

Tempering The Tempers: Conflict Resolution Skills For Busy Professionals

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Introduction: This article's goal is to improve your ability to resolve conflicts by (1) exploring the process of how you communicate, (2) recognizing your negotiating and conflict resolution tendencies, (3) understanding the different processes of alternative dispute resolution (ADR) and (4) developing successful strategies for resolving conflicts in the health care arena.

Exploring The Communication Process

We all understand how important it is to communicate effectively, and that the success of an organization primarily depends upon the communication skills and expertise of its members. If the members of an organization lack these skills, there is a strong likelihood that the organization will be inefficient, unresponsive, disorganized, unfriendly, unprofitable, and may even be dangerous.

As professionals you are in the business of solving problems. People come to you when they are in need, and you must work closely with many different people on a daily basis. Whether communicating with your patients, clients, customers, families, counselors, clergy, staff members, peers, physicians, aids, supervisors, or administrators, you

are most likely attempting to solve a problem or resolve a conflict.

Your success partially depends upon your expertise in your field, but a large degree of your success will be a direct result of your ability to communicate with others. Explaining information to a client, comforting family members, calming an angry co-worker, listening attentively to a hurried customer, and disciplining an employee all involve your ability to communicate.

During your day you undoubtedly encounter situations and people that frustrate you. You may become angry, impatient, feel unappreciated, or even become sad. You may find yourself asking the following questions:

- *Why did that person say that to me in that way?*
- *Why did that person do that?*
- *Why didn't that person say hello or thank you?*
- *What makes that person think his/her behavior (condescending, uncaring, late, laughing, belligerent, shouting...) is acceptable in this situation?*

You may ask these questions immediately or you may raise them later. There may be several situations you are still trying to determine why he/she/they did or said that!

Establishing Standards For Others' Communication Behaviors: In an attempt to determine why people do/say the things they do, we may try to put ourselves in their place. However, more often than not we evaluate other's actions on what we would have done in a

similar circumstance. Would I have behaved like that in that situation? We use our own beliefs, attitudes, and values as “standards” for what we deem to be *acceptable, not acceptable, understandable, wrong, right, immoral, moral, legal, or illegal.*

These conclusions influence how we communicate with others. While not the only determining factor, our conclusions about others’ behaviors do influence whom we decide to associate with and how we communicate with them.

Establishing Standards For Our Own Communication Behaviors: We also monitor our own communication behaviors. Why did I say that? Was that the correct thing for me to do in that situation? If we meet our own self-imposed standards, we experience feelings of confidence, happiness, and inner peace. If we fail to meet our own self-imposed standards, we experience feelings of guilt, shame, sadness, or anger. These resulting feelings affect the way we communicate.

Think of the last conversation you had with yourself about your own actions. What did you say to yourself? Did you make promises to yourself not to act or react that way in the future? You may have attempted to regulate your future behavior by imposing sanctions on yourself or by rewarding. You may reward yourself with your favorite food or punish yourself by working overtime.

Obviously, each one of us establishes our own standards and our own system for regulating future behaviors. However, if we use ourselves as barometers for our own and others’

actions, it should be important to each of us that we begin thinking about whom we really are and how we became who we are. If we are establishing the “standards” for what is acceptable and unacceptable behavior, it is important that we learn how and why we make these inferences about our own and others’ behaviors.

Take a few seconds and think about yourself. How would you describe yourself? What descriptive words first came into your mind? Were they nouns (Mom, Student, Health Care Professional, Friend, Supervisor) or adjectives (Caring, Angry, Healthy, Tired, Religious, Hungry)? Interesting differences wouldn’t you say?

Think about you for a moment. Have you always been the “you” you are now? How did you establish your current beliefs, attitudes, and values about the world? What experiences have you had that made you the person you are now? Have the changes in you always been for the better?

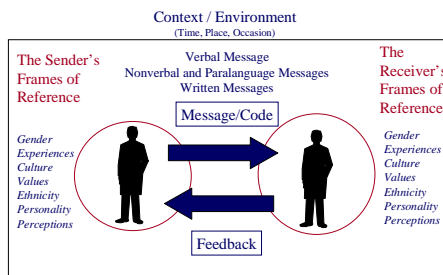
Our Frames Of Reference Influence Our Communication: Everything that makes you, you, is used as your frame of reference when interpreting the world around you. Your life experiences, your gender, your occupation, your language, your ethnicity, your religion, your culture, your social status, your education, and your lifestyle all contribute to your beliefs, attitudes, and values.

