

INTRODUCTION

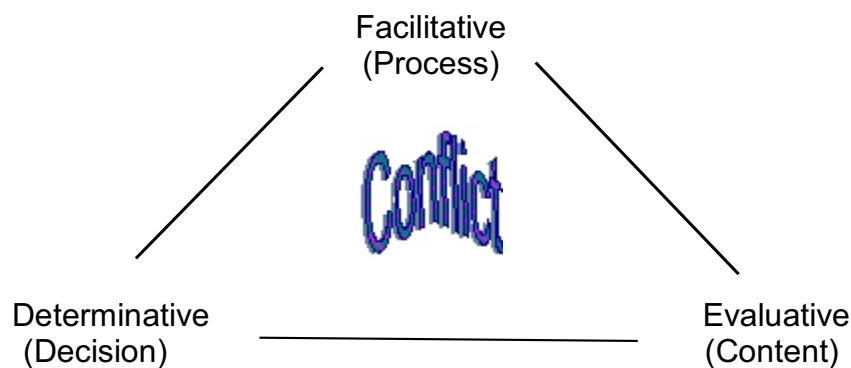
What is “Settlement Facilitation?”

A Hybrid. The process of settlement facilitation is a hybrid, comprised of various aspects of different methods for dispute resolution. Qualities are drawn from mediation, negotiation, early neutral evaluation, settlement conferences, and other dispute resolution forms. The qualities are broadly described, *from the perspective of the settlement facilitator*, as follows:

Facilitative. Settlement facilitation is facilitative in that the parties are encouraged to resolve their dispute upon terms of their own choosing. Here, the settlement facilitator offers process, rather than substantive, guidance. Mediation and communication skills are used.

Evaluative. Settlement facilitation is evaluative in that the settlement facilitators may provide a substantive “reality check” to the parties, whether in joint session or in a session with each party alone, regarding the strengths and weaknesses of a position. However, given the nature of trials, a “reality check” should consider a range of outcomes and should not be absolute and predictive.

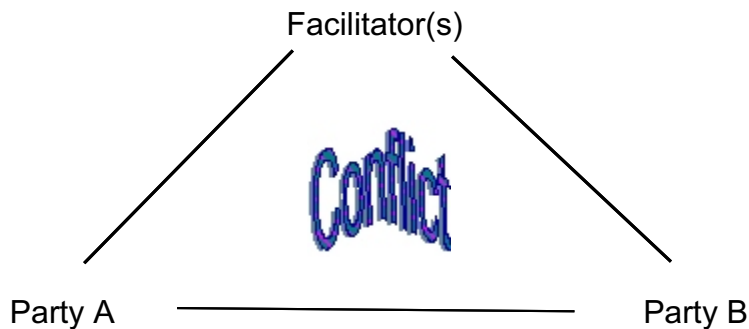
Determinative. Settlement facilitation is not determinative. The settlement facilitator never decides the outcome. The concern is more than not being an overt “arbitrator,” but the concern is to avoid the often indirect means of influencing (“arm twisting”) a settlement decision. Undue pressure to accept a particular outcome, or to settle at any cost, is to be avoided. Decision making belongs to the parties.



The combination of these qualities provides the unique dispute resolution opportunity offered by settlement facilitation. “Touchy feely therapy,” no. “Muscle mediation,” no. *Settlement Facilitation is a thoughtful use of a wide range of qualities.*

Who is There?

Traditional View. Two sides and a neutral(s):



Each side prepares to work with (1) the other side and (2) the Facilitators. The Facilitator prepares to work with the two sides. *Awareness of these dynamics is essential.* However, effective settlement facilitation should consider many more dynamics.

Three Different Types of Players. Each role is distinct, with different experience, expertise, and expectations. Each role should prepare, perceive and participate from a distinctly unique position and background. *And, this is looking at only one side!*



- Advocate/Party - Do they work as a team?
- Advocate/Facilitator ?
- Party/Facilitator?

~ Add Other Side ~

- Advocate/Advocate
- Party/Party

Does this work by accident? The process is too diverse for a formula. What are the tips and traps for preparation and participation?

