



Mediator-Lawyer Collaboration

A presentation by
District Judge / Mediator David Lim
(21 November 2018)

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Lawyers representing the parties are part of the

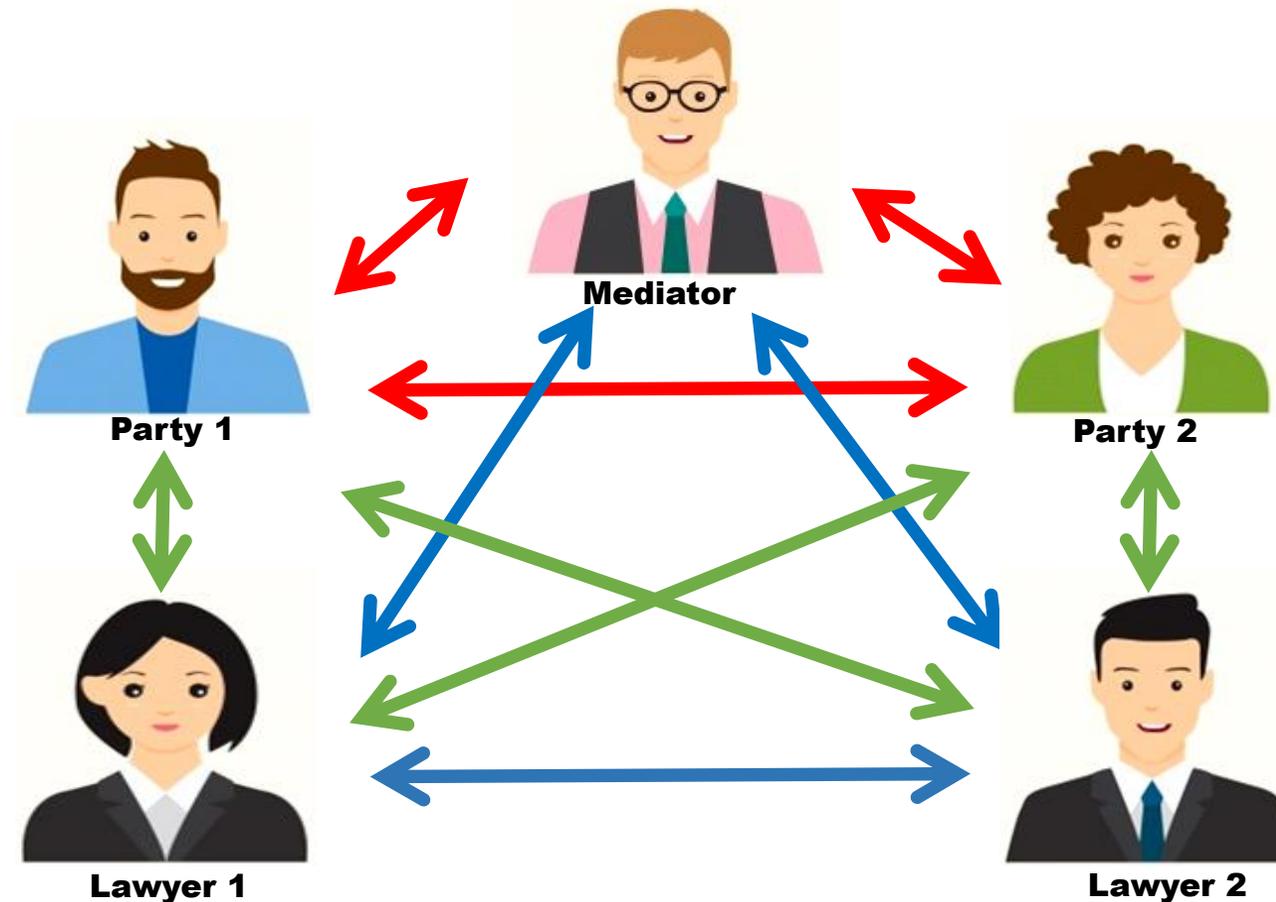
- **PEOPLE**
- **PROCESS**
- **PROBLEM-SOLVING**

aspects of a mediation.

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Relationships / Dynamics in a mediation



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Duties of a Lawyer to his/her clients:

- **Advise client on his/her legal rights/obligations/liabilities.**
- **Protect the client's interests.**
- **Advance the client's best interests.**
- **Secure the best outcome in any negotiation or litigation.**
- **Keep costs within the client's budget.**

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Lawyer's influence

- The party is the one who decides whether and how to settle.
- However, the party may look to the lawyer for advice and guidance.

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Role of Lawyers as Mediation-Advocates

- Prepare the client for mediation by —
 - clarifying the client's interests & alternatives;
 - identifying possible options to propose.
- Assist the client in negotiating with the other party.
- Assess & advise the client on the other party's positions / interests / proposals.
- Work with the Mediator to keep the mediation constructive & on track.
- Ensure terms of settlement—
 - are in client's best interests;
 - reflect the client's intentions.
- Assist in the preparation of the terms of settlement.
- Assist the client in any follow-up action.

