Lela P. Love and Joseph B. Stulberg, PRACTICE GUIDELINES FOR CO-MEDIATION: MAKING CERTAIN THAT “TWO HEADS ARE BETTER THAN ONE”  

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The difficult and delicate nature of a mediator's job argue both for and against a team approach for mediators. Where co-mediators operate in synch with one another, have the same vision of the mediation process and its goals, and have a plan which maximizes the strengths of the mediation team, their combined talents increase their capacity to respond to the myriad challenges they will face. However, when either mediator feels disrespected or under-utilized in the mediation, the mediators have a different vision of the goals of the process, or the mediators have no plan for or understanding of their tasks and roles vis-a-vis each other, co-mediators can be worse than a solo mediator, as the difficult and delicate task of trying to harmonize a dysfunctional or unprepared team is added to the usual challenges that mediators face.

Co-mediation has been routinely used in a variety of program and case situations. For example, in some program situations, training needs and “quality control” make co-mediation advisable. Less experienced apprentice mediators are paired with more experienced mentor mediators, both to provide further training for the apprentice mediator and to insure that disputants are well served. In some case situations, such as divorce proceedings, an attorney-mental health professional and/or a male and female are recommended as the mediator team in order to address the legal and psychological complexities of such matters. Similarly, in highly specialized areas, such as intellectual property, a mediator with substantive expertise—legal, factual or technological—might productively team herself with a mediator who has process expertise.

Whatever the rationale, in order for co-mediation to be effective, the mediators must understand its potential advantages and pitfalls, must thoughtfully match themselves with compatible partners, and must make a plan for effective teamwork.

This article will summarize the advantages and disadvantages that can be realized through co-mediation and then suggest and discuss practice guidelines designed to maximize co-mediation's advantages and minimize its risks. [The] potential benefits [of] … using … [a] co-mediation team [are listed below:]

### Advantages of Co-Mediation

- Enhance the expertise, insights and listening capacity of the intervenors, who may possess diverse backgrounds, professions and ethnicities.
- Increase the patience and perseverance of the mediation team due to one mediator not being continually “on the line.”
- Create “balance” on the mediation team due to diversity of mediators (for example, male/female, Caucasian/African-American, attorney-social worker).
- Provide a model for the parties of effective communication, cooperation and interaction.
- Multiply the linkages that different parties can develop with the mediators, increasing the stamina and tolerance of the parties, who are given a second voice and perspective.
- Allow one mediator to take a “risk”, while having another mediator present to “rescue” them.
- Make the mediation more efficient by division of tasks between the mediators.
Create training, learning and enrichment opportunities for mediators, who will benefit from working with each other.

To avoid potential pitfalls, co-mediators must also know the dangers of co-mediation. [The possible disadvantages that might arise from using co-mediation [follow].

**Disadvantages of Co-Mediation**

- Conflict and competition among co-mediators can make mediation more difficult.
- Co-mediation can be more time-consuming than solo mediation, as mediators have to negotiate about their roles and tasks.
- Parties might “divide and conquer” the mediation team by focusing on the most sympathetic mediator, rather than having a single focus.
- Mediators, in an effort not to “step on each others toes” or not to risk disapproval by asserting themselves, might hesitate to make moves they otherwise would make, resulting in each mediator being unduly constrained and handicapped.

The [following] practice guidelines for co-mediators … are suggested to capture co-mediation's potential advantages and to minimize the risk of its potential harms.

1. **Choose a Partner with a Similar Vision of Mediation's Goal and Compatible Strategies for Executing the Mediator's Job.**
   Differences in fundamental goals can cause a team to pull unproductively against each other. Is the mediators' main task to assist the parties in understanding each other more fully and in facilitating dialogue aimed at resolving the negotiating issues? Or is the main task seen as a forced march towards agreements? Before a co-mediation begins, the mediators must discuss their goals and objectives and be sure they are a compatible team.
   
   Co-mediators must also be sure that they share similar approaches and strategies. Are groundrules presented to the parties or are the parties invited to negotiate with each other to establish groundrules? Is the caucus used routinely in every case or only in special circumstances? Do attorneys sit at the table or away from the table? The co-mediators must be comfortable and confident concerning basic strategies they adopt.
   
