

# MEDIATION MODELS

The Practice of Mediation Varies Significantly

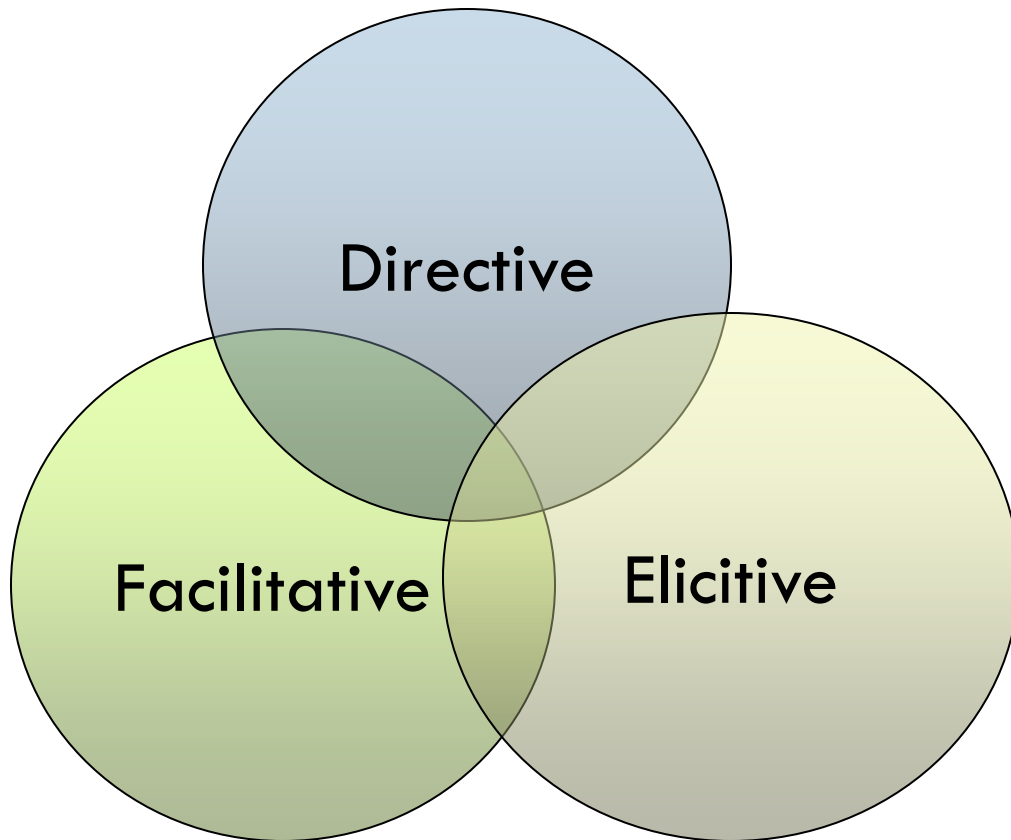
# Mediation Models

- **Different** from practitioner to practitioner
- **Different** from place to place
- **Different** from subject matter to subject matter
- As **Different** in appearance as:



# Three Basic Mediation Models:

## Unlimited Mediation Model Hybrids



Individual practice  
may exist at any  
point between  
centers of circles

# Mediator Role in Each Model



Directive

The Mediator **Directs** Process  
**for** the Parties



Facilitative

The Mediator **Facilitates** Process  
**for** the Parties



Elicitive

The Mediator **Elicits** Process  
**from** the Parties

# Mediation Model: Similarities

- Confidentiality
- Neutrality or Balance
- Disinterested Third Party Intervention
- Many Similar Tools
  - ▣ Restatement
  - ▣ Reframing
  - ▣ Questioning
  - ▣ Summarizing



# Mediation Model: Differences

- What it looks like
- What **beliefs** drive the process
  - ▣ Beliefs about conflict
  - ▣ Beliefs about people in conflict
  - ▣ Beliefs about role of emotions
- What the mediator does
- What the parties do

# Directive Model

- Commonly used later in litigation process
- Similar to a **Settlement Conference**
- Familiar territory for litigators and judges
- Legal issues paramount
- Attorneys do the talking

