

The  
MEDIATION  
PROCESS

**FOURTH** *Edition*



PRACTICAL STRATEGIES FOR  
RESOLVING CONFLICT

Christopher W. Moore

**JOSSEY-BASS™**  
A Wiley Brand



# THE MEDIATION PROCESS



# THE MEDIATION PROCESS

---

*Practical Strategies for Resolving Conflict*

Fourth Edition

Christopher W. Moore

**J** JOSSEY-BASS™

A Wiley Brand

Cover design by Adrian Morgan  
Cover image: © thinkstock

Copyright © 2014 by John Wiley and Sons. All rights reserved.

Published by Jossey-Bass

A Wiley Brand

One Montgomery Street, Suite 1200, San Francisco, CA 94104-4594—

[www.josseybass.com](http://www.josseybass.com)

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as permitted under Section 107 or 108 of the 1976 United States Copyright Act, without either the prior written permission of the publisher, or authorization through payment of the appropriate per-copy fee to the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923, 978-750-8400, fax 978-646-8600, or on the Web at [www.copyright.com](http://www.copyright.com). Requests to the publisher for permission should be addressed to the Permissions Department, John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, 201-748-6011, fax 201-748-6008, or online at [www.wiley.com/go/permissions](http://www.wiley.com/go/permissions).

**Limit of Liability/Disclaimer of Warranty:** While the publisher and author have used their best efforts in preparing this book, they make no representations or warranties with respect to the accuracy or completeness of the contents of this book and specifically disclaim any implied warranties of merchantability or fitness for a particular purpose. No warranty may be created or extended by sales representatives or written sales materials. The advice and strategies contained herein may not be suitable for your situation. You should consult with a professional where appropriate. Neither the publisher nor author shall be liable for any loss of profit or any other commercial damages, including but not limited to special, incidental, consequential, or other damages. Readers should be aware that Internet Web sites offered as citations and/or sources for further information may have changed or disappeared between the time this was written and when it is read.

Jossey-Bass books and products are available through most bookstores. To contact Jossey-Bass directly call our Customer Care Department within the U.S. at 800-956-7739, outside the U.S. at 317-572-3986, or fax 317-572-4002.

Wiley publishes in a variety of print and electronic formats and by print-on-demand. Some material included with standard print versions of this book may not be included in e-books or in print-on-demand. If this book refers to media such as a CD or DVD that is not included in the version you purchased, you may download this material at <http://booksupport.wiley.com>. For more information about Wiley products, visit [www.wiley.com](http://www.wiley.com).

Library of Congress Cataloging-in-Publication Data

Moore, Christopher W., 1947–

The mediation process : practical strategies for resolving conflict / Christopher W. Moore. — 4th Edition.

1 online resource.

Includes index.

Description based on print version record and CIP data provided by publisher; resource not viewed.

ISBN 978-1-118-41974-8 (pdf) — ISBN 978-1-118-42152-9 (epub) — ISBN 978-1-118-30430-3 (pbk.) 1. Mediation. 2. Conflict management. I. Title.

HM1126

303.6'9—dc23

2014003584

Printed in the United States of America

FIRST EDITION

*HB Printing* 10 9 8 7 6 5 4 3 2 1

## CONTENTS

Preface	ix
<b>Part One: Understanding Disputes, Conflict Resolution, and Mediation</b>	<b>1</b>
1 Approaches for Managing and Resolving Disputes and Conflicts	3
2 The Mediation Process: Mediator Roles, Functions, Approaches, and Procedures	19
3 The Practice of Mediation	61
4 Conflict Analysis: Understanding the Causes of Conflicts and Opportunities for Collaboration	106
5 Negotiation and Conflict Resolution	169
<b>Part Two: Laying the Groundwork for Effective Mediation</b>	<b>179</b>
6 The Mediation Process: An Overview	181
7 Making Initial Contacts with Disputing Parties	216
8 Collecting and Analyzing Background Information	237
9 Designing a Plan for Mediation	277
<b>Part Three: Conducting Productive Mediation Meetings</b>	<b>299</b>
10 Beginning Mediation	301
11 Presenting Parties' Initial Perspectives and Developing an Agenda	325
12 Educating about Issues, Needs, and Interests and Framing Problems to Be Resolved	363
13 Generating Options and Problem Solving	387
14 Evaluating and Refining Options for Understandings and Agreements	413
15 Reaching Understandings and Agreements and Achieving Closure	435