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Advantages Lawyers bring to the Mediation

- **They know their clients better.**
- **They know the facts & issues better.**
- **They know the complications and intricacies better.**
- **They know the dynamics better.**
- **They (may) know the legal positions better.**
- **They can help manage their clients' conduct / expectations / emotions.**
- **They can help in getting their clients to see sense and sensibility.**
- **They can help in brainstorming for, discussing, assessing & selecting options.**
- **They can help persuade their clients.**
- **They can help in any interim or follow-up measures.**

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“Challenges” sometimes faced by Mediators from Lawyers:

- They don't understand mediation and take an inappropriate approach.
- They have a “litigation mind-set”, and are all set to go to trial.
- They may have misgivings about mediation (e.g. because of bad experience).
- They may be entrenched / may have entrenched their clients.
- They may have a separate agenda from their clients.
- They may come unprepared / take a “hands-off” approach.
- They may have their own differences / issues with each other.
- They may not respect the mediator.
- There may be a language barrier between them and their clients.

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Approaches:

1. Empathize with them.
2. Enlighten them.
3. Build Rapport with them.
4. Strategize with them.
5. Involve them.
6. Reality-test for them.
7. Manage differences between lawyers.
8. Let them hear from the party.

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1. Empathize with them:

- **Lawyers are as much parties to the mediation as their clients.**
- **Treat them with the very same considerations accorded to the parties.**
- **Be aware that Lawyers too have their own needs and concerns:**
 - **duty to their clients;**
 - **their own / firm's interests;**
 - **need to justify their bill;**
 - **their client's expectations;**
 - **their relationship with their clients;**
 - **their relationship with the opposing lawyer;**
 - **insecurity** (e.g. unfamiliarity with mediation / lack of experience / need for affirmation);
 - **other pressing matters** (e.g. double fixed hearings / other engagements).

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2. Enlighten them

- **Preliminary conference with lawyers (without clients).**
- **Caucus with the particular lawyer.**
- **Explain clearly to them —**
 - **the objectives and process of the mediation;**
 - **your role as Mediator;**
 - **their roles as Mediation-advocates;**
 - **how they may best help;**
 - **what they need to do / refrain from doing.**
- **Give them a chance to prime their clients.**
- **Reiterate / reinforce if necessary.**
- **Conduct the mediation appropriately.**

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3. Build rapport with them:

- **Introduce yourself.**
- **Get to know them.**
- **Treat them with cordiality, respect & tact.**
- **Acknowledge their seniority / experience.**
- **Enlist their assistance.**
- **Highlight their contributions to their clients.**

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4. Strategize with the lawyers:

- Preliminary Conference with lawyers.
- Commitment / sincerity to negotiate.
- Negotiation history.
- Positions & expectations.
- Relational /emotional dynamics.
- Capacity for negotiation.
- Feasibility of mediation.
- Issues to focus on / avoid.
- Possible concessions / proposals.
- Participants.
- Mandate.
- Peculiar considerations.
- Customisation of process.
- Lawyers as allies.

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5. Involve them:

- **They are also participants in the mediation.**
- **Engage / include them in the conversation.**
- **Ask for their views, suggestions.**
- **Give them roles / tasks.**
- **Take stock of the direction & progress with them.**
- **Emphasise the assistance you need from them.**
- **Acknowledge as they achieve.**

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6. Reality-test for them:

- **Worthwhileness of a trial.**
- **Chance of success at trial.**
- **What can go wrong.**
- **Party's chance of recovery.**
- **Lawyer's chance of recovery of costs.**
- **Relationship with client.**

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7. Manage differences between lawyers:

- **Explain their role and how you hope they'll assist you.**
- **Remind them it's their clients' dispute, not theirs.**
- **Focus on their clients' interests.**
- **Counsel / coach them** (whether together or one-on-one).
- **Strategize with them and give them roles.**
- **Consider getting their colleagues /associates to take over.**
- **Do a mediation within a mediation.**

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8. Let them hear from the party:

- **Lawyer may seem to have a different view from client.**
- **Allow lawyer to explain his/her views.**
- **Help the lawyer clarify his/her views & weigh the pros & cons.**
- **Help the party clarify his/her interests and the reasons for his/her views.**
- **Invite the party to decide for himself/herself.**

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Conclusion:

- **Lawyers are as involved in the mediation conversation as their clients.**
- **It's NOT a battle between the Mediator and the Lawyers.**
- **Even if they seem “difficult”, there may be reasons (as we've seen).**
- **Empathise, involve and engage them.**

- **Remember:**
 - **People want to feel respected & understood (so do the lawyers);**
 - **People need to feel relevant & be engaged (so do the lawyers);**
 - **People have their needs and concerns (so do the lawyers);**
 - **Nobody like to be side-lined, cornered or embarrassed (neither do the lawyers).**

- **With rapport, empathy, understanding, engagement and collaboration, Lawyers can be the Mediator's best allies/assistants.**

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Conclusion:

- **With rapport, empathy, understanding, engagement and collaboration, Lawyers can be the Mediator's best allies/assistants towards a successful & satisfying mediation.**



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END OF PRESENTATION

Questions?

Comments?