What Does a Settlement Facilitator Need to Know?

The context of settlement facilitation indicates that a settlement facilitator, or pair of co-facilitators, should have awareness of knowledge and skill in at least the following areas:

Process Awareness: Settlement facilitators should have an orientation to dispute resolution techniques in general, and the context of court annexed settlement facilitation in particular.

Court Awareness: Settlement facilitation takes place in the context of litigation. Therefore, settlement facilitators should have an orientation to the procedure and substance of the legal system.

Subject Matter Awareness: Settlement facilitation offers an evaluative component. Therefore, settlement facilitators should have an orientation to the subject matter of the case.

Consumer Awareness: Settlement facilitation is a service for people. Consumers approach settlement facilitation from all stages of life and from an infinite variety of backgrounds and experiences. This diversity applies to parties, attorneys, and facilitators. Therefore, settlement facilitators should have the ability to perceive and to work the uniqueness of each person who participates in the process, including a self-awareness of the influence of the settlement facilitator's own background on the process.

Civil/Family Court Awareness. Settlement facilitation thrives in both the Civil Court and the Family Court. Therefore, settlement facilitators should be aware of the differences and similarities between these two distinct environments.

There is more: common sense, emotional intelligence, "people skills," among others. The breath and depth of useful knowledge is limitless.

Who Should Be A Settlement Facilitator?

Settlement Facilitation, as a hybrid skill, needs the resources of a diverse population of service providers:

Professional Diversity. Given the specific context of court annexed settlement facilitation, settlement facilitators should have a balance of process, court, and subject matter awareness. Minimum requisite awareness is not necessarily acquired through a particular course of study or experience. There is no perfect, single standard: A 40 hour mediation training course, an accounting, legal or counseling degree, or 5 years of experience all may help. The diverse nature of the cases implies that diversity in professional background is important.

Social Diversity. New Mexico's population is diverse in terms of economics, language, gender, culture, racial ethnicity, education, personal development, vocational experience, personality, and many other meaningful qualities. Each quality brings a unique perspective of experience. Each case offers a different mix. Settlement facilitation programs need to provide an environment for the highest accessibility and usability to the broadest spectrum of our background mixes. The effort to have a socially diverse pool of facilitators needs to be continued.

A clear conclusion is that there is not a simple litmus paper test for who should serve as a settlement facilitator. The job description is multi-faceted. The combination of skills, expertise, and experience of each facilitator will be unique. Given this job description, the question is raised whether a solo or team facilitation model is appropriate.

Co-facilitator Facilitation. A co-facilitation model is often regarded as a means to balance backgrounds and to heighten quality assurance.

Solo Facilitation. A solo facilitation model has different efficiencies and has a heightened need for self-awareness by the settlement facilitator who is operating alone. The single settlement facilitator may need to have more of a hybrid of skills, expertise, and experience.

One size clearly does not fit all.

What Does an Advocate Need to Know?

A trial lawyer hones skills for the courtroom. The negotiator acquires expertise at “the table.” However, the qualities for an effective advocate in Settlement Facilitation are also a hybrid:

“Representation.” On one hand, the advocate is expected to protect and promote the interests of the client. This is a competitive trait.

“Collaboration.” On the other hand, the advocate is asked to participate in a collaborative process, designed to consider mutual solutions. This is a cooperative trait.

“How do you do this dance?” The balance of sometimes conflicting characteristics will be an emerging theme for this conference and those which follow.

What Does a Party Need to Know?

There are no television shows about Settlement Facilitation. Court shows hardly prepare a party for the experience. So, given that people do better when they know what to generally expect, how does the advocate prepare the party?

What Does All this Mean?

Not much, if you will leave fate to chance. Settlement Facilitation is a specific process. To maximize the potential, careful, deliberate preparation is necessary. The goal of Settlement Facilitation 2003 is to further the effectiveness of this method of dispute resolution.

Settlement Facilitation is an art, not a science. This is our fifteenth Settlement Week. We have the experience. If we build upon what we have collectively learned...