Mediation: A Family Therapy Technique?

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Family mediation dovetails with family therapy approaches, in particular the brief, solution-based family therapies, such that these two intervention approaches may be considered quite similar. Is it OK for mediators to employ therapeutic methods and methodologies? Is this still mediation or something else? This article explores these issues, examining and comparing mediation and therapy approaches and the implications for workers, their organizations, and their clients.

Mediation, though relatively young in Australia, has been a traditional process throughout Chinese history. The Chinese word for crisis consists of two symbols, one representing danger and the other an opportunity (for change). The role of the mediator then and now is to diplomatically reframe critical conflictual comments from one party to another. The mediator's task is to calmly contain confrontational anxieties while “future-focusing” parties onto solutions. The classic mediator interventive statement is: OK, that's how it was in the past, but what do you want or what would you like to see happen in the future (of your relationship)?

Moore stated that a commonly accepted definition of mediation was “the intervention into a dispute or negotiation by an acceptable, impartial and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute” (Moore, 1996, p. 14).

My experience is as a mediator for over eight years and as a trained psychologist. I have worked in the main with parents and adolescents—or family mediations—finding that the presenting issues are often symptomatic of very complex problems. This has meant that as a mediator, there has been a need for a more expansive role requiring different approaches, recognized in this definition from the Academy of Family Mediators (1995, p. 2): “The role of the mediator includes reducing the obstacles to communication, maximizing the exploration of alternatives, and addressing the needs of those it is agreed are involved or affected.” Reducing the obstacles to communication has often meant
utilizing counseling techniques and therapeutic methods requiring greater skill and dexterity from the mediator, with the subsequent challenge to the traditional mediator role. For example, family of origin explorations, gestalt techniques, or strategic and structural moves may be said to fall into the therapy camp.

Families who shy away from going to counseling, yet come to mediation, often bring with them similar histories of issues, and it may be up to mediation to fit the family and not the family to fit mediation. The mediator is challenged to deal with clients in ways that are flexible and versatile to meet clients’ needs effectively.

A commonality exists in the tasks and direction of both family therapy and family mediation such that the differences between these approaches may at times be seen as somewhat notional. Professionally run mediation models that introduce therapeutic techniques, such as from family therapy into mediation, could be seen to fit into the area shared by family therapists who may also use a problem-solving mediation approach (Schokman, 1994). In the mediation context then, the family would still maintain control of the content of the mediation session, and mediators would control the process; but that process would be less structured, more varied than the traditional community mediation model.

Commonly in mediation, parties may not be able to agree on the actual problem to discuss, the exact nature of the disagreements, or what is wrong, or who has the problem. Further, significant power differences often exist such that impartiality and equal bargaining positions are nearly impossible. Simply stated, some people stand over and manipulate others. A typical scenario is in parent-adolescent mediations, in which stepparents and stepchildren often fight.

Amundson and Fong (1993, p. 201) argued, “Couples come to mediation to receive something that they cannot achieve for themselves. It is clear that without attention to contextual variables (their dynamic process of interaction and the larger ecology in which individuals operate), mediation loses, if not authority, its response ability.” Often, parties are very stuck, enmeshed, and have a lot of unresolved hurt and resentment inhibiting free relations. With families who get stuck in their conversations, blocked in negotiations, or who are severely enmeshed, or disengaged, a mediator needs to delve into a well-stocked tool kit to free up the situation.

Professional therapeutic or counseling skills are often highly desirable to deal with emotionalities and past dynamics. Saposnek (1993, p. 6) has stated, “This involves viewing the mediation task as more than just reaching agreement; it also involves exploring a host of feelings that may include pain, anger, sadness, grief, anxiety, guilt, and regret. This perspective requires that the mediator ‘connect’ with the parties on a deep, empathic level.” If one accepts Saposnek’s view, then the differences between mediation and family therapy become somewhat blurred or notional. This may lead to confusion about the role of the worker and the understanding and context in which the family is coming along for help.
There are many similarities and many differences between a mediation approach and a therapeutic one. The techniques I find most useful and transportable to the mediation process and most akin to its principles come from solution-focused brief therapy, and some elements of strategic, structural, and Milan therapy. In particular with the Milan, it is the paradoxical, reframing, and circular questioning techniques that transfer so effectively to the mediation process.

Let’s look at some of the common characteristics of some different therapies and family mediation. Both strategic therapy (Haley, 1987) and mediation

• Are problem, not growth oriented
• Have contemporary, not historical focus
• Encourage family members to take responsibility for themselves, the workers for the process
• Externalize the issues rather than viewing persons as problems
• Define problems in behavioral terms, thus allowing for development of options
• Are brief and intensive, with rapid disengagement
• Focus on directives, not so much on interpretations
• Emphasize positive forces that are there and just need to be freed

According to Grebe (1986, p. 57), “Both mediation and strategic therapy are competency based, empowering, respectful, and assume that people are capable, and most mediation takes this approach.”