16 Implementing and Monitoring Understandings and Agreements	477
<b>Part Four: Strategies for Responding to Special Situations</b>	<b>487</b>
17 Strategies for Responding to Special Situations	489
18 Strategies for Multiparty Mediation	555
<b>Part Five: Toward an Excellent Practice of Mediation</b>	<b>571</b>
19 Toward an Excellent Practice of Mediation	573
Resource A: Professional Practice Guidelines	593
Resource B: Mediation Services Agreement	603
Resource C: Checklist for Mediator Opening Remarks/Statement	607
Resource D: Settlement Documentation Form	609
References	611
About the Author	655
Index	657



## LIST OF TABLES AND FIGURES

Table 2.1.	Types of Mediators.	29
Table 8.1.	Types of Questions.	263
Table 8.2.	Party/Stakeholder Conflict Analysis.	270
Table 14.1.	Strengths of Agreements.	419
Figure 1.1.	Continuum of Conflict Management and Resolution Approaches and Procedures.	6
Figure 4.1.	The Circle of Conflict: Causes of Disputes and Opportunities for Collaboration.	110
Figure 4.2.	The Triangle of Satisfaction.	128
Figure 4.3.	Conflict Approaches, Procedures, Strategies, and Outcomes.	147
Figure 6.1.	The Mediation Process Roadmap.	186
Figure 12.1.	Joint Problem Statement.	383

## DEDICATION

*For Susan, my life and professional partner—in play, learning, and peace-making—and Ben and Bess, my parents, who gave me their values and supported my aspirations throughout their lives.*

## PREFACE

All interpersonal relationships, communities, organizations, societies, and nations experience disputes or conflicts at one time or another. Conflict and disputes exist when people or groups engage in competition to achieve goals that they perceive to be, or that actually are, incompatible. Conflict is not necessarily bad, abnormal, or dysfunctional; it is a fact of life. But when it goes beyond competitive behavior and acquires the additional purpose of inflicting serious physical or psychological damage on another person or group, it is then that the negative and harmful dynamics of conflict exact their full costs.

Conflicts and disputes do not inherently have to follow a destructive course; they can lead to growth and be productive for those who are involved. Whether this happens or not often depends on the participants' ability to devise mutually acceptable procedures for cooperative problem solving, their capacity to lay aside distrust and animosity while they work together to resolve differences, and on their ability to develop solutions that satisfactorily meet their individual and common needs and interests. Many people in conflict are unable to do this on their own. They often need the help of a third party, an individual or group of people who are not directly involved in the conflict, to assist them to reach mutually acceptable solutions.

Mediation, one form of third-party assistance, has long been used to help disputants voluntarily settle their differences. It has been effectively practiced in almost all periods of history, in most cultures, and used to resolve a wide variety of types of disputes. Until relatively recently, however, there have been few works that detail what mediators actually do to aid people in conflict to reach agreements.

For the past thirty-five years, I have been actively engaged as a mediator of international, public policy, environmental, ethnic, organizational, personnel, community, and family disputes, and as a conflict management consultant, trainer, and designer of dispute resolution systems. My practice has taken me across the United States, more than fifty countries in Africa, Asia, Latin America, North America, the Middle East, Eastern

and Western Europe, and the South Pacific, and to multiple indigenous communities. This broad experience has convinced me that there are some common mediation principles and procedures that can be applied effectively to help address and resolve a wide range of conflicts in many contexts and cultures. My belief has been confirmed by the expanding experience and literature in the field of mediation.

There is a continuing need for integrative “how-to” books on the various ways that mediation is and can be practiced. *The Mediation Process: Practical Strategies for Resolving Conflict* is my contribution to meet this need. It integrates the practice and research of others and my personal experience and describes some of what we have learned about the mediation process as it has been applied in diverse contexts and settings. The contents for this fourth edition have been greatly expanded and significantly rewritten since the first, second, and third editions, to encompass some of the exciting new developments and applications of mediation in the commercial, interpersonal, and public disputes arenas, and incorporate some of what I have learned about the practice of mediation in different cultures. The book outlines how mediation fits into the larger field of dispute resolution and negotiation and presents a comprehensive, stage-by-stage sequence of activities that can be used by mediators to assist disputants to reach mutually beneficial agreements.

## Audience

This book has been written for several important groups of people. First are potential or practicing mediators who are or will work in a wide variety of arenas and who have repeatedly expressed a need for a comprehensive description of mediation theory and process. The book should be helpful to future or current practitioners in international, public policy, environmental, organizational, community, family, and interpersonal mediation, as well as in many other areas of practice.

Second are professionals—lawyers, managers, therapists, social workers, planners, and teachers—who handle conflicts on a daily basis. Although these professionals may choose to become full-time mediators, they are more likely to use mediation principles and procedures as additional tools to help them within their chosen fields of work. The material presented here will aid any professional who wishes to promote cooperative problem solving between or among people or groups with whom he or she engages.

