

BEYOND THEORY: AN EMPIRICAL RESEARCH ON THE EFFECTIVENESS OF MEDIATION THROUGH DIRECT OBSERVATION



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ABSTRACT

This research aimed to evaluate the effectiveness of mediation in a practical way, through direct observation of mediation sessions. Thus, the study is qualitative in nature and during it the analysis of mediation sessions, in which the author participated as an observer, in addition to dialogue after the session with trained and trained mediators, without recordings due to the principle of privacy of the parties. The results indicate that mediation is a tool capable of achieving the resolution of civil and family conflicts, because in fact it can create a welcoming environment in which the parties are able to collaborate, where communicating comfortably, until reaching a consensual agreement, reducing the chances of discussing during the hearings. In the end, despite the success with an indicator of 25% chances of reaching an agreement, the infamous effectiveness of mediation is conditioned to a series of nuances, particular to the parties in most cases, such as the willingness of the parties to collaborate throughout the session and the appropriate use of the 12 tools, even in seemingly more complex sessions.

Keywords: Mediation. Effectiveness. Mediator. Parts. Sessions.

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INTRODUCTION

When we talk about public policies, alternative or appropriate methods for conflict resolution become a good example, especially after the enactment of Resolution No. 125 of the National Council of Justice. This resolution was made in 2010 and encourages the Judiciary to opt for appropriate mechanisms for conflict resolution, such as conciliation and mediation. Since then, mediation has been increasingly observed in Brazil, in addition to being more frequently disseminated as an efficient method. It is a means to resolve conflicts, and this helps to promote a more peaceful environment, both in communities and in families.

According to CNJ statistics in Brazil, mediation is increasingly present, so much so that 1,130,000 conflicts have already been eliminated since the inauguration of the system. Mediation has been presented as an alternative that promises to be more successful in resolving conflicts. Although there are many theoretical studies on this tool, it is noticeable that there is a new need for deepening research that involves mediation in practice, observing more carefully what happens in the sessions.

The new need brings to light knowledge to contribute to the gap in such a way that the parties know more about the tool, the mediators better analyze the effectiveness of mediation and the lawyers contribute to the parties reaching agreements without needing a judicial decision. Therefore, the objective is to allow either the people involved, whether professionals or parties, or with an interest in conducting mediation sessions to better understand the changing processes of mediation, to better understand measurement as conflict resolution and to know more about its limitations.

However, the tool cannot act efficiently by itself, that is, it depends a lot on the willingness of the parties to collaborate so that the session takes place properly, respecting the principle of the parties' willingness to reach a consensual agreement. In addition, those involved are required to prioritize communication and reflection on the conflicts presented, in addition to taking into account the solutions that emerge during the sessions, as a way to minimize the negative impacts and reach the end of the conflicts that have arisen.

OBJECT OF STUDY

The object of study of the present research is the effectiveness of mediation in practice, taking into account that the alternative for conflicts has been widely publicized for its capabilities. Thus, this question seeks to better understand the practical processes that

occur during mediation sessions, directly presenting the results of the mediators and analyzing the effects that the new alternative for conflict resolution presents to reach agreements between the parties.

THEORETICAL AND METHODOLOGICAL FRAMEWORK

The research is based on previous studies on mediation, non-violent communication and conflict resolution, which were carried out in the theoretical course of mediation. In addition, the methodological approach used was qualitative, whose data collection occurred through observations carried out as a mediator in observation during real mediation sessions and dialogues with mediators and trained mediators and mediators in training. As the participation in the sessions occurred because the author was a mediator-observer, one of the categories of mediators in training and the sessions could not be recorded.

FONTS USED

The research sources used consist of the material made available by the mediator training course, being the Mediar & Conciliar Center the course in question. The virtual library from which parts of the understanding for the article were taken has several articles – active listening, negotiation, schools, risks and others –, books – strategic communication –, in addition to other documents to which the author can have access.

SEARCH RESULTS

Based on the preliminary results of the research by analysis of concrete cases, which were observed in real mediation sessions, it is possible to analyze that 1 in 4 mediation sessions manages to successfully reach a consensual agreement, regardless of whether it is family or civil. The indicators state that so far, the research presents a success rate of the alternative tool in 32% of chances of having a consensual agreement, even with some problems.

In addition, 78% of the participants in the mediation sessions showed improved mood, better communication, improved ability to express themselves and greater tendencies to the process no longer needing a judicial decision, which removes the label of fruitless session from most cases, as the professionals trained in mediation themselves stated in the sessions.

Civil mediation sessions presented more difficulty in reaching an agreement than family sessions due to nuances such as the most recent over-indebtedness sessions, lack of reports in sessions with compensation for being in a pre-procedural situation and companies with no interest in resolving the conflict outside the judiciary. Therefore, there is no agreement in 1 out of 4 to only 1 out of 7 sessions.

The preliminary results of the present study indicated that separation processes without custody have a success rate in reaching consensual agreements of 100% while separation processes with custody involved have a success rate of 35%, which indicates that the nuances involved in addition to the divergent interests of the parents often prevent participants from reaching a consensus in the session. In addition, sessions that last between 2 to 3 hours have a higher success rate when they involve custody, while separation without children tends to last between 1 and 2 hours at most.

