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*Party-Directed Mediation: Helping Others Resolve Differences*  
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## PART I - INTRODUCTION

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**FOR COMMENT**



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# 1

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## Party-Directed Mediation Model Overview

*Party-Directed Mediation* is a third-party intervention approach that seeks to empower each individual involved in conflict of an interpersonal nature. Some of the principles may well apply to inter-group conflicts, where issues of saving face are important. It offers contenders negotiation skills that will help them direct the resolution of the present disagreement as well as increased abilities to deal with future differences. As people become more talented negotiators, they tend to deal more effectively with discord. Individuals may come to see differences in opinions as opportunities to find more elegant, satisfying, and enduring solutions to challenges.

There are many excellent books on mediation and negotiation skills that seek to empower parties who find themselves embroiled in disputes of an interpersonal nature. We shall consider some of their contributions in these pages, and how they can be used within the context of Party-Directed Mediation. One commonality that many of these books share, is the idea that contenders themselves should be given the tools to solve their own challenges.

The two most important elements of Party-Directed Mediation generally include: 1) a meeting between the

mediator and each of the parties prior to the joint session (i.e., a pre-caucus or pre-mediation) and 2) a joint session where parties face each other, and speak directly to each other rather than through the mediator. These tools are quite controversial. The purposes of this book include an explanation as to why the controversy exists; an examination of what types of conflicts lend themselves to the Party-Directed Mediation approach (and perhaps just as importantly, which do not); a defense of the method; and, of course, a sufficiently clear description of the methodology so mediators, facilitators, or those who are in training, can make use of it in a consistent, positive fashion. (Many of the skills developed in Party-Directed Mediation are transferable to the negotiated performance appraisal.)

The aim of the pre-caucus is to 1) listen to the affected individual in order to help parties reduce negative emotions, and 2) teach parties how to utilize effective interpersonal negotiation and communication tools. Armed with these skills, individuals are more likely to arrive at a sustainable solution. That is, a more positive and enduring outcome for all involved.

Typically, people sort out most of their differences without the help of a mediator (although unfortunately, many conflicts are never resolved). We ought not be surprised, then, that a pre-caucus can be so effective that individuals may go on to resolve their dispute without a mediated joint session. In many situations, of course, the help of a third party is crucial.

Whenever people speak about empowering the parties there seems to be quite a negative—if not defensive—reaction among some mediators and scholars. This resentment is partly justified. Those who promote party empowerment sometimes do so with such fervor, often implying the inferiority of other styles. Empowerment is not automatically the best mediation approach.

For instance, a year and a half after one of my Sabbaticals in Chile, I received a nasty, vicious letter from a

collection agency on behalf of the car insurance enterprise I had utilized. I was accused of not paying my last installment. Unfortunately, I had long since discarded proof of payment. This was the first and only note forwarded to me. It was hard dealing with this situation from so far away. You can believe I was relieved when one of my brothers, who lives in Chile, contacted the insurance agency and played mediator between us. I hardly knew the people involved, and had no interest in mutual validation, transformative opportunities, or the like. I simply wanted the problem to go away without having to pay twice.

I know mediators who have a great gift in terms of seeing solutions that the affected parties simply cannot perceive. These skilled practitioners are able to discern potential agreements, and also seem to know exactly when to speak, the tone of voice to use, the humor that is called for, and precisely what to say to get people to the point where they are able to agree. They are virtuoso artists within the profession. These mediators can see and feel what others simply cannot observe. In my opinion, such skills and abilities will always be needed, especially in the resolution of certain types of conflicts.

There are other types of disputes, especially those of an interpersonal nature—or those that involve people who will continue to live, work, or interact after the mediator goes home—that can greatly benefit from a style that empowers each party. This is when Party-Directed Mediation can play a big role.

There are large portions of the pre-caucus where the mediator mostly attends through an empathic listening posture. The third-party hardly speaks, but lets the affected person know she is being accompanied in her journey. This active listening approach was developed by Carl Rogers and best described in his renowned book, *Client-Centered Therapy*. Furthermore, when the parties arrive at the joint session, they face and speak to each other with little intervention from the mediator. As we shall examine later,

empathic listening is not the same as asking good questions. Nor does it mean that the mediator has nothing to say or contribute. We ought not to confuse Party-Directed Mediation with a third party who is either distracted or detached from the process.

During the pre-caucus, after having listened to the individual, the mediator prepares each party for the joint session, where he will address the other contender directly. The responsibility falls on the intermediary to assure that each party 1) is truly ready to confront the other, 2) has acquired the needed tools for effective interpersonal negotiation, and 3) knows how to avoid dysfunctional behaviors. There are situations, of course, that simply do not lend themselves to such face-to-face confrontation between the contenders.

The application of Party-Directed Mediation principles, then, depends on the degree that 1) the case lends itself to them, and 2) the individuals wish to spend the time requisite to acquire the skills to become more effective negotiators. Just as people today are more likely to ask for a second opinion when it comes to their health and doctor's recommendations, there are those who wish to have a greater hand in solving their own disputes. Some cases may involve a little bit of empowerment, while others almost complete empowerment. Some situations—as in certain restorative justice programs—may require months of preparation and baby-steps to help the parties come together into a joint session where they face and speak directly to each other. Other cases, as we have said, are solved by individuals after a friend provides a good listening ear and they gain the necessary confidence to approach and face the other party on their own.