

Stanley's Further Comments from LinkedIn **NO R.I.P To Eval. vs Facilitative Mediation**



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Somehow the evaluative process got mixed up with mediation. By definition and per the Rules, an evaluative process is NOT mediation. You can certainly ask for an evaluative process, you just cannot call it mediation. Regardless, you should be very careful for what you ask for when you seek an evaluative process as no one enjoys being on the wrong side of that.

Patrick Russell Agreed. If the parties/advocates "want" an evaluation of their case/position/possible outcomes, they can have one, just do not call it mediation. The process they should be engaged in is called "Neutral Evaluation" or Early Neutral Evaluation. Interestingly enough, as the author indicates that the "Evaluative vs Facilitative" is an outdated debate, I do not see it as a debate, or even up for a debate. Within the study and discipline of conflict resolution there are varying processes that make up the "Continuum of ADR". And it is my understanding, that most do not know what the Continuum of ADR is. I digress.

Patrick Russell Hmmmmmm! An effective mediator best serves the process with a nuanced understanding of ethics, particularly the concept of impartiality, because evaluation—by its very nature—tests the boundaries of neutrality. While Florida's mediation framework permits certain evaluative conduct, it does not relax the ethical obligation of impartiality. And from the article I can see how a mediator who misunderstands this distinction risks ethical drift, undermining both party self-determination and the integrity of the process.

The article mentions the Florida Rules for Certified and Court-Appointed Mediators Rule 10.370(C) (and the Committee Notes to 10.370 (C)). However they did not mention critical verbiage pointed out in the rule and Committee Note which are

- 1) "Consistent with standards of impartiality..."
- 2) "A mediator must not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute." The author seems to think a mediator can state "I think you have a 70% chance of losing this case completely." The rule clearly states you can not.
- 3) The Committee Note to Rule 10.370(c) makes a critical clarification that is often overlooked. Immediately following the reference to evaluative services, the Note states: "In providing these services, however, it is imperative that the mediator maintain

impartiality and avoid any activity which would have the effect of overriding the parties' rights of self-determination."

Rule 10.330 defines impartiality as "freedom from favoritism or bias in word, action, or appearance," and further emphasizes a mediator's obligation to assist all parties rather than advancing the interests of one over another. Importantly, the Rule acknowledges that a mediator may raise questions about the "reality, fairness, equity, durability, and feasibility" of proposed settlement options—but only while maintaining impartiality. So if providing an evaluation to both parties that benefits one party over another, that goes against being neutral & impartial.

We both know, and I have trained with many colleagues who say, "But how can I share my knowledge of what I THINK (or know) will happen... They both ask for it benefit"? Well, that is where having conflict resolution training & skills over adversarial negotiation skills comes in. There is no debate.