

Complexities of elder mediation

Multi-party, multi-issue and multi-generation

Elder mediations are a complex form of multi-party mediations because they are always multi-issue and often multi-generational.

Elder mediation is the ultimate test for mediators as they work with multiple parties to bring them to consensus. To assist parties to achieve consensus, mediators need to understand the theory of multi-party negotiations, complex age-related issues and have a toolbox full of mediation skills.

The following case scenario is typical of an elder mediation.

Margaret, 80, has lived alone since her husband's death 10 years ago. She has four children – Bill, 60; Julie, 57; John, 54; and Anne, 50. Margaret assumed the care of Julie's son, Simon, when he was three and Anne's daughter, Susan, lived with Margaret until she finished her university course last year.

Bill's friend, a local police officer, has told him that there have been complaints about Margaret's driving. Bill has organised a mediation to discuss his mother's driving with his siblings. The siblings have agreed that Simon and Susan should also attend. Elizabeth, a social worker specialising in aged care, will attend as a resource person for the family and Margaret's parish priest will attend as her support person.

Key characteristics

There are three key characteristics of multi-party mediations that impact on the elder mediation process.

Firstly, as multi-party mediations, elder mediations often involve up to 10 parties, which include intergenerational family members (for example, the elder's partner, children, grandchildren), specialist advisors (for example, lawyers, health-care professionals) and others who can provide emotional support to an elder.

Secondly, elder mediations always involve multiple issues. Typically, issues that arise include:

- Should the elder continue to drive? And if not, how will the elder shop, attend appointments and continue to engage in social activities?
- Is the elder still able to live unassisted? If not, should the elder move into a residential care facility, or in with a family member?
- If the elder is living with a family member, does the family member require additional financial support to undertake this care? Then what should happen to the elder's house?

Thirdly, elder mediations involve an elder and family relationships, and therefore have a complex and potentially potent mix of family dynamics, family history, ageism, family abuse, capacity and mental health issues.

As a result, there is a myriad of potential relationship constellations that can develop, fracture and reform.¹ Crump² has identified the following five relationship types that are present in a multi-party mediation:

1. **Primary party relations.** In these relationships, the parties 'own' the issues and experience the direct impact and consequences of decisions made. In the above scenario, the primary parties are Margaret and her family.
2. **Cooperative relations.** These relations form between primary parties. In the above scenario, some of the family members may cooperate to form a coalition and speak as a single voice on a specific issue. For example, Bill, Simon, John and Julie agree that if Margaret forfeits her licence, then she should live with John. However, Margaret, Anne and Susan form another coalition because they believe that Margaret should remain living in her own home and be provided with community services. The formation of the two coalitions may end when the issue of where Margaret should live has been resolved. The formation of the two coalitions temporarily changes the multi-party mediation to a bilateral mediation.

3. **Non-cooperative relations.** Parties may agree on some issues but not on others. When it is suggested that John be financially compensated, Simon and Julie move away from their coalition with Bill and John but only in regard to this issue.
4. **Third-party relations.** Third parties do not 'own' the issues but provide assistance to all parties during the mediation to resolve the problems. In this scenario, the mediator is the third party.
5. **Supporting primary-party relations.** Supporting parties do not 'own' the issues or have an interest in the outcome. They are usually present to support one party and may include lawyers, health-care providers and support people. In this scenario, the social worker and the parish priest are the supporting party.

Preparation for an elder mediation

Because of the impact that these characteristics may have on an elder mediation, the mediator must prepare well before the mediation. This includes obtaining information from the parties and considering what mediation tools to utilise during the mediation.

In preparation for the mediation in the above scenario, the mediator should ask the following questions:

- How did the family deal with conflict in the past? For example, did Margaret's husband make all the decisions and tolerate no dissent, and do their children adopt the same approach to conflict?
- Are family matters such as Margaret's health or her financial circumstances confidential to the family and not to be discussed outside the family? If the family is not prepared to share information, this may pose an impediment to problem solving.

As discussed in a previous *Proctor* article,³ the mediator also needs to consider the issues of dementia and capacity, to be aware of the early stages of dementia, and to consider accommodations to facilitate participation by a person with dementia.

Amanda Molomby looks at why elder mediations are often complex and outlines a process for gaining consensus.



Managing the negotiations

Poor communication and negotiation skills often prevent families from resolving elder care issues. An elder mediator can model communication by using active listening, meta questioning, reflecting back, reframing, paraphrasing and summarising what has been discussed.

Closely related to communication and negotiation skills is the need for ground rules around acceptable behaviour. The mediator should assist the parties to develop the ground rules and the consequences of not adhering to the ground rules. Experienced mediators know that when the parties are responsible for setting ground rules they are more likely to adhere to them.

Reaching agreements

An important element of elder mediation is the need to maintain and, in some cases, re-establish family relationships to ensure that the elder receives proper care and security. Kardasis et al⁴ suggest using the consensus-building approach to get agreements, as other agreement methods such as voting can lead to or consolidate fractures within the family.

The consensus-building approach developed by Susskind and Cruikshank⁵ leads parties to agree. How is this achieved?

After hearing the proposals, the parties are asked if they agree. If they do not agree, they must clearly explain their reasons for liking or disliking the proposal. They must also specify the changes they require to make the proposal acceptable to them (which is better than no agreement). The group has to be willing to listen to the concerns the dissenting party has with the proposal, respond to these concerns, and modify the proposal to reach consensus.

For example, in the scenario, Bill, John, Julie and Simon need to explain to Margaret, Anne and Susan why they have suggested that Margaret live with John. Julie must explain why she supports Margaret's move but does not support financial compensation for John. Conversely, Margaret, Anne and Susan need to explain why they disagree with Margaret moving to John's home and how they plan to support Margaret to continue living in her home.

Once this information is shared, two options usually emerge as likely solutions. The mediator can assess the level of consensus by asking the parties to rank the options on a six-point scale, ranging from a) I wholeheartedly agree, b) It's a good idea and I am very supportive, c) I can support this, d) I have reservations and want to talk more about it, e) I have serious concerns and we must talk more about it, to f) I cannot be a part of this decision and I will block it.⁶

The purpose of this exercise is to find a solution that all parties can live with, even if they do not get everything they want.

With an understanding and training in the complexities of multi-party, multi-issue and multi-generation negotiations, the mediator can help elders and their families resolve issues that arise in the context of ageing and in many cases, strengthen family relationships.

This article appears courtesy of the Queensland Law Society Alternative Dispute Resolution Committee. Amanda Molomby is a director at Consensus Conflict Management and a member of the ADR committee.

Notes

- ¹ Nadja Alexander and Jill Howie, *Negotiation-Strategy Style Skills*, (LexisNexis Butterworths, 2010) 248-249.
- ² Larry Crump, 'Multiparty negotiation: what is it' (2006) 8, (7) *ADRB* 126, 127-128.
- ³ Amanda Molomby, 'Mediating with Elders' (2014) 34, (11) *Proctor*, 36-37.
- ⁴ Arline Kardasis, Rikk Larsen, Crystal Thorpe and Blair Trippe, *Mom Always Liked You Best – a Guide for Resolving Family Feuds, Inheritance Battles & Eldercare Crises*, (Agreement Resources, 2011) 104.
- ⁵ Lawrence E Susskind and Jeffrey L Cruikshank, *Breaking Robert's Rules – The New Way to Run Your Meeting, Building Consensus, and Getting Results* (Oxford University Press, 2006) 22-29.
- ⁶ Above, note 4, 105.

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