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«Mediation to Foster European Wide Settlement of Disputes»

Chapter XVI

ELENA GIULIA MONTORSI

Psychological Aspects of the Family Mediation

SUMMARY: Introduction. – 1. Emotion in mediation. – 2. What is the family mediation. – 3. Positive Psychology Theory and Family Mediation. – 4. Models of practice. – 5. Psychological aspects of separation and divorce. – 6. Positive effects of mediation.

Introduction

When you are a mediator, you have to ask to your clients if they want to be right or if they want to be happy and how much they want to find a solution to their problems. In fact, if they want only to fight and to be right, you as a mediator cannot really help them. Your work as a family mediator is to explain to your clients that mediation is the best way to find a real and immediate solution for their family and especially for their children. You should stimulate them to reflect. As much as they can, they have to reject feelings of aggression, revenge and violence, because they have to preserve their children from this kind of emotions and from a legal war.

The purpose of this lecture is to improve your basic knowledge about the psychological aspects of family mediation. As a mediator you will have to improve your skills of empathy, objectivity, and sensitivity, because you are the best vehicle for the family to find a solution.

As Hoffman and Wolman write in their article¹: “Questions and decisions in mediation are as much about people as they are about problems [...] successful mediation requires knowledge about psychodynamics” and I add about parents’ and your emotions. Probably, you will feel a lot of emotions during a family mediation, but you have to remember that the focus is on children. If you want to try to work with parents you should speak about children’s needs. You must remember this before anything else. If you will be able to focus parents’ attention on their children, you will have many more possibilities to have a good family mediation and transform negative emotion into a positive future.

1. Emotion in mediation

Emotions are so important in family mediation, you have to feel them and work to improve parents’ knowledge and their parenting skills. The couple might split, but they will always be parents. They will have common children for all of their life. If they could spend time together without revenge and verbal

¹ D. HOFFMAN, D.A. WOLMAN, N. RICHARD, *The Psychology of Mediation*, in *Cardozo Journal of Conflict Resolution*, Vol. 14 Issue 3, 2013, p. 759, retrieved from <http://connection.ebscohost.com/c/articles/91540438/psychology-mediation>.

violence they could have happy children instead of children with psychopathologies or emotional and relationship problems.

During a mediation session you will see positive - joy, hope - and negative - anger, fear, sadness, disgust - emotions. Both are important in mediation process.

According to Fisher and Shapiro², we have to underline that negative emotions could put parents in a tunnel limiting the focus on children and their attention to the aim of mediation. Sometimes emotions take control of behaviour, in this situation is very difficult to have a good mediation session, but parents have to feel and resolve them before making the good choice for children. I believe that it is unrealistic to separate people from their conflict or problem. People's emotions are part of the conflict. We cannot separate reason from emotions. For example, think about a woman, it is very hard for her to forgive her ex-husband for being unfaithful, she has to see the children's father every week: forgiveness is not easy. In this case she thinks that children's father could be as bad a father, as he was a husband. Revenge is the only emotion that she knows, she wants to preserve children happiness, she wants the father out of the door. Our goal at the beginning is to stimulate parents' reflection thinking about children's happiness. Children need two parents. Parents should not put their emotional problems on children. If you stimulate reflection you will see parents change their emotions and bring them out of the conflict and find the best solution for the children.

2. What is the family mediation

Mediator is an impartial third party, he promotes and facilitates the resolution of family divorce and disputes. The fundament of family mediation is the participants' voluntary agreement. According to William Statsky's Family Law Manual³ "The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreements."

Parents have many problems during separation, divorce or dissolution of civil partnership.

Family mediator helps family reflect about their conflict and facilitates and sometimes suggests agreements. As a family mediator, you do not have to become a judge and decide the best way for children, you have to improve reflection, increase their awareness and help parents to find one or two options to resolve their conflict for the children's sake and happiness. Family mediator works to find an agreement about all aspects of family separation and divorce including arrangements for children, finances and property. Mediation also helps to reduce the economic and social costs of separation and divorce both for people and for the state. A family mediator could promote positive dispute resolution.