   While it may be productive to observe and learn from a mediator with a different orientation and basic strategies, effective partnership requires a consonance in goals, objectives and strategies.

2. **Give Leadership Roles to Co-Mediators.**
   So that a power vacuum does not exist, one member of the co-mediation team should be in charge at any given point. Particularly where mediators have not co-mediated together in the past, allocating leadership roles should minimize the chance of conflict among mediators. If there is conflict, the “leader” gracefully takes over, and the conflict does not disrupt the session. Either one of the mediators can be the “lead” for the entire session or the session can be divided into discrete segments (delivering the opening statement; gathering information; articulating the issues and creating a discussion agenda; keeping track of agreements as they are reached; closing the session) with leadership changing for various segments. The latter approach can maximize particular strengths of each mediator and give the mediators a more equal voice.

3. **Strategically Use the Seating Arrangement to Maximize Opportunities for Success.**
   Important goals in structuring the seating arrangement include: 1) maximizing the co-mediators' ability to communicate with each other; 2) taking advantage of the diversity of the mediation team to “balance” the room; 3) unifying the parties' focus; and 4) providing for
mediator “breaks.” The examples that follow illustrate how these goals may be affected by various seating configurations.

Example 1:

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P
M
M
P
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Discussion: This arrangement has the advantage of helping to unify the focus of the conversation as the parties look toward/address both mediators when they speak. Side conversations directed towards one mediator would be minimized. Also, given their proximity to each other, the mediators can pass a note or quietly make a suggestion to each other, without causing a distraction. But this configuration has drawbacks: the mediators cannot see each other easily, thereby making intra-team communication more difficult; further, sitting side-by-side keeps both mediators in the “line of fire” at all times. Example 2 avoids each of these drawbacks.

Example 2:

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P
M
M
P
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Discussion: The advantages of this arrangement address the two weaknesses of Example 1: it allows the mediators to see each other and the parties easily; and it provides some breathing space for each mediator from the parties for creative reflection and recuperation when the focus of the conversation is held by the other mediator. One challenge of this seating arrangement, however, is for the mediators to maintain a unified focus and not allow side conversations between a party and the less active mediator. This can be accomplished by the less-active mediator riveting her attention on the designated speaker.

Example 3:

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P&M
M%
P&M
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Discussion: Distributing the mediators in this manner contributes to “balancing” and harmonizing the room. If the female mediator were seated next to the female party and the male next to the male, it might suggest that the mediators were in advocacy roles and thereby tend to polarize the room.

These examples are not given to suggest there is one “correct” seating configuration, but rather to emphasize that seating arrangement, like other aspects of planning and executing an effective co-mediation, is important and must be done thoughtfully. Obviously, other table shapes than the one presented should be considered as well.
4. Assign Specific Tasks to Each Mediator to Make the Mediation as Efficient and Productive as Possible.

Having one mediator in charge of specific tasks can facilitate the session and lighten the load on the other mediator. Therefore, assigning one person to write agreements as they emerge, manage paperwork, check on resources or obtain special information, while the other focuses solely on the parties' interaction, can maximize mediator resources. Whenever one mediator is not undertaking a specific task or is less active than the other, he or she should use the opportunity to become an astute process observer, tracking both the subtleties of parties' interactions, as well as substantive developments in the session. Having an extra pair of eyes and ears to assume this task insures that the resources offered by a co-mediation team are fully utilized.

There is a tendency for co-mediation to take longer if it entails extensive conferencing between the mediators. This can be alleviated if the mediators use wisely the additional resources a team provides.

NOTE THAT EFFECTIVE PLANNING TAKES TIME! Co-mediators must allow for planning time and then use that time: to ensure they share similar goals, objectives and strategies for the mediation process; and to discuss seating, administration, and assignment of leadership roles and specific tasks.

5. Use the Opening Statement to Set the Right Tone for the Co-Mediation.

Most mediators begin their joint conferences by making an opening statement. When co-mediating, mediators should thoughtfully present their opening remarks in a manner that reinforces their being perceived as a team.