Your resulting beliefs, attitudes, and values influence your perceptions and expectations of yourself and others,

which, in turn influence how you communicate with others.

Think of the people you work with? Do they all communicate in the same way? Do they all have the same tendencies when they communicate? Are some more out-going than others? Are some more demanding than others? Why do you think each person communicates differently?

The following diagram illustrates how each of us communicates. Our frames of reference play a significant role in how we communicate and interpret communication of others.



Because no two individuals have exactly the same frames of reference, no two individuals will communicate in exactly the same way. An interesting, yet somewhat troubling thought, isn't it?

How often have you heard or used the following expressions:

- *We just don't see eye-to-eye.*
- *She doesn't understand me.*
- *I knew you would think that.*
- *They are all so loud.*
- *I give up. You can't talk to someone like that.*
- *We don't have anything in common.*
- *He really understands me.*

- *They just don't understand us.*

All of these expressions share something in common. Each one is an attempt to express our perceived similarities/differences in frames of reference. As you can see, this may be at the root of our stereotypes (positive and negative) of other peoples.

Earlier, we discussed how we evaluate others' behaviors on our own standards. If this is true, it is only natural that we might assume that others should think the way we think or at least attempt to see the world as we see it.

This may be the result of our perceived superiority (intellectual, moral, social, cultural, hierarchal, family role, gender, age) over others. Or, it may be because we genuinely attempt to view things from others' perspectives but we conclude others are not attempting to view things from our perspective.

Once again, think about the people you meet and work with each day. How do your beliefs, attitudes, values, perceptions, and expectations differ from theirs? Do you have any influence on their beliefs, attitudes, values, and resulting behavior? How do they influence you? Do you feel you share more common beliefs, values and attitudes with one particular person or group of people? If so, how do you measure which common beliefs, values and attitudes are most important and which are not? Do you find it easier or harder to communicate with people who don't perceive the world as you do? All of these questions are interesting to think about but difficult ones to answer. It is not always easy to think about who

we are, why we are this way, and if we are happy about whom we have become. It may be an even more difficult to ask ourselves to think about our relationships with others. How do you view yourself in relationship to your peers? Patients? Physicians? Supervisors? Non-medical personnel?

Perception And Communication: Look closely at the following images. What do you see?



Figure 1



Figure 2

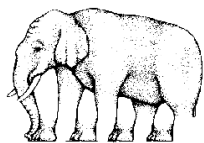


Figure 3



Figure 4

If you have seen these images previously, your frame of reference has been changed by your previous experiences. You already know to look for hidden images. For example, in Figure 1, you probably see both an old and young woman. If you have never seen this image before, you are probably still looking for both women. Can you see them yet?

Now that you know there could be more than one image, you will begin to look for more than meets the eye. What do you see when you look at Figure 2? Most people see a profile, but can you see the word *liar*?

How many legs does the elephant have in Figure 3? Look again. How many legs does he have now?

What about Figure 4? What do you see? Some see a vase and others see two profiles facing one another.

As you can see from this very brief demonstration, your perception and resulting interpretation was altered by a change in your frame of reference. Look at Figure 5. Are these two women nurses or doctors? What was your first thought? Do you think everyone saw the same thing you did?



Figure 5

If we wish to understand how we communicate, and ultimately to improve our communication skills we must begin thinking about ourselves, and who we are in relationship to other people around us. What messages are we sending and how are they being received? How are we interpreting the messages around us? Are we making the *correct* choices when we communicate with people?

Recognizing Your Style Of Negotiation And Conflict Resolution

Let's look more closely at how you communicate with others in situations involving conflict. Your ability to be successful in both your work and in your personal life is significantly influenced by your ability to negotiate with others. How do you manage in those difficult situations when, in the words of Rudyard Kipling's poem, "If," ... "everyone is blaming it on you...?"

Are you perceived as a "conflict-solver" or a "carrier"- one who creates conflict situations and passes the problems on to others?

Dr. Kenneth W. Thomas and Dr. Ralph H. Kilmann devised a fascinating assessment instrument for evaluating an individual's behavior in conflict situations. The Thomas-Kilmann Conflict Mode Instrument defines "Conflict Situations" as those in which the concerns of two people appear to be incompatible. In these situations, they describe a person's behavior along two basic dimensions: (1) *assertiveness*, which is the extent to which the individual attempts to satisfy *his or her own* concerns, and (2) *cooperativeness*, which is the extent to which the individual attempts to satisfy the *other person's* concerns. According to Drs. Thomas and Kilmann, these two basic dimensions of behavior can be used to define five specific methods of dealing with conflict, which they call "conflict-handling modes."