For example, if a couple is contesting the custody of their children, a family mediator finds the best way for the parents to focus on children's needs. In the United States of America in the state of Maryland⁴, all cases involving contested custody or visitation matters are referred to mandatory mediation, provided that there is no allegation of domestic violence or child abuse.

The 4th European Council of Family Law⁵ spoke about Family Mediation and gave to all the professionals the best principles of family mediation⁶. Roberts⁷ and McCrory⁸ wrote about the characteristics of mediation:

- the impartiality of the mediator;
- the voluntary nature of the process: the mediator has no power to impose the mediation;
- the confidentiality of the relationship between the mediator and the parties;
- the procedural flexibility available to the mediator.

It is important to add:

- the family mediation is always child-focused;
- mediator encourages parents to stay in control of decisions that affect their lives and to work out mutually acceptable and shared solutions;

² R. FISHER, D. SHAPIRO, *Beyond Reason: Using Emotions As You Negotiate*, New York, 2015.

³ W.P. STATSKY, *Family Law*, Independence, 2012⁶.

⁴ <http://www.peoples-law.org/what-family-mediation>.

⁵ The European Council was held in Strasbourg on 1/2 October 1998.

⁶ 4th European Conference of Family Law, *Family Mediation in Europe*, Strasbourg, 2002.

⁷ M. ROBERTS, *Mediation in Family Disputes. Principles of Practice*, Farnham, 2014⁴.

⁸ J.P. MCCRORY, *Environmental Mediation. Another Piece for the Puzzle*, in *Vermont Law Review*, 6(1), 1981, p. 49 ff.

- mediation is future-focused;
- mediation involves equal opportunities for parents to speak and reflect about family story.

Also, to become an excellent family mediator you need a broad range of skills⁹:

- emotional intelligence¹⁰;
- active listening;
- empathy and thoughtfulness;
- strong negotiation skills;
- patience, endurance and perseverance;
- the ability to create trust among the parties;
- the ability to identify the issues of the dispute;
- a likeable personality;
- problem solving skills and creativity;
- ability to reframe the parties views in softer terms and summarize what was said.

3. Positive Psychology Theory and Family Mediation

According to The Oxford Handbook of Positive Psychology¹¹: “Positive psychology is the scientific study of what makes life most worth living. It is a call for psychological science and practice to be as concerned with strength as with weakness; as interested in building the best things in life as in repairing the worst; and as concerned with making the lives of normal people fulfilling as with healing pathology. [...] The value of positive psychology is to complement and extend the problem-focused psychology that has been dominant for many decades.”

In 1998, Martin Seligman¹² was recognized as the father of Positive Psychology. He found a scientific method to explore why happy people are happy. This vision of happiness combines the virtue ethics of Confucius, Mencius and Aristotle with modern psychological theories of motivation. Seligman thinks that happiness has three dimensions that every person should develop: the Pleasant Life, the Good Life and the Meaningful Life.

In the last twenty years the Positive Psychology theory has been developing. Now, it is very important to underline why we need to master this theory in order to find a good approach in family mediation. According to Christopher Peterson¹³: “people who are satisfied with life eventually have even more reason to be satisfied, because happiness leads to desirable outcomes at school and work, to fulfilling social relationships, and even to good health and long life; happiness, strengths of character, and good social relationships are buffers against the damaging effects of disappointments and setbacks; crisis reveals character and the good life can be taught.”

During a family mediation session we have to remember that happiness and good life should be taught so that the parents could understand their negative emotions and deal with them. According to Jeffrey McClellan¹⁴, we must know that high stress levels hamper creativity and cooperative behaviours. This strongly suggests that allowing participants to share their negative stories early in the mediation process could trigger enough emotional response to limit the effectiveness of problem-solving activities. The founding fathers of Positive psychology developed a mediation model called Appreciative Inquiry¹⁵. This model works based on the fundament and following the scientific studies of the positive psychology.