In addition to the similarities with strategic therapy, there are also commonalities with solution-focused and structural therapies.

Solution-focused brief therapies (De Shazer and Weakland, 1988; White, 1991) share many of the characteristics of strategic therapy and most easily align with the principles of mediation, for both

• Are solution-task oriented
• Look for exceptions
• Emphasize: if it works do more of it
• Emphasize: if it’s not broken, don’t fix it
• Are brief

Structural therapy (Minuchin and Fishman, 1981) focuses on characteristics similar to those that mediators concentrate on. Both are interested in

• Patterns of interaction
• Power relationships
• Alignments and boundaries
• Enmeshments and dependencies
• Subsystems
• Immediacy
A structural therapist differs from a mediator in being more directive in giving out strategies than a mediator would be.

I believe the family mediator is well informed by these therapies. Another therapeutic strategy for the mediator to keep in mind is the use of other MAPS (Member of Australian Psychological Society) frameworks—for example, knowledge from developmental theories; family of origin; object-relations; and feminist and postmodernist approaches. “Perhaps it is necessary to approach severely entrenched families with a hybrid of therapy and mediation principles and practices” (Dworkin, Jacob, and Scott, 1991, p. 116).

In some parent-adolescent mediations, I have employed such structural therapy techniques as having clients move chairs and then talk about the impact such a move has. I have also frequently used the Milan therapy’s paradoxical questioning approach, as well as circular questioning, in order to obtain more information and to challenge parties to think more about their particular views. These approaches help empower those present to be able to negotiate more effectively. In aiming to increase each person’s capacity and to assist all parties to become more informed, I may need to be more directive, which may well be appropriate to assist in creating new perspectives. A concern may arise about any significant change in direction away from the mediation process: “If such a change in direction occurs without the informed consent of the client, then the mediators may be engaging in a highly questionable practice” (Pietropiccolo, 1991, p. 2).

**Case Example**

Let’s look at a case involving a father and his fifteen-year-old daughter. The clients’ presenting issues centered around the daughter’s refusal to go to school, subsequent arguments, and disciplinary clashes. The mediation process involved both of them expressing their concerns, and my role was to facilitate communication of feelings and to future-focus parties. The parties became positional, with dad wanting his daughter to attend school, daughter not wanting to go. The parties could not agree, or agree to disagree, and an impasse persisted.

In exploring the issues further, I found that dad held strong emotions of hurt and anger around his responsibilities to his daughter, fueled in part by resentment toward his recently divorced former wife and her actions and attitudes toward him and their daughter, as well as from residual effects from abusive incidents in his childhood. The daughter expressed bitterness and hatred toward her mother and had had thoughts of suicide. She recognized, after exploring it, that refusing to go to school helped her cope and was also a way of expressing her anger.

Exploring these factors satisfactorily was considered beyond the contract of mediation as originally understood. Early on in the process, the clients were offered options. They were asked whether they wished to be referred else-
where, to work in a more therapeutic fashion, to make limited agreements at this time, or to continue at some other time. The parties chose to continue working on their deeper issues. Sessions were videotaped, with consent, to assist in supervision. There were a number of individual sessions during which the parties were very distraught and emotional. These sessions proved invaluable in assisting the clients to become more focused in the present and to help them clarify issues for future negotiations.

Therapeutic intervention was seen to occur both in the individual sessions and when clients were together. As mentioned, this involved more of an exploration of emotional states. When the clients were together and became antagonistic toward each other, and when it wasn’t clear what the issues were, then a mediative process was entered into. The mediative approach helped the clients focus. I have found mediation is most useful when clients are overly hostile, because it offers a structured method of containing conflict. The rule of thumb I often work with is: the higher the conflict the more structured the (mediation) approach. As a mediator, I am the “chairperson” of the meeting and call the shots, in terms of process. When families are really stuck and uncommunicative, I may need to call on other strategies. For families such as these, therapeutic problem solving most clearly represents the process they are involved in.

In the above case example, because the clients chose to examine the emotional background to their dispute individually, it meant that my role changed, that I needed to act more as a therapist than as a mediator. It could be suggested that I was involved in therapeutic mediation. Introducing techniques to help clients express unresolved emotions was certainly a departure from the original mediation contract. It was fortunate that, in this case and at that time, the funding organization supported such therapeutic sessions; that I had the skills; and that the parties were clear about and motivated to try different approaches.

Mediation is particularly valuable in containing conflict. It supports setting limits and helps clients focus and negotiate on their agreed issues. Mediators, who are trained in negotiation, may well work effectively without having additional therapeutic skills or academic qualifications. Mediation may be limited, however, when there is a complex of interrelated and underlying emotional factors needing exploration and resolution.

