing this, I will draw on the model of counselling intervention put forward by Lawrence M. Brammer. Admittedly, other models of the counselling process structures have also been proposed, but I believe that Brammer’s model dovetails most closely with the pattern of mediation interventions.⁴ A counselling studies perspective on the mediator’s intervention in the process of conflict resolution may foster a rethinking of mediation practice and, also, provide the counselling practitioners with specific guidelines for which they tend to call to hone their interventions.

Stages in the mediation and counselling processes

The process of mediation and the process of counselling alike may be divided into a number of stages. From the helper’s point of view in counselling, eight stages have been distinguished in the helping process. Similar stages are to be found in mediation. Table 1 (p. 315) helps compare the two processes.

In both processes, the first stage (“entry,” “first joint session”) entails starting a relationship. If in individual counselling the relationship involves the counsellor and the counselee, whose attitudes both to the counsellor and to the counselling process may vary, in mediation the relationship involves the support-providing mediator and the parties to the conflict. Brammer emphasises that it is difficult to accept help and, at the same time, it is far from easy to make change. The helpees may view their acquiescence to the helper’s influence as a threat to their independence and autonomy. Problems tend to be difficult to comprehend, particularly if they are perceived as substantial, very important and too overwhelming to cope with on one’s own (Brammer, 1973, p. 57). Given this, the course of the counselling process is significantly affected both by the “physical conditions” of the meeting and by its “situational context” linked to how the interior is furnished, what impression the counsellor evokes in the counselee and how the conversation commences.

In mediation, the matters are even more complicated. The mediation participants are often people who are victims and/or wrong-doers – people who have experienced failures in the relationship with the other party. These adverse experiences prompt them to attempt to cope with the difficult situation and, often, imply a desire to repair the damaged or broken relations and bonds. Starting to talk in the mediation framework, each individual engaging with the process harbours

⁴ For further information on and models of the organisation of the counselling process, see: Egan, 2002, pp. 49-72; Savickas, Duarte, Guichard et al., 2009, pp. 239-250; Okun, 2002, pp. 91-252; Drażkowska-Zielińska, 2005, pp. 53-65. The scope of this paper precludes discussing and critically assessing the complete array of counselling intervention models. Excessive detail would also obscure the range of overlap of the counselling and mediation processes this paper focuses on.

a particular attitude and has his/her own interpretation of the current situation. The situation is complex not only because the help of a third party – the mediator – is involved, but also because the negotiating individuals are in conflict with each other. Entering the space of a deliberately arranged social situation co-created by the mediators, the individuals must thus overcome serious emotional barriers in order to be ready to meet. Hence, preparing the parties for mediation may entail more complex operations than those undertaken to encourage a person to consult a counsellor for help, and usually involves meeting with each party separately first.

In the mediation process, this stage segues smoothly into the “structure” phase (Brammer’s third stage), in which the procedural rules for the future meetings are formulated. The principles governing the sessions are thus defined and endorsed before the “plenary” talks of the conflicted participants commence. Only when the rules are in place does the mediator invite the two disputing parties to a first plenary session. In this stage, called “beginning the mediation session” by Christopher Moore’s, the mediator delivers a “monologue” introducing him/herself to the support-recipients, explaining his/her role and outlining the fundamental principles of mediation, which guarantee the participants’ security as they may withdraw from mediation at any time, can always “save face” since all proceedings are confidential, will always be treated equally by the support-provider, will not be pressured by the neutral mediator into (any specific) settlement as the responsibility for the outcome of the talks lies with the disputants themselves, and may demand another mediator if any of the parties deems it fit.

Having explained possible doubts, the mediator has the two parties confirm that their further participation in the process is voluntary, which is followed by agreeing on and to the principles governing the mediatory meetings. The participants reveal their expectations as to the negotiations, make sure they comprehend the rules to be complied with in them and establish the time frame of the meeting or meetings.

The major objectives of these stages – “entry” and “structure” in Brammer, and “beginning the mediation session” in Moore – include familiarising the participants with the basic principles of and ideas behind mediation, explaining the role of the mediator in the process, defining the conditions of meetings, building the climate of credibility (the mediator repeats in the presence of the other party what was said in the initial individual meeting) and generating the atmosphere conducive to openness in the participants.

In her article “Life-Designing: Objectives, processes, instruments” in *Studia Poradownicze/Journal of Counselling*, Maria Eduarda Duarte describes the counselling process as conceptualised in the life-designing paradigm and defines the range of counsellor competences necessary to support the client across the stages of the counselling process (Duarte, 2014, pp. 41–58/214–230). Duarte discusses the key operational, social and communication counsellor competences distinguished by Jean-Pierre Dauwalder and Jean Guichard (2011). Drawing on these categories,

I will attempt to outline examples of mediator competences in each of the mediation stages listed above.