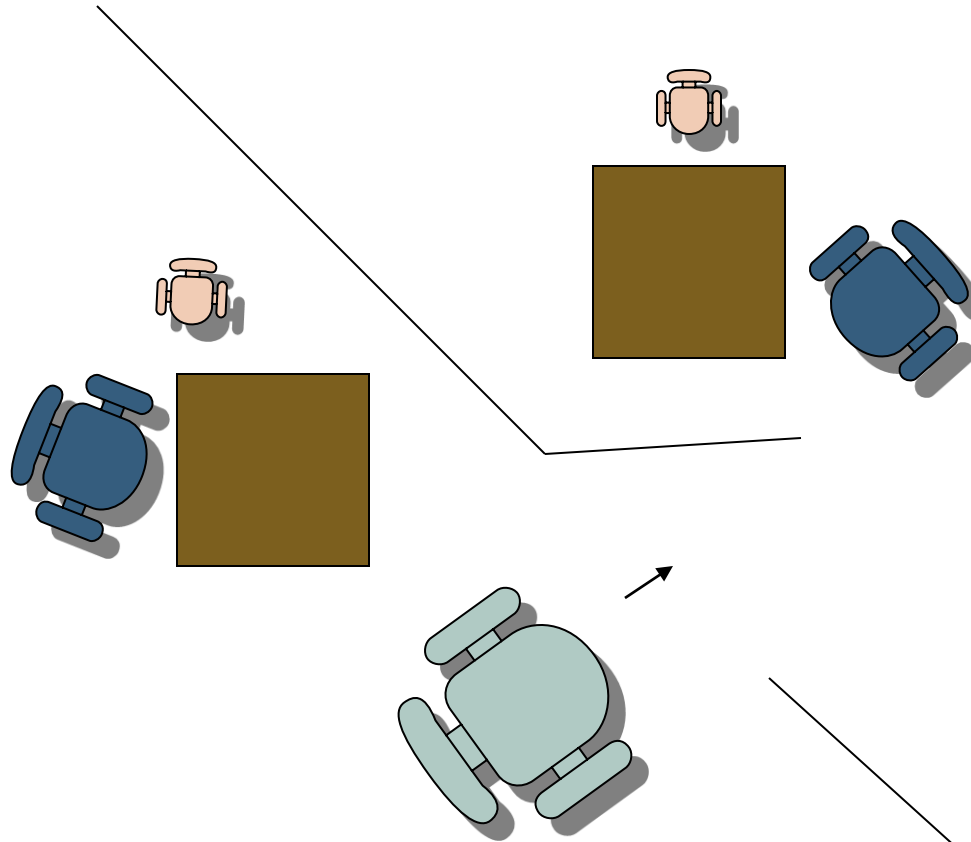


# Directive Model: The Beliefs

- Conflict is something to be ended
- Parties are not capable of ending it themselves
  - ▣ They don't have the skills
  - ▣ They don't have the knowledge
- Mediator's are needed to take control and move parties to **settlement**
- Settlement seldom addresses the underlying issues giving rise to conflict
- Focus is on fault and damages resulting from fault



# Directive Model: What it looks like



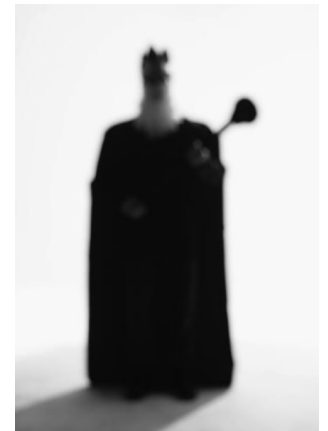
1. Mediator

2. Lawyer

3. Party

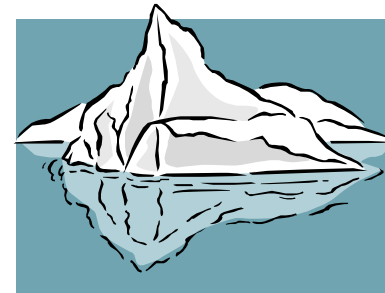
# Directive Model

- Parties and their attorneys primarily in separate rooms – Caucus
- Mediators role:
  - Shoulders responsibility for settlement
  - Often has substance matter expertise
  - Structures the process
  - Keeps **emotions** out of the process –“venting” in caucus
  - Explores strengths and weaknesses of case
  - May be willing to predict outcome at trial
  - Helps attorneys with “difficult clients”

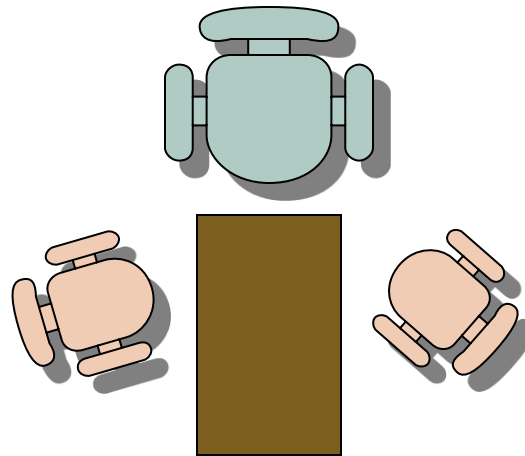


# Facilitative Model: The Beliefs

- Conflict is something to be overcome
- Parties capable of overcoming conflict with guidance of mediator
- Settlement may become **resolution** through addressing underlying interests (existing below the “tip of the iceberg”)



