Facilitated Dialogue Model (FDM): Towards the Next Generation of ADR

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Within the ADR spectrum, practitioners utilize processes including Conciliation, Facilitation, Negotiation, Mediation, Arbitration, Med/Arb and ODR. The authors believe there is a changing global landscape that includes fiscal austerity, return to office and relaunching of interpersonal skills. Organizations and employees are increasingly time and resource starved. These circumstances exacerbate existing tensions and create new conflicts. In adapting, the ADR field needs more timely and innovative tools that are pre-emptive, efficient and expeditious.

The authors have conceptualized and designed an innovative adaption to existing facilitation models called Facilitated Dialogue Model ("FDM"). This Model comes out of our practice in Law and ADR. FDM is a directive, fast-paced, time-efficient model where a neutral Facilitator manages Stakeholder-generated dialogue. This requires: Retaining Client who is progressive, dynamic, prepared to take some risk and assumes responsibility for vetting Stakeholders; Facilitator who is experienced, intuitive, observant, analytical and skilled; Stakeholders who are articulate, diligent, committed, collaborative and capable of engaging in direct dialogue.

FDM is akin to a Grand Prix: the driver and pit crew work in synchronized tandem, and time their actions to the second. From start to finish, FDM is structured to take no more than 5.0 hours.

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Our review of Facilitation literature from authors such as Roger Schwartz[1], John Forester[2], Janice M. Fleischer[3] and Adam Kahane[4] demonstrate consensus on the key skill sets required to be an effective Facilitator. These requirements include: strong verbal and non-verbal skills, analytical questioning, trust building, reframing and effective Stakeholder management. All are prerequisites for the FDM Facilitator to "drive" this high-performance model. FDM is designed for future-focused conflicts that are less than 1.5 years in duration, and when decision makers require speedy resolution. Examples include: discord in work/project teams, mergers and amalgamations and stalled ADR processes. FDM does not preclude participants from accessing other ADR or litigation options.

The FDM designers precluded historical relationships, as FDM focuses on immediacy, today. In our conceptualization, FDM is not appropriate for entrenched interpersonal conflicts, family and estate, etc. Conflicts over 1.5 years are too entrenched and complex, and would be better suited for other ADR processes.

As with other ADR processes, FDM is private, confidential and voluntary. The FDM Facilitator initiates meeting with the Retaining Client (Meeting #1) and provides an overview of the process, benefits, and their roles and responsibilities. The Retaining Client selects and vets Stakeholders they believe appropriate.

After Stakeholders agree to participate, the FDM Facilitator meets with each Stakeholder separately (Solo Meetings #2 and #3) to briefly outline the process, their specific roles and responsibilities, and the opportunities presented at the Joint Session (Meeting #4).

During their Solo meetings, Stakeholders are informed that one of the benefits of the Joint Session is that they are required to listen without restatement or rebuttal. However, this listening role is not passive. Stakeholders are directed to identify potential threads of expansive collaboration when the other is speaking.

At the end of the Solo Meetings, the Stakeholders are informed that they will receive a concise, customized Questionnaire that directs them to identify no more than three issues they wish to communicate to the other. Stakeholders are required to return their completed Questionnaire to the FDM Facilitator within 12-24 hours.

The FDM Facilitator analyzes the Questionnaire responses and applies the principles and skills of reframing, rephrasing and negotiating, to build an Agenda composed of no more than three items. The constructed Agenda should cover all of the topics identified in the returned Questionnaires and becomes the platform that permits direct dialogue between the Stakeholders (Joint Session – Meeting #4).

Once the Agenda is prepared, the FDM Facilitator sends the Agenda to the Stakeholders 12-24 hours prior to the Joint Session (Meeting #4).

> ## "The quality of collaboration required in FDM goes beyond the traditional ADR understanding of the word."

Stakeholders are instructed to speak only on the issues identified in the Agenda. Each Agenda item is afforded a specific amount of time, and this time is tightly controlled by the FDM Facilitator.

In the Joint Session, the FDM Facilitator opens the meeting with a brief reminder of the process, roles and responsibilities. For Agenda item #1, the Stakeholders take turns speaking and listening in equal measure. They do not do both concurrently. FDM does not permit restatement, summary or rebuttal. At the conclusion of Agenda item #1, a break is called. This pattern is repeated for the remaining Agenda items.

After the Stakeholders have spoken on all Agenda items, the FDM Facilitator asks both Stakeholders to engage in expansive collaboration. This collaboration, at the final stage of FDM process, may lead to a brief and concise agreement ("Agreement").

The quality of collaboration required in FDM goes beyond the traditional ADR understanding of the word.

Authors like Adam Kahane[1], Nobukhosi Ngwenya and Liza Rose Cirolia[2], John Forester[3] and Malcolm C. Burson[4] use terms such as "stretch collaboration," "communicative collaboration," "conflict gradient" and "community/collaborative." The commonality of these models is the recognition that collaboration is "a critical skill for coordinating the ideas and contributions of diverse sets of people…" (Brad Spangler)[5].

The FDM Agreement respects divergent positions and offers the widest possible ZOPA[6]. For example, one Stakeholder may have 60% of their needs met, the other 40%. This is an acceptable FDM agreement. What is paramount for Stakeholders is that the race was concluded and both cross the finish line together.

The changing landscape previously described provides opportunities for evolving ADR processes, such as FDM. FDM is not facilitative mediation. The benefits include: Model which allows for highly-focused and efficient problem identification; customized, Facilitator-designed Agenda which provides a focused platform for Stakeholders to have a direct, specific dialogue; collaboration that breaks the traditional rules, leading to an expansive ZOPA; process designed to be completed in 5.0 hours or less; process that is scalable to include more than two Stakeholders.

In the Grand Prix, everyone on the track is subject to specific rules that are designed to facilitate speed, involve highly skilled participants, and the goal is a single winner outcome. FDM has all of these, except for one key difference: both Stakeholders are winners because they share the chequered flag.

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https://www.beyondintractability.org/essay/facilitation
[10] Zone of Potential Agreement

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