Third are people who have to negotiate solutions to complex problems. Because mediation is an extension of the negotiation process and,

in fact, is a collection of techniques to promote more efficient negotiations, an understanding of the mediation process can be tremendously helpful to people directly involved in bargaining. Mediation can teach negotiators how to be cooperative rather than competitive problem solvers, facilitative negotiators, and how to achieve win-win rather than win-lose outcomes. An understanding of mediation can also aid negotiators in deciding when to call in a third party and what an intermediary can do for them. For readers who want more information on negotiation, I suggest reading *The Handbook of Global and Multicultural Negotiation* (San Francisco: Jossey-Bass, 2008) written by my colleague Peter Woodrow and me, as a companion volume to *The Mediation Process*.

Fourth are university, professional school, or college faculty members and students, and trainers and trainees presenting or participating in academic programs on dispute resolution or shorter mediation training programs. This book is suitable for use as a text in mediation, conflict resolution, law, business, management, planning, social work, counseling, education, sociology, and psychology seminars or training programs. Undergraduates as well as graduate students will find it useful in learning mediation and dispute resolution concepts and skills.

## Overview of the Contents

*The Mediation Process* is divided into five sections and appendices. Part One, “Understanding Disputes, Conflict Resolution, and Mediation,” provides an overview of dispute resolution procedures, defines mediation, presents a variety of mediator orientations toward providing dispute resolution assistance, and describes how mediation is practiced around the world. Chapter 1, “Approaches for Managing and Resolving Disputes,” describes a spectrum of dispute resolution approaches and procedures, and when each may be appropriate means for the resolution of conflicts.

Chapter 2, “The Mediation Process: Mediator Roles, Functions, Approaches, and Procedures,” describes three broad types of mediators—social network, authoritative, and independent—the kinds of relationships they have with disputing parties, and their orientation toward providing mediation assistance in terms of eliciting input from disputants or being directive. It examines potential areas of mediator focus—substantive issues in dispute, enhancing negotiation procedures, or the psychological/relational concerns of disputants—and a number of “schools” of mediation related to each.

Chapter 3, “The Practice of Mediation,” provides an overview of the different types of disputes where mediation is being applied, and examples of the diverse practices of the process around the world. Chapter 4, “Conflict Analysis,” provides a detailed framework and process for analyzing and understanding multiple potential causes of conflicts as well as factors that promote collaboration. It presents core concepts related conflict drivers, “dividers,” and “connectors” (factors that push disputants apart or pull them together) and information about issues, needs, and interests as well as potential options and outcomes of mediation.

Chapter 5, “Negotiation and Conflict Resolution,” defines negotiation and explains how it is the context for mediation. It presents various negotiation approaches and procedures focused on relationships, positions, needs, and interests that are commonly used by negotiators to try and achieve their goals and desired outcomes.

Part Two, “Laying the Groundwork for Effective Mediation,” focuses on work conducted by mediators separately with parties to help them determine whether mediation is the appropriate method to use to resolve a specific dispute and, if so, how to prepare for joint engagement. Chapter 6, “The Mediation Process,” provides an outline of mediation procedures that will be explored in detail in the rest of the book. Chapter 7, “Making Initial Contacts with Disputing Parties,” explores various means of mediator entry. Chapter 8, “Collecting and Analyzing Background Information,” presents a range of methods, procedures, and skills that are useful for gathering data about the parties, issues and needs, and interests involved in disputes. Chapter 9, “Designing a Plan for Mediation,” explores considerations of mediators and disputing parties as they prepare for direct engagement.

Part Three, “Conducting Effective Mediation Meetings,” includes seven chapters focused on how to conduct mediation sessions with parties principally working together. Chapter 10, “Beginning Mediation,” focuses on the mediator’s opening comments or statements in a joint session, and how they are used to promote productive talks. Chapter 11, “Presenting Parties’ Initial Perspectives and Developing an Agenda,” explores how mediators help parties to begin talking, identify topics for future discussions, and order them into a sequence that will help promote productive deliberations.

Chapter 12, “Educating about Issues, Needs, and Interests and Framing Problems to Be Resolved,” presents a range of procedures for how to elicit detailed information about parties’ issues, and understand the

critical needs and interests that are important to them. It also introduces procedures for describing them—either framing or reframing—in a manner that makes them more amenable to joint problem solving.

