



# Choosing Suitable Mediation Tools and Achieving Results

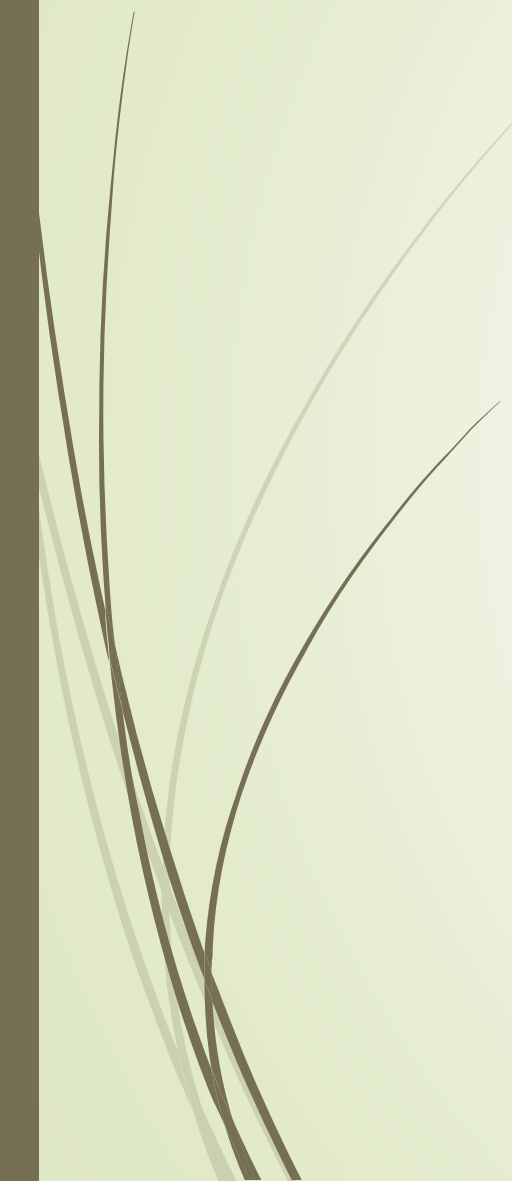
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# Plan

- Foundational Thoughts
  - Common Mediator Tools and Interventions
  - Results
- 



“What's in a name? That  
which we call a rose by  
any other name would  
smell as sweet.” – Juliet

Romeo and Juliet (II, ii, 1-2)



# Definitional Sources

- Dictionary
  - Court Rules
  - Statutes
  - Standards of Conduct
    - Model Standards of Conduct for Mediators
    - Rule 114 Standards
    - Organizational Standards
  - Advisory Ethical Opinions
  - Grievances
  - Court Cases
- 



# Mediation Defined

- ▶ noun: **mediation**; plural noun: **mediations**
- ▶ intervention in a dispute in order to resolve it; arbitration.
- ▶ "the parties have sought mediation and it has failed"



# More Definitions

- **Dictionary.com:** action in mediating between parties, as to effect an agreement or reconciliation
- **Legal-Dictionary:** In International Law, *mediation* is the friendly interference of one state in the controversies of nations. It is recognized as a proper action to promote peace among nations. The individual who intervenes in order to help the other parties settle their dispute is called a *mediator*
- **Merriam-Webster:** nonbinding intervention between parties to promote resolution of a grievance, reconciliation, settlement, or compromise — compare arbitration