# Facilitative Model: What it looks like



1. Mediator

2. Party

3. Lawyer



# Facilitative Model

- Parties do the talking
- Everyone in the same room
- Caucus used sparingly
- Mediator's role:
  - ▣ Helps parties recognize **interests** underlying **positions**
  - ▣ Has process expertise rather than substance expertise
  - ▣ Structures the process
  - ▣ Manages **emotions** that might undermine resolution
  - ▣ Directs party focus from past to future
  - ▣ Reframe language to “detoxify” conversation



# Facilitative Model

- Mediator moves parties through linear, prescribed stages
  - 1. Setting the stage
  - 2. Gathering information
  - 3. Framing the issues
  - 4. Developing options
  - 5. Negotiation
  - 6. Finalizing agreement
- Lawyers there or not there as advisor to client



# Elicitive Model

Known to many mediators as the *Transformative Model*

Articulated by **Robert A. Baruch Bush** and **Joseph P. Folger** in their 1994 publication:

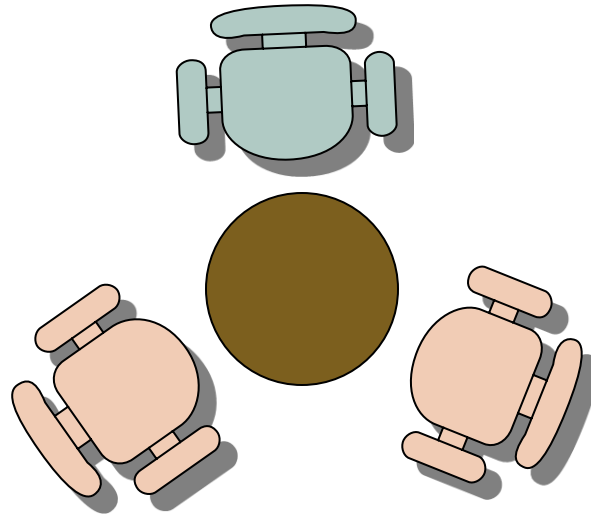
*The Promise of Mediation:  
Responding to Conflict Through  
Empowerment and Recognition*

# Elicitive Model: The Beliefs

- Conflict is something that can be learned from
- People seek equanimity and good relationships
- People are capable of **transforming** their conflict interaction from destructive to constructive
- Conflict causes people to feel weak and self-absorbed
- When people understand each other and their conflict more clearly, **resolution** follows



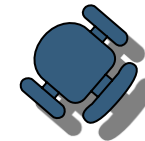
# Elicitive Model: What it looks like



1. Party

2. Mediator

3. Lawyer



# Elicitive Model

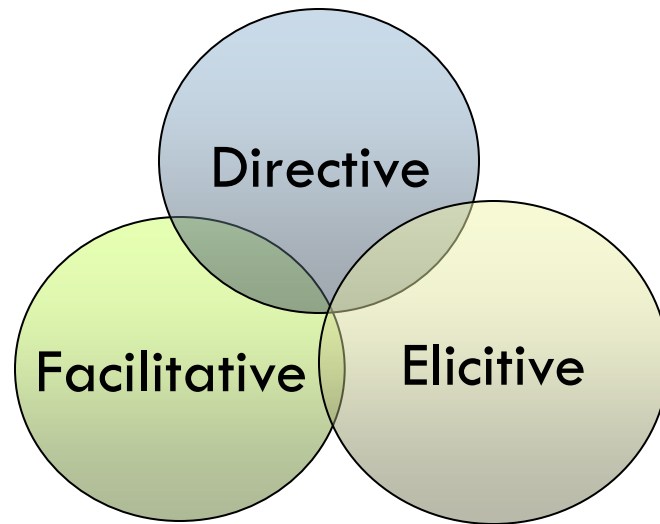
- Parties do most of the talking
- Everyone in the same room
- Caucus used sparingly
- Less apparent structure - nonlinear
  - ▣ Empowers people to develop their own agenda
  - ▣ Following party topic selection leads to issues at core of conflict (below the “tip of the iceberg”)
- Lawyers there or not there as advisors to client



# Elicitive Model

- Mediator's role:
  - Reinforces people's decision making capabilities
  - Accepts people's wish to revisit the past in order to shape future
  - Recognizes **emotion** as guidepost to what's important
  - Focuses on the party interaction - not the issues
  - Confident that understanding generates resolution
  - Invites parties to ask questions and speak to each other
  - Highlights differences as well as commonalities

# Mediation Models: Summary



- Three distinct models of mediation practice
- Many similar tools
- Individual practice often “in between” or “back and forth”
- **Great value in all models**