The basic operational competences of the support-provider in the stages of Brammer's "entry" and "structure", and Moore's "beginning the mediation session" include:

- ◆ establishing the framework for the process
- ◆ making a contract of intervention;
- ◆ devising an action plan.

Equally necessary are interpersonal competences, such as:

- ◆ building a relationship;
- ◆ fostering the climate of trust and confidence, which facilitates "opening up" to other participants of the talks.

The mediator communication competences are expressed in, among others, speaking with precision and clarity as well as in skilful use of such speech functions as:

- ◆ (verbal and non-verbal) encouragement to make the support-recipients inclined to talk about themselves as well as to express the support-provider's interest and dedication (time and attention);
- ◆ paraphrasing, which makes the support-recipients realise that the mediator pays attention to and remembers what they say and, in case of a misunderstanding, offers an opportunity of correction;
- ◆ recognition and neutral description of emotions the mediator has noticed in the support-recipients in order to demonstrate that s/he understands the feelings they are going through and help them self-assess their inner states on hearing how they are construed by the mediator;
- ◆ synthesis and re-framing of the major emotions and ideas revealed by the support-recipients, which shows the progress of the settlement, interlinks important content and issues of the negotiations and helps proceed to the further stages of the talks;
- ◆ showing appreciation for the support-recipients, their efforts and actions;
- ◆ adjusting the interrogatory forms to the purpose of the talk, which helps obtain more information and explain the data.

The communication competences of the support-providing mediator listed above are applicable to all mediation stages.

In the mediation process, the "structure" stage is followed by "clarification." In counselling, "clarification" involves the counselee describing his/her behaviours and sensations spurred by the problem for the sake of identifying and exploring that problem. Defining the problem precisely may promote a change in attitudes, feelings and behaviours as well as it may become a turning point in the counselee's life. Clarification may be the primary aim of the meetings or their culminating point.

It may be a discrete stage, or it may permeate the whole counselling or mediatory process.

In Moore's view, clarification in mediation entails "defining issues and setting an agenda." It is at this stage that the parties make their initial statements. In terms of symbolic interactionism, after the initial decisions are made, the parties put on the masks of either a victim or an offender, settling into their respective roles. Each of the "actors" is given an opportunity to "perform," wherein s/he presents his/her interpretation of the fact. The mediator sums up the key issues. When the parties have presented their versions of the events, it is possible to define the problem in some detail. If the "actors" manage to control their emotions and assume the view of the other party, the moment may prove a breakthrough in the lives of the mediation participants and usher in a change in attitudes, emotions and behaviours already in this stage. The presentation of opinions by the parties may also lead to the next stage.

The stage referred to as "clarification" or "defining problems and setting an agenda" aims to enable the support-recipients to speak out, be heard by the other party and get access to basic information.

The operational competences of the support-provider in the "clarification" stage of the mediation process include:

- ◆ identification of key issues (the mediator listens, takes notes and finds out about circumstances);
- ◆ focusing the support-recipients' attention on the exploration of key issues;
- ◆ mindful observance of procedures and principles;

The necessary interpersonal competences are, for example:

- ◆ conducting and directing conversation;
- ◆ supporting the participants and facilitating their talk in a confrontational context.

As a rule, the "clarification" stage transitions smoothly into the stage of deeper "relationship." In counselling, Brammer's fourth stage ("relationship") aims to re-inforce the heretofore relationship "outcomes." The counselee's engagement in the process perceptibly grows ever more intense, which manifests in greater openness to talk about him/herself, exhibiting emotions, searching and exploring the themes left unmentioned before. In this stage, both latent and patent non-verbal messages are exchanged. The counsellor and the counselee adjust to each other and arrive at the mutually best fitting collaboration method.

In this stage of mediation, referred to as "uncovering hidden interests of the disputing parties" by Moore, the presentation of facts and events by the conflicted parties frequently releases heated emotions. Due to this exposure, the mediator may fathom the parties' real agendas. That is why, the mediator focuses chiefly on discovering and exploring the "sensitive" themes, which might have been omitted before. Listening to what the support-recipients say, the mediator searches for

the primal causes of the problems at hand. The objective of this stage is to display openly such emotions as regret, frustration and anger as well as to find satisfaction in being heard by the other party and the support-providing mediator. If “venting” (in Lincoln’s terms) fails to take place, the constructive negotiations may be inhibited and further progress toward agreement may be thwarted.