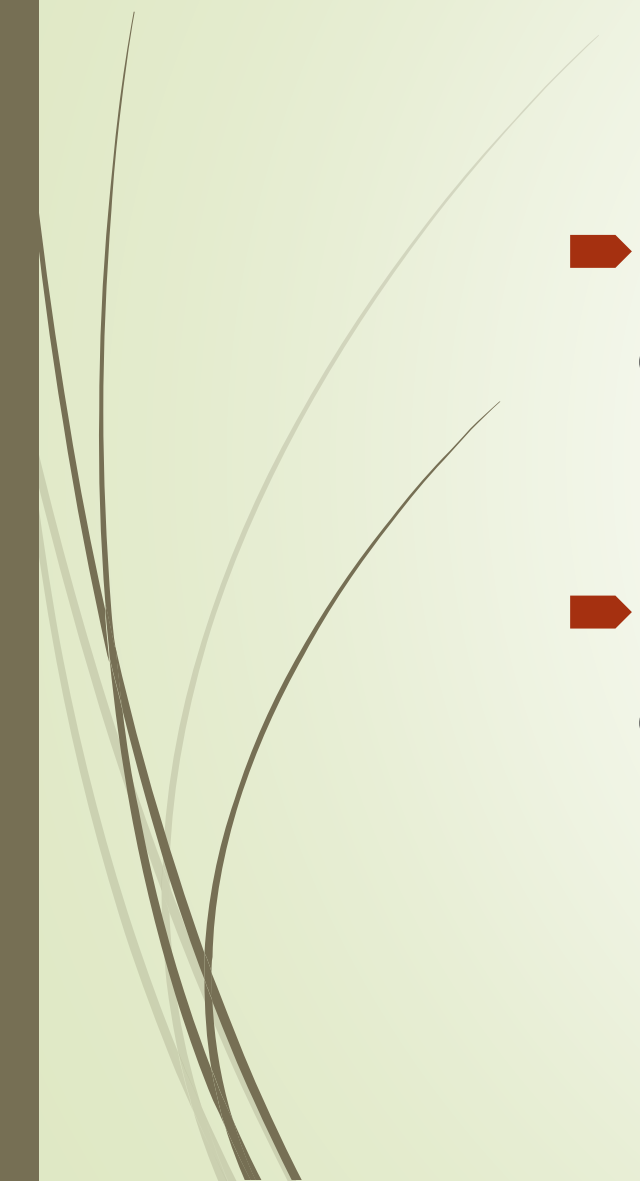


... and more

- ▶ **Model Standards of Conduct for Mediators:** a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute
- ▶ **Uniform Mediation Act:** a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute



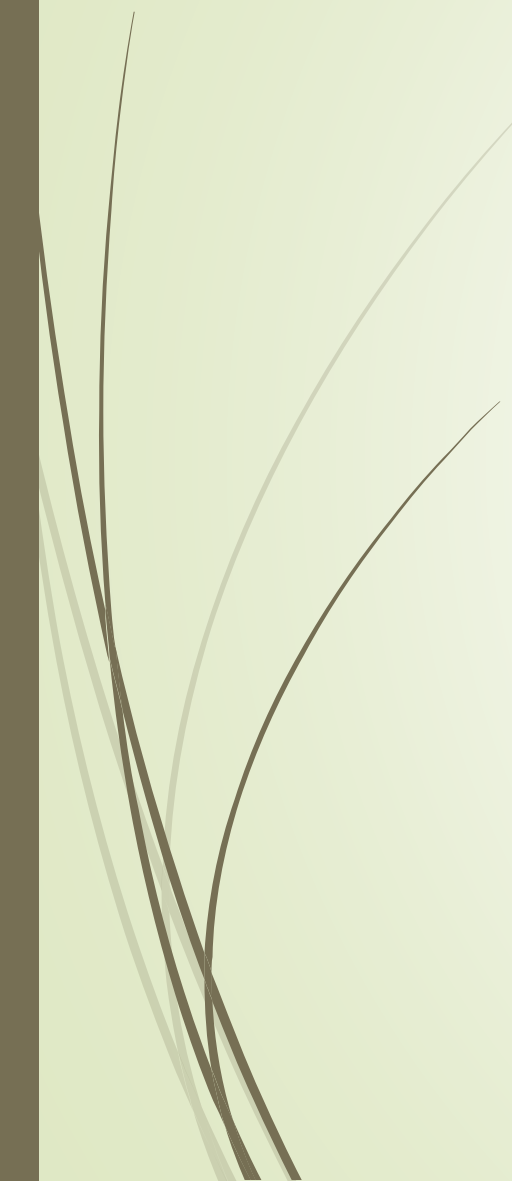
## Reuben, Fuller, and others

- Each dispute resolution process has its own internal structure, logic and morality
  - Failure to recognize this would lead to confusion, ill-fitting processes, and unsatisfactory results
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# Legal Implications

