



CATEGORIES OF MEDIATION MODELS

Mediation scholars and practitioners have categorized and analyzed mediation models from many perspectives. Using the categories of Norm-Generating, Norm-Educating and Norm-Advocating¹ mediation, allows us to identify the norms being referenced, at the same time comparing: theory of conflict, empowerment of parties, basis of authority, control of process, and definition of success. While mediation has gained legitimacy as one of the Alternative Dispute Resolution processes, controversy abounds regarding how to define mediation, train and evaluate mediators, and measure success. If mediators cannot fully explain the process being offered, self-determination of the parties can not be exercised.

Norm-Generating Mediation applies to any mediation in which the parties reference primarily their own values and standards. While all mediation operates “in the shadow of the law,” Norm-Generating models focus the attention on the interpersonal issues. Self-interests, in addition to parties’ proposals on concrete issues, can include: future relationships, fairness to all parties, redefining relationships, changing patterns of communication, and greater awareness and empowerment of parties.

Norm-Educating Mediation is based on the theory that people who are well informed make better decisions. Participants gather all relevant information throughout the mediation process, as well as referencing their own values. The mediator may offer information for the parties to consider. Parties are encouraged to learn skills of negotiation for use outside the mediation.

Norm-Advocating Mediation is any mediation in which legal statutes or institutional regulations dictate the parameters of the mediation agreement. Parties must be informed of these restrictions prior to the mediation.

While these categories include considerable overlap, the emphasis in each is different. The strategies and tools the mediator chooses, according to Waldman’s hypothesis, inevitably reflect the norms being referenced. Mediators are required to inform consumers (prior to mediation) about the processes and model/s to be used, and to assess each party’s capacity to understand. Explaining ADR processes and mediation models is critical in ensuring that parties exercise informed consent. Informed consent is the key component of self-determination. Self-determination is the defining element of mediation in relation to other Alternative Dispute Resolution processes.

¹ See Ellen A. Waldman “Identifying Social Norms in Mediation: A Multiple Model Approach”, 48 *HASTINGS L. J.* No. 4, April 1997 and Ellen A. Waldman “The Challenge of Certification: How to Ensure Mediator Competence While Preserving Diversity” 30 *U.S.F. L. REV.*, Spring 1996.