For example, if one mediator delivers the entire opening statement, she should close by saying to the other mediator, “Mr. (Co-Mediator), is there anything you would like to add?”

If the mediators divide the components of the opening statement so that they each participate in its delivery, they should have a transition strategy that they convey to the parties: “I will explain the goals of our session today, and then Ms. (Co-Mediator) will review the groundrules for our discussion. And, of course, we will answer any questions you have before we begin.”

Also, if the mediators have assigned specific tasks to each other, they should alert the parties to their particular roles, noting however that their functions might shift as the session proceeds. Such an explanation should enhance the parties' confidence that the mediators have developed a thoughtful plan. When the mediators proceed to do what they have promised, they will build more confidence and trust. Furthermore, in discussing their roles, mediators are implicitly encouraging the parties to understand the mediation process and become engaged in strategies to design productive sessions.

In delivering the opening, the pronoun “we” should be routinely used to describe the mediation team's goals, roles and groundrules, instead of the pronoun “I”.

6. Adopt the Principle of Non-competition among Mediators.

There is no need for one mediator to have “equal time” with the other mediator. In fact, one mediator might be “on a roll” and do 90% of the mediation. Whatever works best should be the guiding principle for determining which mediator is most active.

Mediators must be flexible. If one person, by prior arrangement, has been designated the “lead” mediator for a particular segment of the mediation but the non-lead mediator is doing effective work, then the “lead” must step back, watch vigilantly, and be ready to take a more active role when and if a useful contribution can be made.
A caveat to this principle of non-competition, however, also discussed in Guideline 9, is that a co-mediator who never assumes a visibly participatory role might have his credibility seriously eroded whenever he does try to assert himself. Further, a seemingly inactive co-mediator who is aligned with one of the parties due to sex, age or ethnicity, might exacerbate a power imbalance between the parties by modeling such an imbalance on the mediation team. If a “weaker” party is already feeling overwhelmed by negotiating with a stronger party and the weaker party identifies with the inactive co-mediator due to some apparent gender, ethnicity or age “match”, the inactive co-mediator's apparent non-participation could result in the weaker party feeling increasingly uncomfortable and disempowered. In such a situation, the co-mediators inadvertently may further skew an already unlevel playing field, thereby missing an opportunity to model effective and competent interaction which might help a weaker party find her voice, assert her interests and examine her options. Co-mediators must be sensitive to such considerations. Teamwork, of course, requires more than the mere absence of competition.

7. Remember to Consult with your Partner before Making Important Decisions.

After any completed segment of the mediation, the mediator who is most active should inquire of the other mediator: “Is there anything you would like to add?” or “Is there anything we should explore further before moving on?”

Important decisions, such as structuring the discussion agenda or declaring a caucus, must be made with the consensus of the team. That consensus can be secured with a subtle nod across the table or after a mediator conference held during a recess. Mediators must work out communication signals ahead of time, including signals that address both procedural decisions (for example, when a mediator conference is necessary) and tactical moves (for example, deciding with which party to caucus first).

8. Maintain a Unified Focus so that Common Understandings are Reached.

Mediators should not allow parties to “split” the conversation between the mediators. That is, while one party is addressing the “active” mediator, the other party should not be allowed to have a private conversation with the less active mediator. To maintain a unified focus, the less active mediator can rivet her attention on the party who has the floor and refuse to be distracted by the other party. Moreover, the more active mediator can assist in maintaining a unified focus by using the pronoun “we”, rather than “I”, when describing goals and groundrules or when making suggestions to the parties.

Finally, to sustain the unified focus, when one co-mediator is exploring a topic or pursuing a line of questions, his or her partner must be careful not to jump in and initiate conversation on a totally different track. Co-mediators must be supportive of each other's effort to bring closure to a given angle or analysis.

At an advanced level, though, it is possible for co-mediators to maintain a unified focus even while pursuing different agendas simultaneously. For instance, there is a potential to conduct simultaneous caucuses with both (all) parties by splitting up the mediation team. If speed is a primary consideration and if the goals of the caucus are extremely clear, using this technique can be extremely effective even though it adds a layer of complexity to the communication process among the mediators.

