

“Addressing the Neutrality Dilemma through an Alternative Ethical Paradigm for Mediation”

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Slide 1

The Current State of Neutrality in Mediation

- Key element of definitions of mediation.
- Legitimising element of process – inferences of fair practice, protection against biased or inappropriate practice.
- Makes the process credible – comparisons can be made with neutral judges in adjudication.

Slide 2

Nevertheless:

- There is no clear definition of neutrality in mediation.
- There is little commonality amongst practitioners on its meaning.
- Neutrality is said to have “shades of meaning” (Taylor), to be “contextual and fluid” (Astor) and “based on intuition” (Thomson et al).
- Neutrality is therefore an elusive and idealistic concept (Gadlin and Pino).
- Neutrality can be considered to be “the most pervasive and misleading myth about mediation.”

Slide 3

Making Mediation Credible Through a New Ethical Paradigm

- It is more realistic and practically relevant to seek an alternative way to ensure fairness in the mediation process through ethical requirements for appropriate mediator conduct.

Slide 4

Current Ethics in Mediation?

- Aspirational. Generic. Unenforceable.
- Currently, there is no “consistent perspective of ethical standards” across the mediation profession, or uniform code of ethics (Wellick)
- Existing codes of conduct, guidelines and standards for mediators are subjective and complex.

- Significant debates about approaches to ethics are ongoing – for example, the debate in the US about the appropriateness of facilitative and evaluative approaches to mediation.

Slide 5

A New Ethical Paradigm

- Situated, contextual ethics for mediation.
- Drawing on feminist ethics.
- Focussed on ensuring party self-determination.
- and
- An enforceable element of a mediation profession.