Power imbalances often exist between parties as in the above case example. The father in this instance was considerably more powerful physically and intellectually. He also wielded financial power by often saying, “If you don’t behave yourself by going back to school, you can find yourself another place to live, young lady!” Emotional blackmail is often par for the course in family mediations. The mediator has to work particularly hard with such power imbalances, organizing private sessions, and confronting antagonistic parties with: Is this what you really want? Ideas of mediator neutrality often may need to be abandoned.
When does the mediator refer out? When is the mediator an advocate or a therapist and not mediating any more? To clarify these questions and the role of the worker, we need to examine the contract the worker has within the organization, its context, as well as the understanding established with the clients. There are some ethical considerations and implications to take into account if the boundary between mediation and therapy becomes diffuse.

Several factors require careful consideration:

1. **Type of organization.** Tensions can often arise, as Roberts (1992, p. 8) pointed out: “Some family therapists working in other agencies in other capacities (for example, as social workers, psychologists, or mediators) recognize that systems thinking may be incompatible with the aims and tasks of those agencies.” Factors to consider are: How does the organization advertise itself to the public and its referrers? What are its funding sources, its philosophy, its mission and vision statements? Any of these elements may create limitations or tensions for workers on one hand and on the other create useful boundaries from which to work and communicate the nature of that work to other professionals and clients alike.

2. **The model.** Is the structure fixed or flexible? In varying the model, how is this handled with comediators and clients? There is a need to establish clear boundaries and procedures. Do clients really understand or can they be expected to understand the differences? There is a need for clarity in presenting a “mixed model” so that referrals are appropriate and clients’ expectations are met.

3. **Expectations.** The professional needs to have a clear theoretical and philosophical base and from this to have a clear understanding, purpose, goal, or intent that satisfies the professional’s, the client’s, and the organization’s expectations. Changing direction toward family therapy away from mediation may mean renegotiation with the clients, establishing a new contract. For example, typically I would present the scenario to clients by telling them: We could go down this path XYZ, which would mean ABC, and come back again to DEF. Then I would ask the following questions: Would that be OK? What do you think? Before presenting this scenario, I would have to answer the following questions myself: Do I know where I am going? How far should I go? Will the clients understand this proposition, and what are the implications for my perceived role changes?

4. **Roles.** It is important that workers are very clear about their roles and what tensions there may be in changing roles. For example, among coworkers it may be difficult to keep pace with the type of organization, the intervention model, and client expectations. My experience is that this can be achieved when there is a very clear sense of purpose and direction and when the clients’ needs are closely followed. In addition, as with any skilled intervention, my aim has always been to make any changes as seamless as possible.

5. **Training.** It is essential that mediators have adequate training and supervision that provides them with the confidence, the skills, and the flexibility to engage families effectively.
6. Neutrality. I believe neutrality is a myth. Some biases are always present. Even at the simplest levels of age, race, and gender, biases exist. Nevertheless, impartiality is an important ideal to aim for. This may mean spending more time and effort on “being partial” to one party instead of another to achieve greater equality or awareness between the parties, thus, aiming to achieve a neutral or level playing field overall. This, in part, is the aim of Milan family therapy, and such therapy is at times congruent with some of the ways mediations can be conducted. I think it is important that all clients feel they have been given a fair go even if it has meant that there may have been changes in direction and partialities. In contrast to mediation, a therapeutic technique may mean a varying degree of involvement with different parties as different means to resolving conflicts are sought. The systemic view would acknowledge the fact that the mediator or therapist is a part of the family system and an influence on it. The ideal of neutrality that mediation aspires to may in fact belie the significance and importance of the impact of the intentioned and unintentioned intervention.

7. Duty of care. Finally, organizations must be aware of the needs of their clients, and mindful that families may often have a complex of issues and problems that underlie presenting conflicts. Being able to provide services appropriate to the needs of families may require a reexamination of existing service delivery models and training programs. Failing to provide services that a family requires, or referring them to another agency, may cause undue distress.

At different times, different approaches will suit some practitioners and some families more than others. Moving from one approach to another requires skillful, flexible workers and a clear understanding of the ethics around expectations, contracts, goals, and the organizational setting. As Gold (1985, p. 18) wrote, “There is no one right way to mediate. What is important is to be guided, not controlled, by definition and technique. The practitioner must give him or herself permission to develop a model and style that fits his or her particular strengths and values and abilities to evolve and change.”

Summary

I have found that in parent-adolescent conflicts, family therapy techniques are often most useful for unblocking or uncovering and externalizing entrenched interactional patterns. I believe family mediation may be considered as another “window in” to a family, which can assist them to change. I would argue that family mediators benefit highly from the use of family therapy techniques and that family therapists are well served by mediation as a particular structured, focused, problem-solving method.

I would argue further that in many instances, the differences between family mediation and some family therapy approaches may well be somewhat notional. With this in mind, establishing clear expectations about roles and
goals within an organizational context needs to be carefully considered and managed for both workers and clients. With this in mind, it is important for both workers and clients—within the organizational context—to establish and maintain clear expectations about roles and goals.

References


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