The operational competences of the support-provider in the “relationship” stage of the mediation process include:

- ◆ alertness in preventing the “venting” process from slipping out of control and causing a breakdown in the support-recipients’ communication;
- ◆ identifying the primal causes of the problems at hand;
- ◆ wrapping up the stage and proceeding to the following one;

The necessary interpersonal competences involve, for example:

- ◆ reducing the emotions revealed;
- ◆ supporting the participants by helping them elaborate on what they have said, specify their words and focus on key issues.

In this stage, important feelings are articulated. Going through the “relationship” stage helps reduce the emotions of the disputants and make them engage in constructive negotiations.

“Exploration,” the fifth stage in Brammer’s model of the counselling process, entails exploring alternative solutions to the problem as the participants in the counselling process “open the doors together,” and the counsellor’s activity intensifies, relying on helpful intervention methods selected to suit a particular situation. Brammer insists that, in this stage, the counsellor is confronted with a number of challenges related to sustaining and developing the relationship, coping with emotions and encouraging the counsellee to explore his/her feelings authentically and deeply so as to expand his/her self-consciousness. The counsellor encourages also gathering information that facilitates problem-solving as well as clarification and further specification of goals. In this stage, the choice is also considered between continuing the relationship and terminating it. Other objectives the counsellor sets include: having the counsellee learn skills conducive to goal achievement (demonstrating, modelling, coaching) and initiating “homework” that brings the counsellee closer to the goals set (try-out, evaluation, progress monitoring) (Brammer, 1973, p. 65). If the situation requires that, the counsellee may be given an insight into the emotions s/he evokes in the counsellor.

In the corresponding stage of the mediation process, labelled by Moore as “generating options for settlement,” the agenda of final talks is decided. The aim of “exploration” is to put up a list of issues for discussion which the participants consider essential and to start working on the mutually satisfying solutions.

Key mediator operational competences in the “exploration” stage are:

- ◆ focusing the support-recipients’ attention on the future and solution-seeking;

- ◆ concretising the participants' expectations as to the outcomes of the agreement;
- ◆ selecting the essential issues to be discussed and sequencing the discussion on them;
- ◆ helping the parties discuss new options and use precise argumentation.

The necessary interpersonal competences include:

- ◆ helping the support-recipients understand the other party's point of view;
- ◆ showing the participants both their divergent interests and the common ones.

In Brammer's sixth stage ("consolidation"), the support-recipients become more active as they make decisions and devise plans on their own. The stage corresponds to the mediation stage called "assessing options for settlement" by Moore. The stage entails a very dynamic course of action and problem-solving. As a consequence of the shared experience of the "dramatic climax" and "venting," a new interpersonal reality emerges. The aim of this stage is to define and assess the relevance of particular problems as well as to search for unambiguous solutions.

Mediator operational competences in the "consolidation" stage include:

- ◆ clarifying ambiguities, reformulating assessments, focusing the support-recipients' attention on the negotiation outcome;
- ◆ concretising content-related and emotional issues;
- ◆ eliciting initial declarations, listing and ordering them for the support-recipients;
- ◆ finding the mutually satisfactory options.

The necessary interpersonal competences of the support-provider are, for example:

- ◆ giving the participants and opportunity to talk and mobilising them to generate their own options for problem-solving.
- ◆ taking a position vis-à-vis the two parties' consent to the proposed solutions.

After working through the issues related to emotions and further action, "planning" – Brammer's seventh stage of the counselling process – takes place, which determines continuation or termination of the meetings. Referred to as "final bargaining" by Moore, the stage involves formulating specific plans and testing the viability of propositions. In this stage, the partners seek answers to the questions posed in the previous stage. As the earlier options are further specified, they take on the shape of realistic projects and settlement proposals. The "planning" stage aims to establish viable agreement propositions that meet the needs and expectations of the support-recipients.

The support-provider's operational competences in the "planning" stage of the mediation process are:

- ◆ removing ambiguities as to the execution of the settlement's particular provision;
- ◆ summing up the declared solutions;
- ◆ determining the sequence and details of the implementation of all arrangements agreed upon.

The necessary interpersonal competences of the support-provider include:

- ◆ eliciting both parties' confirmation of consent as to the feasibility of the solutions proposed;
- ◆ eliciting the support-recipients' reliable assessment of the fairness and sincerity of the proposed options and their consent to them.