Chapter 13, “Generating Options and Problem Solving,” explores a range of procedures that can be used by parties to develop possible solutions to their dispute. Chapter 14, “Evaluating and Refining Options for Understandings and Agreements,” presents methods that mediators can use with parties to help them to assess the viability and acceptability of some of the potential solutions or outcomes that they have developed.

Chapters 15, “Reaching Understandings and Agreements and Achieving Closure,” and 16, “Implementing and Monitoring Agreements and Understandings,” focus on the final stages of the mediation process: reaching accords and executing them. They explore in depth how mediators help parties reach substantive, procedural, or psychological/relational closure, write agreements, and promote voluntary compliance with the terms of their agreements.

Part Four, “Strategies for Responding to Special Situations,” contains two chapters. Chapter 17, with the same name as this part of the book, explores how mediators use private meetings; handle time and timing; work with cultural and gender-related issues; manage and exercise power and influence; develop grand strategies for responding to past, present, and potential future conflicts; and help parties with differing beliefs or values to productively engage with each other. Chapter 18, “Strategies for Multiparty Mediation,” examines intermediary strategies for assisting in disputes that involve multiple participants—teams, groups, or large numbers of individuals.

Part Five, “Toward an Excellent Practice of Mediation,” includes Chapter 19 with the same name as this part of the book, focuses on the process, issues, and problems related to the professionalization of mediation and how the practice has become a profession. It looks at the development of literature in the field, educational developments, qualifications of trainees and trainers, and the development of ethical codes and standards.

At the conclusion of the book are several appendices that present Professional Practice Guidelines: Model Standards of Conduct for Mediators, a sample Mediation Services Agreement, a Checklist for Mediator Opening Remarks/Statement, and a sample Settlement Documentation Form. There is also an extensive list of references for readers’ further reading and research.

## Acknowledgments

All knowledge is socially produced. Although I bear responsibility for the identification, elaboration, and development of the ideas presented in this book, I have clearly drawn on the experiences and advice of colleagues and researchers engaged in the practice of mediation.

The first group of people to whom I am indebted is my fellow mediators. Since 1973, when I first became involved in mediating an intense interracial community dispute, I have worked with four active groups of mediators and conflict resolvers. Each group has contributed significant insights and pushed me to develop my thinking.

First and foremost are my partners and colleagues at CDR Associates in Boulder, Colorado—Susan Wildau, Mary Margaret Golten, Bernard Mayer, Louise Smart, and Peter Woodrow—and our other program staff, notably Jonathan Bartsch, CDR's CEO, and Laura Sneeringer, my co-mediator of a recent federal regulatory negotiation. They have been my colleagues in developing and practicing many of the ideas contained in this book.

Susan Carpenter and W.J.D. Kennedy of ACCORD Associates also provided insights and support in researching and refining mediation theory and practice while I worked in the late 1970s as a mediator and director of training for that organization.

The members of the Training Action Affinity Group of the Movement for a New Society—Suzanne Terry, Stephen Parker, Peter Woodrow, and Berit Lakey—and my coauthors on the *Resource Manual for a Living Revolution*—Virginia Coover, Charles Esser, and Ellen Deacon—worked with me to develop intervention skills for multiparty disputes and effective training techniques in conflict resolution.

Bill Lincoln and Josh Stulberg provided my first excellent exposure to mediation training. Norman Wilson, Paul Wehr, and Martin Oppenheimer, academic colleagues, encouraged and supported my research on mediation as a graduate student. P. H. Gulliver, John Paul Lederach, Roger Fisher, and William Ury also made significant contributions to my understanding of dispute resolution, negotiation, and mediation theory and processes.

Since writing the first edition of *The Mediation Process*, I have had the pleasure of working with a significant number of colleagues and mediators on institutional, public policy, international, and multicultural projects. Each has broadened and influenced my views about the range of effective mediation approaches that are practiced in diverse institutional, political, and national cultures. I would specifically like to thank