- Statutory and Rules Provisions
  - Party expectations of the neutral and attorney
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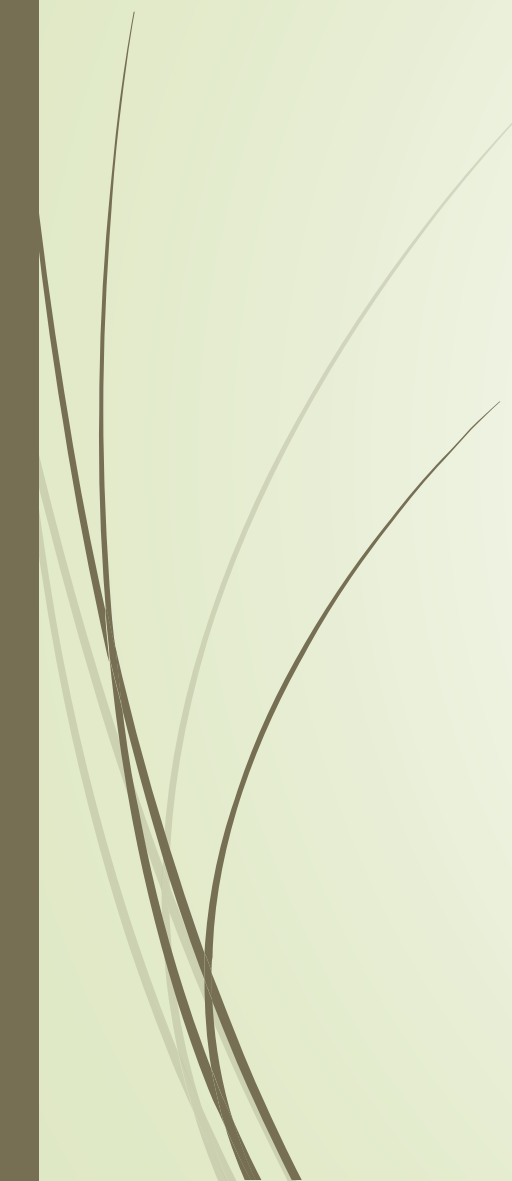


# Ethical Implications

- From the perspective of the neutral
  - Public Confusion - grievances
  - Unauthorized Practice of Law Issues