4. Models of practice

During the past twenty years, many models of practice have been studied and developed, but only few of them really work in family mediation.

⁹ D. TAPOMOY, *Managing Human Resources & Industrial Relations*, New Delhi, 2009.

¹⁰ D. GOLEMAN, *Working with emotional intelligence*, New York, 2011.

¹¹ S.J. LOPEZ, C.R. SNYDER, *The Oxford Handbook of Positive Psychology*, Oxford, 2009.

¹² M. SELIGMAN, *Can Happiness be Taught?*, in *Daedalus*, Vol. 133 No. 2, Spring 2004, p. 80 ff.

¹³ C. PETERSON, *Pursuing the Good Life. 100 Reflections on Positive Psychology*, Oxford, 2003.

¹⁴ J.L. MCCLELLAN, *Marrying Positive Psychology to Mediation: Using Appreciative Inquiry and Solution Focused Counseling to Improve the Process*, in *Dispute resolution Journal*, Winter 2007/2008, p. 1 ff.

¹⁵ D. COOPERRIDER et al., *Appreciative Inquiry: The Handbook*, Brunswick, 2003.

The first one is the Facilitative mediation model. This is a client centered approach. Mediation is focused on the interests of the parties, the aim is to preserve a good relationship between the parties. The family mediator is a facilitator of the process, during sessions he allows the parties to develop and find their own solution based on family and children's needs.

The second one is the Evaluative mediation model. This kind of mediator helps parents, assisting them during the mediation. His work is to underline the weaknesses of the solutions, and predicting what a judge could say about. Evaluative mediators most often conduct separate meetings with the parties and their attorneys to calm down all of them.

The third one is the Transformative mediation model. According to Peter Fenn¹⁶, this method is based on the values of maximum "empowerment" of each of the parties, and "recognition" by each of the parties of the other parties' needs, interests, values and points of view. The result is the relationship transformation. Transformative mediators meet with parties together, since only they can give each other "recognition". As a transformative mediator, you could empower the parties involved to work out their own solutions and become aware of their own actions.

The fourth mediation model in the narrative mediation. The aim is to rewrite all the family history with a sense for all the members of the family. It is one of the best models for family mediation, because this kind of work makes sense of all the negative and positive emotions experienced during the family history. Narrative mediators help the parties to write a new and more constructive story about the past and of course about the future.

The fifth model is the Positive Psychology Appreciative Inquiry method. It was born for business but it is also used in family mediation and works very well with the narrative method.

According to the most well-known Appreciative Inquiry author Davide Cooperrider¹⁷, "this is a methodology that seeks to foster growth and change by identifying and using the central strengths and resources of an individual. The appreciative inquiry takes organizations and individuals through four stages called the "4-Ds": discovery, dream, design and destiny. First, they discover the factors that "give life to the family and to the children." Second, they dream about what the new family balance ideally could become. Third, they design their social architecture in a way that would facilitate the desired future. Finally, they seek to make that future happen". Like in Positive Psychology theory and practice, appreciative inquiry helps parents to discover "positive capacity" in one another.

5. Psychological Aspects of separation and divorce

As a family mediator you should know how separation and divorce affect parents and children. This kind of knowledge is as important as the mediation process. At the beginning, you could reflect on the difference between person after divorce with a positive life and person with negative emotions and feelings. According to Margit Gaffal¹⁸, we know that age and socio-economic status have an impact on parents' adjustment. For example, young people tend to feel negative emotions longer than old people. People with higher education and a good job have an advantage to divorce more easily, because they do not feel psychologically or economically dependent from the ex-spouse. In general, only people with a lot of personal resources adjust well to the period after divorce without specialised help.

But, if they do not have that personal resources, they can feel lots of negative emotions like:

- sadness and unhappiness;
- fear;
- depression;
- feelings of worthlessness;
- lack of energy and fatigue;
- difficulty concentrating and indecisiveness;
- feelings of hopelessness or guilt;
- suicidal thoughts or attempts;
- sleep disorder;
- psychosomatic symptoms.