the following individuals for their insights, being wonderful partners and terrific practitioners in the field: Jack Lang y Marques of the Colorado Civil Rights Commission; Cindy Cruz, Zell Steever, Richard Ives, Chris Kenney, and Kevin Price of the US Bureau of Reclamation; Jerome Delli Priscoli, Lester Edelman, and Frank Carr of the US Army Corps of Engineers; Ken Acton of the Saskatchewan Mediation Service; Jack Knight and Ellen Smeiser of the Continuing Legal Education Societies of British Columbia and Saskatchewan; Mary Ann DeSoet of the Rikswaterstaat in the Netherlands; Vasu Gounden, Karthi Govender, and Jerome Sachane of the African Center for the Constructive Resolution of Disputes (ACCORD); Sandra Fowkes, a private consultant in South Africa; H. W. van der Merwe of the Centre for Intergroup Studies (currently the Centre for Dispute Resolution) in South Africa; Azikwewa Zikhalala of the Negotiation Skills Project in South Africa; Loet Dowes Dekker of the University of Witwatersrand in South Africa; Athol Jennings and Vuyi Nxasana of the Vuleka Trust in South Africa; P. B. Herat, Dhara Wijayatilake, and Kamalini de Silva, Ministry of Justice, Sri Lanka; Nilan Fernando, Dinesha de Silva, Ramani Jayasundere, Niro Nayagam, Eric Jensen, Nick Langton, and Kim Mckay, Asia Foundation, Sri Lanka; P. Dematagoda, M.N.S. Gunawardena, M. Thirunavukarusu, L. Amarajeewa, K. Ganisha Raja, M. Bandula, T.Y. Sylva, M.T. Mubaris, S. Parathasarathy, and A. De Seram of the Center for Mediation and Mediation Training (CMMT) in Sri Lanka; Sandra Dunsmore, Roberto Menendez, and Philip Thomas of the PROPAZ Program, Organization of American States in Guatemala; Zbjeck and Ela Czwartos, colleagues at the University of Warsaw, and Kinga Markert of Markert Mediacje in Poland; Rumun Valchev and colleagues of the Bulgarian Center for Negotiations and Conflict Resolution; Mas Achmad Santosa, Wiwiek Awiati, Mega Adam, and Takdir Ramadi of the Indonesian Center for Environmental Law (ICEL) and Indonesian Center for Conflict Transformation (ICCT); Mehmet and Ipek Gurkanyak of the Hope Foundation in Turkey; John Marks and Bonnie Pearlman of Search for Common Ground; Connie and Jeff Peck, Tim Murithi, Tricia Reidy, Hiroko Nakayama, Gao Pronove, and Lata Chandiramani, United Nations Institute for Training and Research; Gillian Martin, LEAD International; Winfried Hamacher and Stephan Paulus, GTZ Germany; Meg Taylor, Amar Inamdar, Kate Kopishke, Rachel Kyte, and Henrik Linders, Office of the Compliance Advisor/Ombudsman at the International Finance Corporation; Steve Del Rosso, Pew Charitable Trusts; Pedro de Sousa, and Edwin Urresta, Land and Property Directorate, Ministry of Justice, East Timor; Jonathan Stromseth and Ji Hongbo of the

Asia Foundation, People's Republic of China; Szilard Frickska, and Antony Lamba, UN HABITAT; Fernando de Medina Rosales, Monica Sanchez Bermudez, Laura Cunial, Greg Kitt, Ana Palao, Zamina Khalilova, Greg Norton, Gabriel Sostein Bathuel, and Barbara Cole of the Norwegian Refugee Council; Dr. C.T.O. Brandy, Commissioner Lwopu Kandakai, and Kuloboh Jensen of the Liberia Land Commission; and James MacPherson, of the Bahrain Chamber of Dispute Resolution.

The individuals mentioned above are the theoretical and experiential contributors to this book. Also important are the people who edited the drafts and provide clerical support. I would like to thank my editors at Jossey-Bass—Kathe Sweeney, Mark Karmendy, and Donna J. Weinson—who ably helped me see this work through to completion, and Lieschen Gargano, CDR Associates' office manager, who provided research for references and clerical support.

A final word of thanks to Susan Wildau, my life and professional partner, for her support during writing this, and previous editions of *The Mediation Process*.

March, 2014

Christopher W. Moore  
Boulder, Colorado

# THE MEDIATION PROCESS



PART ONE

UNDERSTANDING  
DISPUTES, CONFLICT  
RESOLUTION, AND  
MEDIATION

---



# APPROACHES FOR MANAGING AND RESOLVING DISPUTES AND CONFLICTS

---

DISPUTES OR CONFLICTS occur in all human relationships, societies, and cultures. From the beginning of recorded history, there is evidence of disputes between children, spouses, neighbors, coworkers, superiors and subordinates, organizations, communities, people and their governments, ethnic and racial groups, and nations. Because of the pervasive presence of conflict and the emotional, physical, and other costs that are often associated with it, people have always sought ways to peacefully handle their differences. In seeking to manage and resolve conflicts, they have tried to develop procedures that are effective and efficient, satisfy their interests, build or change relationships for the better, minimize suffering, and control unnecessary expenditures of emotional and physical energy or tangible resources.