Brammer's "termination," i.e. the last, eight stage, overlaps with the last stage of the mediation process dubbed by Moore as "achieving formal settlement." A successful transition to this stage leads to wrapping up all disputed issues and ending the mediation process. If successful conflict resolution has been reached, a settlement agreement is drafted, including all the items agreed upon by the parties. It comprises the conditions of agreement and, sometimes, also the principles of mutual conduct in the future – this is the case if the support-recipients continue in the relationship after the mediation due to co-habitation, shared workplace or relaxation space, etc. If the support-recipients reach agreement, in the "termination" stage they consent to items previously discussed and now put in writing.

If mediation does not end in agreement, the support-provider – the mediator – terminates the mediation process and highlights what the parties have managed to achieve despite the failure to resolve the conflict amicably.

The support-provider should display the following operational competences in the "termination" stage of the mediation process:

- ◆ making sure that the support-recipients do indeed consent to the accepted settlement arrangements;
- ◆ writing up the agreement (drafting the settlement agreement; specifying what the support-recipients have agreed upon; listing details; ensuring that the settlement is concrete, viable and inclusive of all essential information).

Mediator necessary interpersonal competences include:

- ◆ empathetic dedication to making sure that the support-recipients are fully satisfied;
- ◆ highlighting and underscoring the outcomes of the collaborative work and thanking the participants for involvement in the mediation and the effort invested in the process.

Table 1. Helping processes: A Comparison

Stages of the counselling process according to Lawrence M. Brammer	Stages of mediation according to Bill Lincoln	Stages of the mediation process according to Christopher W. Moore
		Preparation for mediation (stages 1-5)
Entry (stage 1) and Structuring (3)	Mediator's opening statement and formulation of procedural rules (1)	Beginning the mediation session (6)
Clarification (2)	Presentation of the parties' positions (2)	Defining issues and setting the agenda (7)
Relationship (4)	Venting (3)	Uncovering hidden interests of the disputing parties (8)
Exploration (5)	Explanation of issues and data (4) Separate talks (5)	Generating opinions for settlement (9)
Consolidation (6)	Recapitulation (6)	Assessing options for settlement (10)
Planning (7)	Testing the viability of proposals (7)	Final bargaining (11)
Termination (8)	Achieving settlement and wrapping up particular issues (8)	Achieving formal settlement (12)

Put together by this author, based on Moore C. W., *The Mediation Process*, 2nd edition (San Francisco: Jossey-Bass, 1966), pp. 66-67, in: Kressel 2006, pp. 736-737; Czwartosz, 2001 (manuscript); Brammer, 1973, pp. 55-79. For the sake of clarity some phrases are cited verbatim.

Besides the competences enumerated for each stage separately, the mediator, throughout the process, must not forget about professional deontology and such personal competences as sustaining personal balance, self-evaluation of conduct, priority-setting, time management, flexibility, focus and mindfulness vis-à-vis the support-recipients and their problem.

Conclusion

The overall underlying assumption is that participation in the mediation process, like in some types of the counselling relationship, results in re-interpretation of the situation which disturbs everyday life: a conflict or a sense of mental discomfort. The re-interpretation takes place as the participants acquire more information, have their motivation enhanced, transform their emotions, abandon their former stereotyped thinking and develop their reflexive and critical investment (cf. Czerkawska, 2009, p. 138; Duarte, 2014, pp. 41–58/214–230).

Not all counselling and mediation processes follow the identical course. Variations may take place in the number of stages within the process, their duration and sequencing. That it is very difficult to precisely demarcate the stages in the mediation process is observed by Moore, who insists that as the actions the mediator and the negotiating parties engage in seem to “blend together into an undifferentiated continuum of interaction,” it is very hard to distinguish them as discrete entities (Moore, 1996, p. 65). Consequently, although mediation procedures are governed by a rather precisely defined protocol, one mediation process may considerably differ from another one. By the same token, outcomes may also vary widely. First-time participants in mediation tend to expect the support-giver – the mediator – to guide them and impose solutions arbitrarily. On experiencing agency in the process and realising they may affect its course and the emerging options of solving the difficult situation, some of them discover their creative potential. If this is the case, the participants’ actions build the entire situation in which information and guidelines are provided and psychological support is offered. However, it is without doubt the mediator with whom the responsibility for the quality of the process lies and on whose competences its course and outcomes largely depend. Such interpretation is supported by Anna Cybulko, who emphasises that “*the person performing the mediator role faces a huge challenge. The course that mediation takes depends, namely, largely on him/her – on what actions s/he takes and how s/he fulfils his/her role*” (Cybulko, Siedlecka-Andrychowicz, 2009, p. 177). This is one more voice confirming that being a professional helper is far from easy, and mediators, as well as counsellors, therapists and personal trainers, should be adequately qualified and trained for job performance.

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