



Alternatives

to the High Costs of Litigation

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Know Thyself: A Test that Classifies Style To Improve Mediators' Performance

By Jeffrey Krivis and
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Prof. Leonard L. Riskin of the University of Missouri-Columbia School of Law has written extensively about mediators and the mediation field. Most recently his work has focused on developing ways to characterize the many different styles of mediators.

In 1994, Riskin explained in *Alternatives* the ideas used to develop this article's Mediator Classification Index. [See Riskin, "Mediator Orientations, Strategies and Techniques," 12 *Alternatives* 111 (September 1994). Riskin elaborated on his classification system in "Understanding Mediator Orientations, Strategies and Techniques: A Grid for the Perplexed," 1 *Harvard Negotiation L. Rev.* 7 (1996).] His theory on mediator style focuses on (1) how mediators view their role, as "evaluative" or as "facilitative," and (2) how mediators define the problem, "narrow" or "broad." The result is a four-quadrant grid keyed to these two style focuses and containing areas pertaining to media-

tor styles: Evaluative Narrow, Evaluative Broad, Facilitative Narrow, and Facilitative Broad.

Based on Riskin's work, we have developed the self-scoring MCI. It is designed to assist mediators in understanding the particular approach or style that they tend to use during the mediation process.

Understanding style is crucial to improving mediator performance. It allows a mediator to select from a spectrum of techniques that might be available depending on the nature of the issues presented. It also makes it simple for the mediator to explain to the disputants why a particular approach might be used in resolving the dispute.

Although the MCI is still a work-in-progress and is not a standardized testing instrument, many are finding it to be a useful tool to create an awareness of the stylistic options available to mediators.

In developing the MCI, we first used expert panels in Minnesota and California to analyze the content validity of questions below. For example, did the questions measure what they were supposed to measure relative to factors used by Riskin in his original grid? After revisions, a 48-item MCI was made widely available and used throughout the country by hundreds of mediation trainees. Using a statistical package on a sample of 224 completed instruments, the scales were "purified" and reduced. Finally, after analyzing written and verbal feedback received from mediation trainers and trainees, the MCI was revised to its current 26-item format. To continue the instrument's development, we invite additional feedback from *Alternatives'* readers.

Explaining the Quadrants

The differences between the types of mediators on the grid are significant. According to Prof. Riskin, (continued on following page)

NEUTRALS'
SKILLS

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(continued from front page)

"the principal strategy of the Evaluative-Narrow mediator is to help the parties understand the strengths and weaknesses of their positions and the likely outcome at trial. To accomplish this, the Evaluative-Narrow mediator typically will first carefully study relevant documents, such as pleadings, depositions, reports and mediation briefs. Then, in the mediation, she employs evaluative techniques ...which are listed from most to least evaluative."

The Facilitative-Narrow mediator "plans to help the participants become realistic about their litigation situations. But he employs different techniques. He does not use his own assessments, predictions or proposals. Nor does he apply pressure. Moreover, he probably will not request or study relevant documents, such as pleadings, depositions, reports or mediation briefs. Instead, because he believes that the burden of decision should rest with the parties, the Facilitative-Narrow Mediator might ask questions—generally in private caucus—to help the participants understand both sides' legal positions and the consequences of non-settlement."

The Evaluative-Broad mediator "helps the parties understand their circumstances and options. However, she has a different notion of what this requires. So she emphasizes the parties' interests over

their positions and proposes solutions designed to accommodate these interests. In addition, because the Evaluative-Broad Mediator constructs the agreement, she emphasizes her own understanding of the circumstances at least as much as the parties'."

The Evaluative-Broad mediator "also provides predictions, assessments and recommendations. But she emphasizes options that address underlying interests, rather than those that propose only compromise on narrow issues."

The difference between the types of mediators are significant. Your test results will provide a snapshot of your natural tendencies.

The Facilitative-Broad mediator "seeks to help the parties define, understand and resolve the problems they wish to address. She encourages them to consider underlying interests rather than positions and helps them generate and assess proposals designed to accommodate those interests."

After taking the test below, the box at the end explains the scoring method, which will place you on the grid. Where you are on the grid provides a snapshot of your natural tendencies as a mediator. It does not necessarily limit your ability to move around the grid by using different strategies and techniques depending on the circumstances of the case.