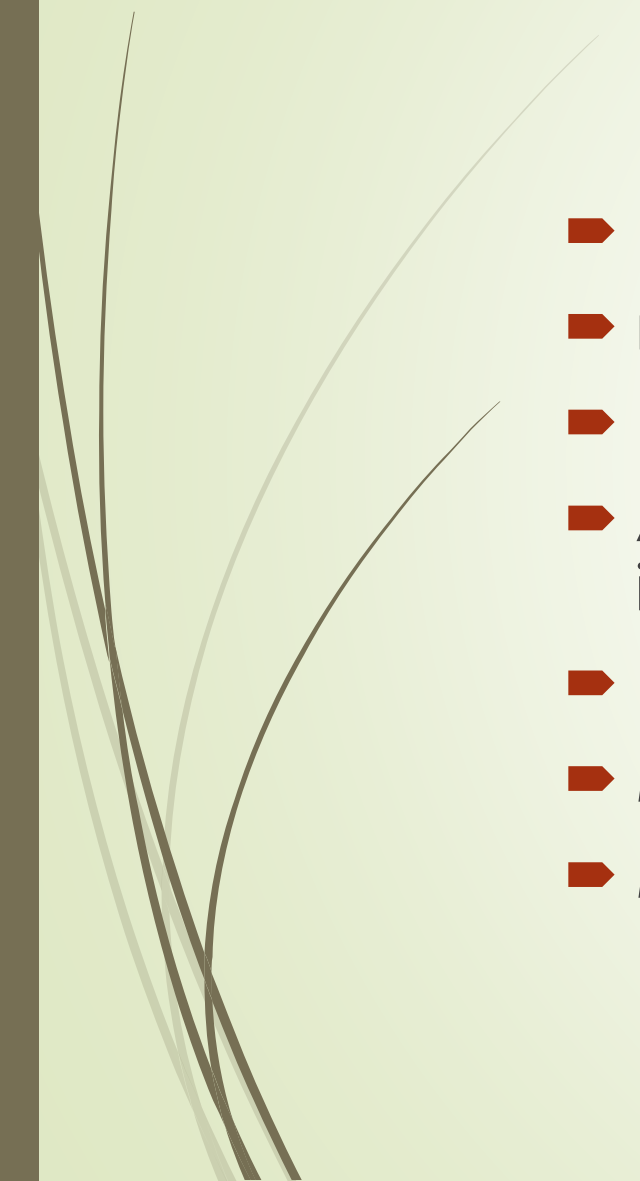


## Within Mediation Alone...

- Judicial mediation
  - Facilitative mediation
  - Transformative mediation
  - Evaluative mediation
  - Narrative mediation
  - Binding mediation
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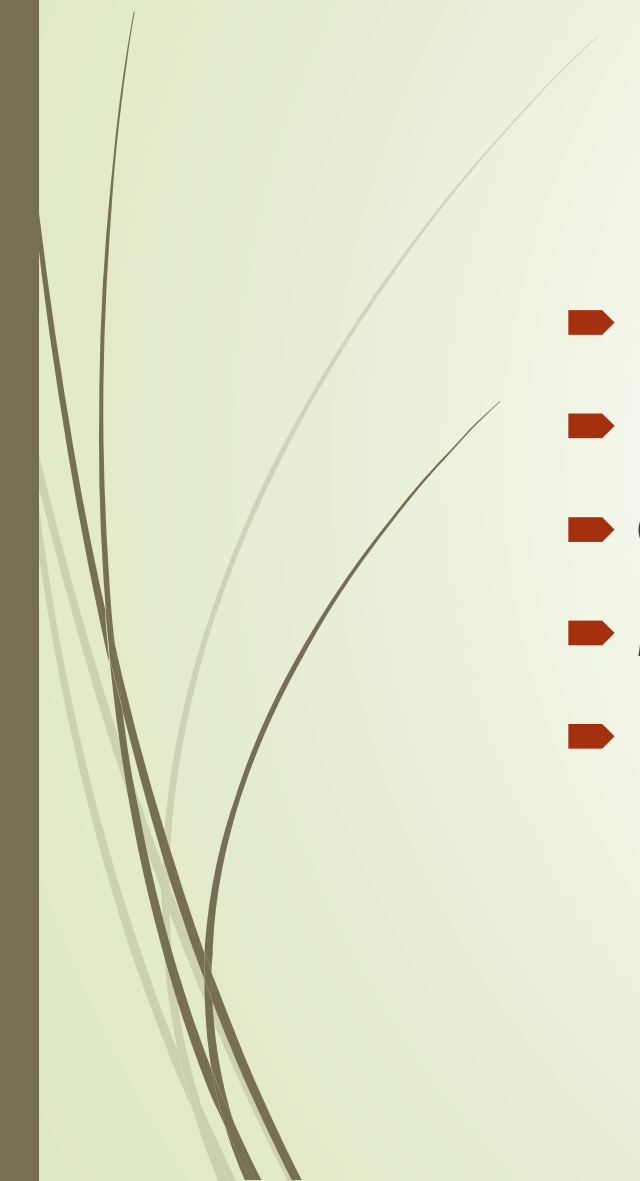


# Bottom line... what is mediation?

- Process whereby a third person,
  - not involved in the dispute and
  - Has no stake in the outcome
  - Assists people in dispute to talk about their issues, interests and concerns
  - Based on the concept of self-determination
  - May result in an agreement
  - May be confidential
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# Tools and Interventions