In most situations, the involved parties have a range of approaches and procedures at their disposal to respond to or resolve their disputes; however, procedures available to them vary considerably in the way conflicts are addressed and settled. This chapter begins with an analysis of a specific interpersonal and organizational conflict and explores some of the procedural options available to the involved parties for managing and resolving their differences. Mediation, one of the options, is examined in depth.

## **The Whittamore-Singson Dispute**

Singson and Whittamore are in conflict. It all started three years ago when Dr. Richard Singson, director of the Fairview Medical Clinic, one of the few medical service providers in a small rural town, was seeking

two physicians to fill open positions on his staff. After several months of extensive and difficult recruiting, he hired two doctors, Andrew and Janelle Whittamore, to fill the positions of pediatrician and gynecologist, respectively. The fact that the doctors were married was not a problem at the time they were hired.

Fairview likes to keep its doctors and generally pays them well for their services. The clinic is also concerned about maintaining its patient load and income. It requires every doctor who joins the medical practice to sign a five-year contract detailing what he or she is to be paid and conditions that will apply should the contract be broken by either party. One of these conditions is a covenant not to compete, or a no-competition clause, stating that should a doctor choose to leave the clinic prior to the expiration of the agreement, he or she will not be allowed to open a competing practice in that town or county during the time remaining on the contract. Violation of the clause will result in an undefined financial penalty. The clause is designed to prevent a staff doctor from building up his or her reputation and clients at the clinic, leaving before the term of the contract has expired, starting a new and competitive practice in the community, and taking patients with him or her.

When Janelle and Andrew joined the Fairview staff, they each signed the contract and initialed all the clauses, including the one related to noncompetition with the clinic during the term of the contract. Both doctors performed well in their jobs and were respected by their colleagues and patients. Unfortunately, their personal life did not fare so well.

The Whittamores' marriage went into a steady decline almost as soon as they began working at Fairview. Their arguments increased, and the tension between them mounted to the point that they decided to divorce. Because they both wanted to continue to co-parent and be near their two young children, they agreed that they would like to continue living in the same town.

Every physician at the clinic has a specialty, and all rely on consultations with colleagues, so some interaction at work between the estranged couple was inevitable. Over time, however, their mutual hostility grew to such an extent that they had difficulty being in the same room while performing their duties. Ultimately, the Whittamores decided that one of them should leave the clinic—for their own good, that of the clinic, and for other staff who became increasingly uncomfortable with the tensions between the couple. Because they believed that Andrew, as a pediatrician, would have an easier time finding patients outside the clinic, they agreed that he was the one who should leave.



Andrew explained his situation to Singson and noted that because he would be departing for the benefit of the clinic, he expected that no penalty would be assessed for breaking the contract two years early, and that the no-competition clause would not be invoked.

Singson was surprised and upset that his finely tuned staff was going to lose one of its most respected members. Furthermore, he was shocked by Whittamore's announcement that he planned to stay in town and open a new medical practice. Singson visualized the long-range impact of Whittamore's decision: the pediatrician would leave and set up a competing practice, taking many of his patients with him. The clinic would lose revenue from the doctor's fees, incur the cost of recruiting a new doctor, and (if the no-competition clause was not enforced) establish a bad precedent for managing its doctors. Singson responded that the no-competition clause would be enforced if Whittamore wanted to practice within the county, and that the clinic would impose a penalty for breach of contract. He intimated that the penalty could be as much as 100 percent of the revenues that Whittamore might earn in the two years remaining on his contract.

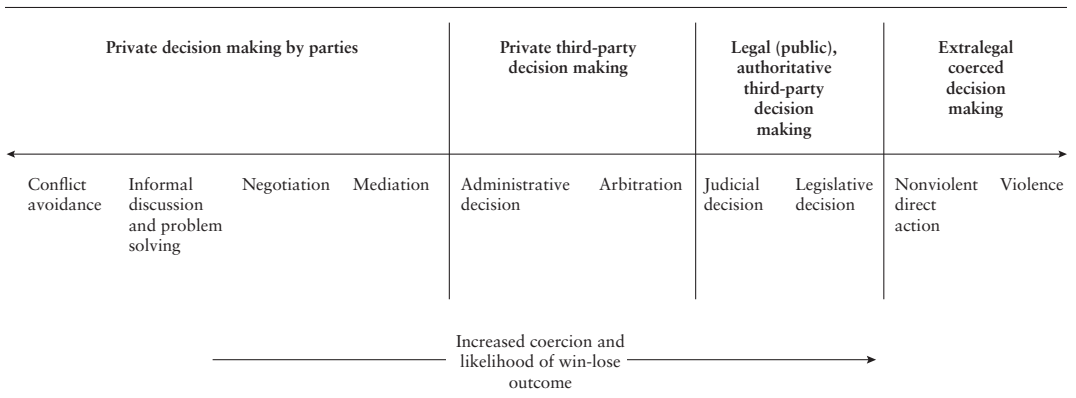
Whittamore was irate at Singson's response, and considered it to be unreasonable and irresponsible. If that was the way the game was to be played, he threatened, he would leave and set up a competing practice, and Singson could take him to court to try to get his money. Singson responded that if necessary, and if he was pushed into a corner, he would get an injunction against the new practice and would demand the full amount due to the clinic. Whittamore stormed out of Singson's office mumbling that he was going to "get that son of a gun."