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Instructions

Review each statement below from the perspective that you are a mediator, and indicate the extent to which you agree or disagree by checking the appropriate box and recording the score. When you are finished, follow the accompanying **Self-Scoring Instructions**.

(continued on following page)

MCI'S PROBLEM DEFINITION

This section of the survey concerns the goals of a mediation. The statements are designed to measure the scope of the problem(s) that the mediation seeks to address or resolve.

1. I encourage the parties to focus on resolving the specific, legal problems.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

2. I prefer to look beyond the legal issues in defining the problem to be resolved.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

3. I am inclined to consider the parties' interests more important than the legal issues in defining the problems to be resolved at the mediation.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

4. The focus of the mediation session is on legally relevant issues.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

SCORE

5. In learning about the issues of the case, it is important to understand the legal posture of the case.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

SCORE

6. I urge the parties to compromise on narrow issues.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

SCORE

7. I tend to decide how I will approach a case based on the legal documents, technical reports or legal briefs.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

SCORE

8. Even when the lawyer is present at a mediation, I ask the client to discuss the personal impact of the case.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

9. The interests of the parties are more important to me than settling the case.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

10. The parties' perception of the conflict is not as important to me as the actual evidence of the case.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

SCORE

11. I view the mediation as an opportunity to help the parties understand each others' perception of the dispute.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

12. My role is to help parties understand and reach settlement on the issues set forth in the legal documents.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

SCORE

13. Generally, parties are more capable of understanding their situations better than either lawyers or mediators.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

SCORE

Problem Definition
Enter Sum of Scores



TOTAL SCORE

(test continues on following page)

MCI'S ROLE OF MEDIATOR

This section of the survey concerns the mediator's activities. It measures the strategies and techniques that the mediator employs in attempting to address or resolve the problems that are the subject matter of the mediation.

14. I provide parties with direction as to the appropriate grounds for settlement (e.g., law, industry practice or technology).

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

15. To help parties negotiate realistically, I find it helpful to give an advisory opinion about the likely outcome of a case.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

16. My principal strategy is to help parties understand the strengths and weaknesses of their legal positions.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

17. I use the parties' relevant documents, pleadings, reports and legal briefs to help them look realistically at their case.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

18. The principal technique I use is to encourage the parties to explore the likely outcome at trial.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

19. A principal strategy I use is to suggest a particular settlement proposal or range to the parties.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

20. I use private caucuses early to help the parties understand the weaknesses of their case.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

21. I do not have to understand the legal posture of the case to serve as the mediator.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

22. I focus on the process as opposed to the outcome of a mediation.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

23. I prefer joint sessions over private caucuses.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

24. Developing options for settlement is the responsibility of the parties, not the mediator.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

25. I must have expertise in the subject matter of the dispute.

< STRONGLY AGREE STRONGLY DISAGREE >
10 9 8 7 6 5 4 3 2 1

26. I do not consider it my responsibility to protect legal rights and responsibilities of the parties.

< STRONGLY AGREE STRONGLY DISAGREE >
1 2 3 4 5 6 7 8 9 10

Role of Mediator
Enter Sum of Scores



TOTAL SCORE

(test continues on following page)

(continued from previous page)

MCI'S SELF-SCORING INSTRUCTIONS

How To Determine Your Personal Mediator Classification:

1. Add together all of your Problem Definition scores.
2. Divide that total number by 13. This is your **mean Problem Definition** score.
3. Add together all of your Role of Mediator scores.
4. Divide that total number by 13. This is your **mean Role of Mediator** score.
5. Go to the Mediator Classification Index (MCI).
6. On the Problem Definition axis (the bottom horizontal axis) locate the point that corresponds to your **mean Problem Definition** score. Draw a vertical line from that point all the way to the top of the Index.
7. On the Role of Mediator axis (the left vertical axis) locate the point that corresponds to your **mean Role of Mediator** score. Draw a horizontal line from that point all the way across the MCI.
8. The point at which the two lines intersect will be in the area of the MCI that indicates your personal mediator orientation.

Mediator Classification Index: Where Do You Fit?

Prof. Leonard L. Riskin's view of mediator style focuses on whether mediators evaluate or facilitate and how narrowly or broadly mediators define a problem. The result is a four-quadrant grid, containing areas pertaining to mediator styles: **Evaluative Narrow**, **Evaluative Broad**, **Facilitative Narrow**, and **Facilitative Broad**. Take the test, and follow the scoring instructions above, which will place you on the grid and define your mediation style.