- Reflecting Strategies
  - Eliciting Strategies
  - Offering/Telling Strategies
  - Meeting Separately with the Parties
  - “Rules” for mediation
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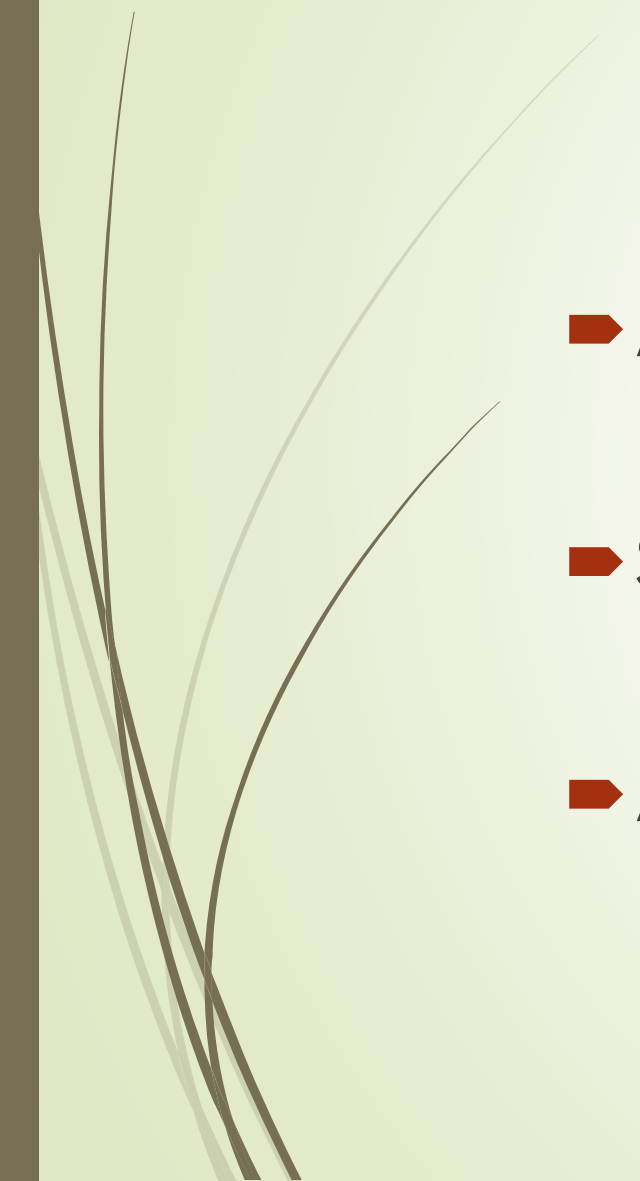


# Reflecting Strategies

- **Emotions and interests**
  - **Individually or Jointly**
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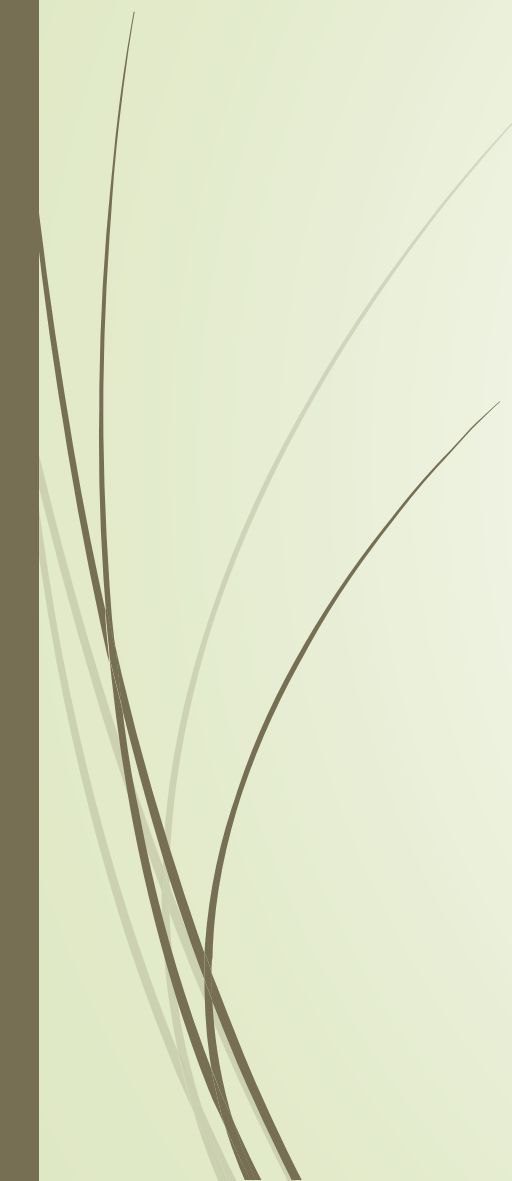


