

PRACTICE HINTS

THE INTEGRATIVE AND DISTRIBUTIVE ASPECTS OF A DISPUTE

Most conflicts have both integrative aspects and distributive aspects. Integrative aspects concern the continuing relationship of the parties and how they feel about each other. The distributive aspects concern who gets what and how much. Many lawyers and business people incorrectly assume business disputes center only on the distributive aspects and that they are “just a matter of money.” However, most people in a dispute have a personal stake in the settlement and how it settles—the integrative aspects—are almost always present. Likewise, to view a parenting dispute apart from the money (business) issues is shortsighted. Often in a business dispute, the positions of the parties will be softened considerably by bringing to bear on the discussion, directly or indirectly, the personal relationship of the parties. No conflict is solely an integrative or distributive matter; but how the issue is framed by the parties or the context may emphasize one aspect over another.

However, regardless of the emphasis, the mediator’s approach and structuring of the process may vary depending on whether the emphasis is on integrated or distributive aspect. At some point, the expectations of the parties about their continuing relationship after the resolution of the immediate dispute should be considered. If they intend to continue doing business with each other, that can provide a useful focus for cooperation in moving toward settlement. Even if they do not intend to deal with each other directly in the future, in most instances they will have to deal with each other in their industry in the future; in some sense, reputations are at stake. Finally, most people, even business people, want to feel that they have settled a matter “fairly.”

Examples of integrative and distributive matters/issues are as follow:

INTEGRATIVE MATTERS

- Parenting responsibility issues
- Environmental matters - use of resources - land use disputes
- Future financial responsibility
- Employee grievance matters
- Labor/management issues
- Intra-organizational disputes (family business)
- Will disputes

DISTRIBUTIVE MATTERS

- Asset/property allocation
- Medical treatment (malpractice) allocation of costs/expenses
- Personal injury/damage claims
- Contract disputes

ISSUES AND PARTIES

In negotiating or mediating business/civil contexts, the two variables that directly affect the complexity of the matter are the number of parties and issues. Generally, Limited parties and issues refers to two parties and one or two key issues. And multiple refers to three or more parties and three or more issues. From the parties/issues variables and the integrative/distributive aspects, a useful typology of disputes can be developed.

TYPES OF DISPUTES

- LIMITED PARTY / LIMITED ISSUE (Distributive, e.g., personal injury, small claims, medical treatment)
- LIMITED PARTY / LIMITED ISSUE (Integrative, e.g., partnership dissolution, employment grievance, contract dispute)
- LIMITED PARTY / MULTIPLE ISSUES (Integrative and distributive, e.g., divorce)
- MULTIPLE PARTY / LIMITED ISSUES (Distributive, e.g., construction disputes)
- MULTIPLE PARTY / LIMITED ISSUE (Integrative, e.g., zoning variance, land use)
- MULTIPLE PARTY / MULTIPLE ISSUES (Integrative, e.g., land use, environmental, organizational dispute, collective bargaining agreement, public policy)

BASIC STRUCTURING CONSIDERATIONS

While the theory, strategy, and skills will be the same regardless of context of the dispute, there may be some adjustment to the structuring of the process. The specific structuring suggestions are noted in each substantive issue section that follows.

However, for all contexts the generic structuring of the mediation session will be the same:

1. Introduction/gain commitment to the process
2. Glean the facts/story
3. Clarify the issues
4. Negotiate and discuss options
5. Confirm understandings

The introduction and confirming the understanding will generally follow the same formats; the Checklist for Mediator Introduction (9.3), the Agreement to Mediate (9.4, form) and the format for a written understanding (9.5) are always used with some variation.