¹⁶ P. FENN, *Commercial Conflict Management and Dispute Resolution*, Prague, 2011.

¹⁷ D. COOPERRIDER et al., *Appreciative Inquiry: The Handbook*, cit.

¹⁸ M. GAFFAL, *Psychosocial and Legal Perspectives of Marital Breakdown*, Berlin, 2010.

However it is the children who are the real victims of divorce. According to Emery¹⁹, we have to remember that the stability of the family environment is the key between happy on unhappy future for children. Also according with Twaite, Silitsky and Luchow²⁰, much of children's post-divorce adjustment is dependent on:

- the quality of their relationship with each parent before the divorce;
- the intensity and duration of the parental conflict;
- the parents' ability to focus on the needs of the children during the divorce.

During a ferocious and rough divorce children could experience:

- denial;
- abandonment;
- preoccupation about information;
- anger and hostility;
- depression;
- immaturity/regression or hyper maturity;
- preoccupation with reconciliation;
- blame and guilt.

But, according to Emery²¹: "a majority of children whose parents divorce do not develop these kinds of serious behavioural or emotional problems. Most children from divorced families are resilient, especially when their parents do a reasonably good job managing the stress of divorce"²². Also, after a good family mediation children could be able to better manage their emotions, as because they see their parents to do the same, both alone and together.

During adolescence, sometimes parents need help in identifying stress in their children. They are not yet adult and need support. Typical experiences and signs of stress in adolescents during divorce are:

- fear of being isolated;
- loneliness;
- feeling that parents are not available to them;
- feeling in hurry to achieve independence;
- discomfort with a parent's dating, relationship and sexuality;
- chronic fatigue;
- difficulty concentrating;
- hesitancy to trust adult figures;
- fear or excessive drive towards romantic relationship, manipulative or controlling.

Sometimes during the parent mediation process, it is a good choice to consult an adolescence psychotherapist. A psychotherapist could provide the adolescent with a safe place where speak about parents, negative emotions and problems. This kind of therapy helps adolescent, parents and the mediation process in general.

6. Positive effects of mediation

Mediation is quicker, less expensive and private and parents have control over decisions without the court intervening. Emery's studies demonstrate²³ that after mediation parents and children feel a lasting benefit, because they are able to take control of their own destiny and attempt to work out their own agreements in mediation. And in the end, the long term Emery's study²⁴ - twelve years - demonstrates that after five mediation sessions, 28 % of non-resident parents could see their children at least once a week, in comparison with 9% of parents who fight in front of a court, 36% of non-resident parents who litigated had not seen their children in the last year, in comparison with 16% of divorcing parents who mediated,

¹⁹ R.E. EMERY, L. LAUMANN-BILLINGS, M. WALDRON, D.A. SBARRA, *Child custody mediation and litigation: custody, contact, and co-parenting 12 years after initial dispute resolution*, in *Journal of Consulting and Clinical Psychology*, No. 69, 2001, p. 323 ff.

²⁰ J.A. TWAITE, D. SILITSKY, A.K. LUCHOW, *Children of Divorce. Adjustment, Parental Conflict, Custody, Remarriage and Recommendations for Clinicians*, Lanham, 1998.

²¹ L. LAUMANN-BILLINGS, R.E. EMERY, *Distress among young adults from divorced families*, in *Journal of Family Psychology*, No. 14, 2000, p. 671 ff.

²² http://emeryondivorce.com/how_divorce_affects_children.php.

²³ R.E. EMERY, *The Truth about Children and Divorce: Dealing with the Emotions so You and Your Children Can Thrive*, New York, 2004.

²⁴ L. LAUMANN-BILLINGS, R.E. EMERY, *Distress among young adults from divorced families*, cit., p. 671 ff.

59% of non-resident parents talked to their children weekly or more often, compared with just 14% of non-resident parents who litigated. Of, course these are only numbers, but you have to understand and underline to parents that they have to think about their children's future, and if they will be able to do that, children could live better with two happy parents