# Eliciting Strategies

- **Asking participants to suggest solutions**
  - **Summarizing solutions that have been offered**
  - **Asking how those solutions might work for them**
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# Offering/Telling Strategies

- **Offering opinions**
  - **Advocating for mediator's own solution**
  - **Offering legal analysis**
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# Meeting Separately with the Parties/ Caucus



## **Description**





# “Rules” for mediation

- **Referral**
  - **Attendance/Participation**
  - **Structure**
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➤ Maryland Judiciary Statewide Evaluation of  
Alternative Dispute Resolution Results and  
Implications

➤ Full report:

[www.mdcourts.gov/publications/reports.html](http://www.mdcourts.gov/publications/reports.html)



# Maryland Evaluation

- ▶ Pre and Post Surveys to compare **attitudes and changes in attitudes** of participants who went through ADR to an equivalent comparison group who went through the standard court process.
- ▶ Coding of mediator interventions to evaluate **effectiveness of various mediation strategies** on short-term and long-term outcomes



# Mediator Strategies – Results: Reflecting Strategies

- ▶ Positively correlated with participants reporting:
  - ▶ The other person took responsibility and apologized
  - ▶ Increase in self-efficacy
  - ▶ Increase from before ADR to after ADR that court cares



# Mediator Strategies – Results: Eliciting

- Positively associated with reaching an agreement
- Positively correlated with participants reporting
  - They listened and understood each other & jointly controlled the outcome
  - The other person took responsibility and apologized
- Long term – participants were more likely to report a change in their approach to conflict and were less likely to return to court for an enforcement action



# Mediator Strategies – Results: Offering Strategies

- ▶ Long term – the more offering strategies used, the **less** participants report
  - ▶ Outcome was working
  - ▶ Satisfaction with outcome
  - ▶ Recommend ADR
  - ▶ Change in approach to conflict



# Mediator Strategies – Results: Caucus

- ▶ More time in caucus =
  - ▶ participant reports that the ADR practitioner controlled the outcome, pressured them into solution, and prevented issues from coming out
  - ▶ Increase in sense of powerlessness, increase in belief that conflict is negative, and increase in desire to better understand the other participant
- ▶ Long term: More time in caucus, more likely the case will return to court for enforcement AND
  - ▶ **less likely** for participants to report
    - ▶ Consideration of the other person
    - ▶ Self-efficacy
    - ▶ Court cares





# Statistically Significant Findings

- ▶ Those who went to mediation, *regardless of whether they reached an agreement*, are more likely to report:
  - ▶ They could express themselves, their thoughts, and their concerns
  - ▶ All of the underlying issues came out
  - ▶ The issues were completely resolved (rather than partially resolved)
  - ▶ They acknowledged responsibility for the situation
  - ▶ They increased their rating of level of responsibility for the situation from before to after the intervention
  - ▶ They disagreed more with the statement “the other people need to learn they are wrong” from before to after the process



# Significantly Significant Findings cont.

- ▶ Participants who developed a negotiated agreement in mediation were more likely to be satisfied with the judicial system than others (*including those who reached a negotiated agreement on their own*)

Participants who went through mediation were more likely, 3 – 6 months later, to report:

- ▶ Improved relationship & attitude toward the other participant
- ▶ The outcome was working
- ▶ Satisfaction with the outcome
- ▶ Satisfaction with the judicial system



# Mediation Strategies: “Rules”





# Implications

- Mediation is effective as an intervention – not just because it is **not** court
- Supports what we know intuitively about “supportive/facilitative” versus “directive/evaluative” mediator interventions
- Underscores result of “overuse” of caucus
- Length of time needed for mediation
- Lessons for training and qualifications
- If need evaluative processes, create options



Questions?