This conflict has multiple components: the Whittamores' relationship with each other, their relationship to other staff members at the clinic, potential conflicts between Andrew Whittamore's patients and the clinic, the relationship between Andrew Whittamore and Richard Singson and probably the clinic's board of directors, and the legal status and enforceability of the no-competition clause in the contract. For ease of analysis, we will examine only one of these components: the conflict between Richard Singson and Andrew Whittamore and the various means of resolution available to them.

## **Conflict Management and Resolution Approaches and Procedures**

People involved in a conflict often have a range of possible approaches and procedures to choose from to resolve their differences. Figure 1.1 illustrates some of these possibilities.

**Figure 1.1. Continuum of Conflict Management and Resolution Approaches and Procedures.**



Approaches and procedures for the resolution of disputes vary regarding who participates, how collaborative or adversarial the process is, the degree of coercion that may be used by or on disputants, the level of formality of procedures, the degree of privacy afforded to parties, types and qualities of outcomes, and the roles and influence of third parties if they are present and used.

At the left end of the continuum in Figure 1.1 are informal, collaborative, and private approaches and procedures that involve only the disputants or a third-party process assistant (a mediator) who does not have authority to make or impose a decision on those involved. At the other end of the continuum, one or more parties rely on coercion and often public action to force the opposing party, either nonviolently or violently, into submission. In between are a variety of third-party approaches that provide decision-making assistance, which we will examine in more detail later in the chapter.

Disagreements and problems can arise in almost any relationship. The majority of disagreements are usually handled informally. Initially, people may avoid each other because they dislike the discomfort that frequently accompanies conflict, do not consider the contested issues to be that important, lack the power to force a change, do not believe the situation can be improved, or are not yet ready to take an action to settle their differences.

When avoidance is no longer possible or tensions become so strong that the parties cannot let the disagreement continue, they usually resort to informal problem-solving discussions to resolve their differences. This is probably where the majority of disagreements in daily life are settled. Either they are resolved, more or less to the satisfaction of the people involved, or the issues are dropped for lack of interest or inability to push them through to a conclusion.

In the Whittamore-Singson case, the Whittamores avoided dealing with their potential conflict with the medical clinic until it was clear that their dispute was so serious that Andrew was going to have to leave. At that point, Andrew initiated informal discussions with Singson, but they failed to reach an acceptable conclusion. Clearly, their problem had escalated from a problem that each of them faced into a dispute. Gulliver (1979, p. 75) notes that a disagreement becomes a dispute “only when the two parties are unable and/or unwilling to resolve their disagreement; that is, when one or both are not prepared to accept the status quo (should that any longer be a possibility) or to accede to the demand or denial of demand by the other. A dispute is precipitated by a crisis in the relationship.”

People involved in differences that have reached this level have a variety of ways to resolve them. They can pursue more formal and structured means to voluntarily reach an agreement, resort to third-party decision makers, or try to leverage or coerce each other to reach a settlement.

Other than informal conversations, the most common way that disputing parties reach a mutually acceptable agreement on issues that divide them is through negotiation (Fisher and Ury, 1991; Fisher and Ury, with Patton, 2011; Shell, 1999; Thompson, 2001; Moore and Woodrow, 2010).

*Negotiation* is a structured communication and bargaining process that is commonly used to conduct transactions and reach agreements on issues where serious differences do not exist, or to resolve a dispute or conflict. In negotiations, parties who have perceived or actual competing or conflicting needs or interests voluntarily engage in a temporary relationship to discuss issues in question and develop and reach mutually acceptable agreements. During negotiations, participants educate each other about their needs and interests, make mutually acceptable exchanges that satisfy them and address less tangible issues such as concerns about trust, respect, or the form their relationship will take in the future. Negotiation is clearly an option for Whittamore and Singson, although the degree of emotional and substantive polarization will make the process difficult.

If negotiations are hard to initiate and start, or have begun and reached an impasse, parties may need to use another dispute resolution process that involves assistance from a third party who is not directly involved in the conflict. One common form of third-party assistance is mediation.