9. Use the Diversity of the Mediation Team to Maximum Advantage.
In considering the seating arrangement, mediators should position themselves to take greatest advantage of their diversity and not to polarize the situation in any way. (see Example 3 under Guideline 3 above.)

In situations where there is an apparent power imbalance between the parties, there should not be a matching power imbalance on the mediation team. That is, if there is a female party at a disadvantage due to a more powerful male party, the female mediator (on a male/female mediation team) should display—at a minimum—equality with her male co-mediator. In this context, the mediators might strategically plan for the female mediator to have equal floor time with the male. When structuring the mediation team in such a case, it might be particularly important for the female mediator to be a strong, experienced mediator.

10. Have a Fall-Back or “Fail-Safe” Plan if Co-Mediation is Not Working.

Not every team works well together. Particularly if mediators are co-mediating with each other for the first time, they must realize that it may not go smoothly. Should a mediator decide that the team is less helpful to the parties than a solo mediator would be, switch strategies. Instead of allowing the parties to suffer because the team cannot operate effectively, allow one of the mediators to conduct the session, while the other mediator observes. The “lead” mediator will generally be the one to take over at this point.

Should such a dysfunctional performance occur, the co-mediators should decide in their de-briefing session whether they can develop a plan for a successful co-mediation in the future or whether they should simply not co-mediate. In the latter case, they may still profit from observing each other mediate.


Frequently, plans made by co-mediators regarding the division of responsibility, “lead” assignments and the like, must be altered based on new developments in the mediation. For example, where one mediator achieves a better rapport with one or both parties, she might become the more active mediator, regardless of the team’s original plans. In other cases, a particular substantive expertise or “industry knowledge” of one of the mediators may emerge as helpful to the discussion, which results in a needed shift of mediator roles. Just as a solo mediator must be flexible and respond to shifting circumstances, a team must have a built-in principle of flexibility and be able to alter plans seamlessly when the situation requires.


Among the special advantages of co-mediation is its potential to allow mediators to learn from each other. This can best be accomplished if the mediators give each other constructive feedback after each session.

Additionally, teams need to analyze their strengths and weaknesses so that future co-mediations can avoid past pitfalls and build on prior successes.

A de-briefing session should be arranged after each mediation. In such a session, each mediator should invite comments about: individual and team strengths; individual and team areas for improvement; and the plan for the next mediation session. Knowing in advance that de-briefing is part of co-mediation, each mediator should keep notes during the mediation targeted for the feedback session. In order for feedback to be helpful, general points need to be linked to specific examples and actual quotations, both of which require notes to remember!
The de-briefing session should be held at the earliest opportunity after the actual mediation session so that each mediator's recollections are fresh. Of course, observations must be made in the spirit of improving each individual's and the team's performance, rather than having a judgmental tone. Positive feedback is at least as critical as discussion of problem areas. Positive feedback highlights strengths and leads to repetition of successful behaviors. In addition, “stroking” and supporting your partner by recognizing strengths tends to create more receptivity to a focus on areas for improvement.


It is common to have one member of the co-mediation team who is more experienced and confident than the other. Especially in such a case, the more confident mediator must allow room for her partner to participate, encouraging and respecting his contribution. Otherwise, all the special benefits of co-mediation will not be realized. MEDIATOR MISTAKES WILL BE MADE by experienced and inexperienced mediators alike. The point is to recover from them smoothly and quickly; there will be time in the de-briefing discussion to plan for avoiding similar pitfalls in the future.

Whenever one mediator is more active than the other, the more active mediator should regularly allow openings for the less active mediator to have input. The same way that a mediator asks parties to add to or clarify what has been said, the less active co-mediator should be invited to re-frame, reflect and otherwise participate in the discussion. This practice minimizes the possibility of a mediator feeling disrespected or “frozen out” by his partner.

It is essential for co-mediators to view each other as enhancing the process; thus each mediator must see co-mediation as a positive mode of service and must secure a partner with whom they work effectively.