Among the hours of hearings used as a basis for this preliminary research, only 2 out of 5 of the cases involving family mediations the parties are calmer and can even reach an agreement more easily, because due to the involvement of particular situations, which do not involve the mediator or conciliator, but approximately 1 out of 5 of the cases can present such heated discussions that not even the mediator can calm down.

The indicators show family mediation as a tool with a diversity of benefits for families in the process of separation. It facilitates communication between parents, reducing hostility between them and the effects of this are the reduction of conflicts at home and greater empathy for the child or adolescent. However, the tendency to resolve the conflict without further difficulties also varies according to the age of the children, requiring children to be more careful with their parents in the process of routine adaptation, adolescents between 12-13 years old need greater psychological follow-up and older adolescents need greater participation of parents in everyday life, which may vary according to family life, But this was the result acquired so far on the subject.

Among the most complex consensual solutions to resolve, alimony has a single-session settlement rate of 20%, with 1 in 5 cases, unless there is a previous proposal or a lawsuit in progress and both parties are willing. At the same time, questions related to visits have a 50% resolution rate, with 1 in 2 cases. To conclude this analysis, it should be noted that issues involving custody have greater nuances, but an indicator of resolution in 3 out of 4 cases.

Among the 12 mediation tools, the caucus was the least used, with a rate of 0%, which occurred because it took more time than the others. On the other hand, recontextualization was used in 100% of the sessions, regardless of the type, and role reversal in 75%, but it was much more used in family sessions, being used in 3 out of 4 sessions.

Overall, the mediators used the strategies properly and really made an effort to promote dialogue between the parties, which made most of those involved, including the lawyers and mediators, leave the sessions satisfied with the result. Thus, the satisfaction rate of the result reaches 82% while the success rate is 75%, but even though it is lower, it is already possible to look for a new label for the sessions, since they can clearly no longer be characterized as fruitless.

MAIN TOPICS

The main topics of this research involve, firstly, mediators as helpers of people's communication and direct observation as a research tool and strategic alternative for scholars who must keep data confidential, influencing new researchers in the area of mediation. In this way, mediation can be used as a way to identify patterns of communication errors in conflicts and the most used strategies of mediators, because this can help these justice assistants.

In addition, it is possible to observe the effects that mediation can have on the conflict, whether to go to the judiciary or find a new solution. These being the satisfaction of the parties, the agreement and the reason for the conflict to have improved or worsened.

Next, it is possible to talk about the communication of separated people in favor of the children involved in the process, using mediation as the most appropriate form of conflict resolution to promote an improvement in the relationship between parents even after separation and in marital separation as a topic to be further studied in mediation.

Taking the topics mentioned into account, it is possible to understand that giving a safe and confidential space to people who want to reach a consensus can actually resolve the conflict, but if this is not the option, mediation is no longer ideal, nor does it achieve its expected results. In addition, factors that influence the mediation itself must be taken into account, such as the will of the parties, because the mediator cannot go against the principle of voluntariness and the complexity of the specific case.

By taking into account all the issues exposed, questioning the capabilities of the tool has become something inherent to the exercise of mediator for the improvement of practice through empirical research and presentation of results, which concludes the main topics presented in the study.

FINAL CONSIDERATIONS

The research finds that mediation is a truly effective tool for the resolution of civil and family conflicts, as it is capable of achieving the expected result, even for an alternative full of variables. Although the effectiveness of mediation is conditioned by several factors, the ability of the parties to collaborate is crucial.

In family mediation, it is ratified that nowadays it can mean greater practicality and speed in the resolution of family conflicts after separation, even those involving the custody of children and/or adolescents. However, the benefits may have less positive impacts according to the will of the parties, the complexity of the conflict, the parents' ability to collaborate and the age of the children involved.

Childless separation processes are much simpler than those involved, making mediation sessions up to 65% less efficient, even improving communication between parties in 3 out of 4 cases. In other words, mediation has a greater capacity for resolution in less complex cases, but this does not prevent it from culminating in more lasting and efficient consensual agreements more quickly.

Depending on the case, there is a tendency to go to the judiciary according to the characteristics mentioned at the beginning of the topic, but only 1 in 5 cases are not possible to resolve through mediation. However, the numbers are based on preliminary research and this data may be changed over time, not to mention that the proposal to include the children of the parents in the pre-procedural mediations may be an alternative that changes this number.

In both family and civil mediation, the rate of satisfaction with the result of mediation is higher than the success rate in reaching agreements, but this does not prevent the tool from being identified as, without a doubt, an adequate tool for conflict resolution.

The research was interesting to give the opportunity to mediators in training to better understand the tool, to lawyers to discover its success rate, to those interested in presenting their conflict to discover solutions beyond the judiciary and to highlight the

importance of mediation. After all, criticizing the capabilities of tools that are widely publicized as effective is part of the empirical nature of researchers.

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