*Mediation* is a conflict resolution process in which a mutually acceptable third party, who has no authority to make binding decisions for disputants, intervenes in a conflict or dispute to assist involved parties to improve their relationships, enhance communications, and use effective problem-solving and negotiation procedures to reach voluntary and mutually acceptable understandings or agreements on contested issues. The procedure is an extension of the negotiations. Mediation is commonly initiated when disputing parties on their own are not able to start productive talks or have begun discussions and reached an impasse.

Specifically, mediation and mediators help disputing parties to (a) open or improve communications between or among them, (b) establish or build more respectful and productive working relationships, (c) better identify, understand, and consider each other's needs, interests, and

concerns, (d) propose and implement more effective problem-solving or negotiation procedures, and (e) recognize or build mutually acceptable agreements.

Mediators are generally individuals or groups who are independent, or in some cases somewhat autonomous, of disputing parties. They generally do not have specific substantive needs they want met by an agreement between or among disputants. They also commonly do not have predetermined, biased, or fixed opinions or views regarding how a dispute should be resolved, and are able to look at all parties' issues, needs, interests, problems, and relationships in a more objective, impartial, or "multipartial" manner than can the participants themselves. In addition, except on rare occasions and in some specific types of mediation that will be described later on, mediators do not have the power, authority, or permission to make binding decisions for those seeking to resolve their differences.

Whittamore and Singson might well consider mediation if they cannot negotiate a settlement of their issues on their own. We will return to this process later on, once we have explored and assessed other procedural options for their usefulness in helping Whittamore and Singson settle their differences.

Beyond negotiation and mediation, there are a number of approaches and procedures that decrease the control that people involved in a dispute have over the resolution process and outcome, increase the involvement of external third-party advisers or decision makers, and rely increasingly on adversarial procedures and win-lose outcomes. In general, these approaches and procedures can be divided into private and public, and legal and extralegal processes.

*Administrative or managerial approaches and procedures* are often available to disputants to resolve their differences if a conflict is between employees or members of an organization or, occasionally, between an organization and members of the public (Kolb and Sheppard, 1985; Morril, 1995; Gerzon, 2006). In these kinds of processes, a third party who has some decision-making authority concerning issues in dispute and the disputants, and who has a degree of distance from the conflict but is not necessarily neutral or impartial, may if necessary make a command decision on the topics in question. The procedures may be conducted in private, if the dispute arises within a private company or government agency, division, or work team and either the organization or participants want to keep the proceedings confidential. They may also be conducted in public, if the dispute is over a policy, law, regulation, or issue of concern to broader members of the public. In this latter case,

the intervention may be conducted by a private sector, governmental, or nonprofit administrator. A managerial or administrative dispute resolution process generally attempts to balance the needs of the entire system with the interests of individuals or concerned groups.

In the Whittamore-Singson dispute, both parties might choose to forward their dispute to the board of directors of the Fairview Medical Clinic for a third-party decision. If both parties trust the integrity and judgment of these decision makers, the dispute might end there. However, Whittamore is not sure that he would get a fair hearing from the board.

*Arbitration* is an umbrella term that encompasses a range of voluntary and private dispute resolution procedures that involve the assistance of a third party to make decisions for disputants about how a conflict will be resolved when the parties cannot reach an agreement on their own. Arbitration is a private process in that the proceedings, and often the outcome, are not open to public scrutiny. People often select arbitration because of its private nature, and also because it is generally more informal, less expensive, and faster than a judicial proceeding.

Arbitration procedures begin with disputing parties jointly deciding to voluntarily submit their dispute to a mutually acceptable individual or panel of intermediaries to make a decision for them on how their differences should be resolved. Together, disputants generally select third parties who are independent of and not beholden to or subject to undue influence by any of the involved parties; are knowledgeable about the topics to be addressed and resolved and the relevant laws, rules, and regulations that may pertain to them; and are trusted and perceived to be objective and unbiased toward either the issues in question or the involved parties.

Once the intermediary or intermediaries have been selected, parties often discuss and decide with them the procedures that will be used to conduct the arbitration hearing. Discussion commonly includes how relevant information will be gathered and shared among the disputants and the third party prior to the decision-making meeting, the duration of the process, and sequencing for presentation of the parties' cases and rebuttals. They also decide if the outcome of the process will be a nonbinding recommendation by the intermediary on how the dispute should be settled (nonbinding arbitration) or a binding decision (binding arbitration), which parties agree to abide by prior to beginning the process.

Several variations of the arbitration process just described include *med-arb* and *mediation-then-arbitration*. In med-arb, disputants agree