Drs. Thomas and Kilmann suggest that in the case of conflict-handling behavior,

no one style of conflict-handling behavior is necessarily better than any other. All five conflict-handling modes are useful in certain situations-each represents a set of useful social skills. We are all capable of using the five different conflict-handling modes. None of us can be characterized as having a single, rigid style of dealing with conflict.

However, any given individual uses some modes better than others and therefore, tends to rely upon those modes more heavily than others, whether because of temperament or practice. If you are asked to fold your arms across your chest, you are able to do so without hesitation. However, if you are suddenly asked to reverse this seemingly easy task, you might pause and struggle to do so. Certainly, you have not been taught to fold your arms in a certain way. Over time, you developed an instinctive, intuitive, automatic way of performing this behavior that is comfortable for you. In sports like football and basketball, coaches carefully study videotapes of opposing teams so they can learn their opponents' "tendencies" and anticipate the plays those teams are likely to use in certain situations. Drs. Thomas and Kilmann suggest that we all have similar "tendencies" in how we respond to conflict situations.

1. The Competitor: This personality is assertive and uncooperative. This individual pursues his or her own concerns at the other person's expense. This is a power-oriented mode, in which one uses whatever power seems appropriate to win one's own position-one's ability to argue, one's rank, economic sanctions. Competitors "stand

up for their rights" and defend positions that they believe are correct, or simply try to win for the sake of winning. For competitors, "Might makes right" and Niccolos Machiavelli's "The ends justify the means" are credos by which to live. Scarlett O'Hara, the vain and ruthless heroine of "Gone With The Wind," epitomizes this competitive personality.

The Advantages Of Being

Competitive: The competing conflict-handling mode is particularly useful in certain situations. When there is an emergency situation that requires quick and decisive action, competitors can save the day. Similarly, on important issues where unpopular actions need to be implemented, competitors are willing and able to make tough decisions on cutting costs, downsizing, enforcing unpopular rules, and enforcing discipline.

Remember Al "Chainsaw" Dunlap, the former CEO of Sunbeam? When competitors know they are right (which is almost all the time), they are able to decide issues that are vital to company welfare. Competitors will not take any "guff" from anyone. They are able to protect themselves against people who pray upon the noncompetitive behavior of others.

The Disadvantages Of Being

Competitive: Competitors are often identified by the company they keep. Do you surround yourself with people who always agree with you? This may be because your colleagues and subordinates believe that it is unwise to disagree with you or because they have given up trying to persuade you. As a result, competitors may not receive all of

the information (good and bad) they need to make important decisions. In the children's story, *The Emperor's New Clothes*, people did not tell the emperor that he was naked because they were afraid to tell him the truth. Trusted advisers may tell competitors what they want to hear, rather than what they need to hear.

Similarly, are your subordinates afraid to admit their ignorance to you? In order to curry favor with you, subordinates may act more certain and confident than they actually are. They may be reluctant to ask you for information, opinions, and help. As a result, they may be less able to learn in this competitive environment, or they may learn by making mistakes that could have been avoided by simply asking for help.

Competitors find it extremely difficult to groom successors, which can affect the long-term stability of the organization. Competitors often perceive themselves as indispensable and irreplaceable. They believe that nobody is quite good enough to replace them.

Do you have trouble building goodwill with others? Do others often seem to regard you as unreasonable? Do you have trouble admitting when you are wrong? Do you recognize legitimate exceptions to rules? Do you know when to give up? Or do you pride yourself on having the "tenacity of a pit bull"? Do you find yourself hurting people's feelings or stirring up hostilities? Do you often feel harried or overwhelmed by a number of issues? If you answered any of these questions with a "yes", you are probably a competitive personality.

Competitors tend to be indifferent or insensitive to the needs of others. Competitors should exercise more discretion in confronting issues and more tact in framing issues in non-threatening ways. They also should need to devote more time to setting priorities, deciding which issues are relatively unimportant and delegating them to others.

2. The Accommodator: This personality is unassertive and cooperative-the opposite of the competing personality. The accommodating individual often neglects his or her own concerns in order to satisfy the concerns of the other person. This individual may be a self-sacrificing "martyr."

Accommodating may take the form of selfless generosity or charity, obeying another person's order when one would prefer not to, or yielding to another's point of view. The stereotypical, doting mother typifies the accommodating personality. The accommodating individual lives by the motto, "kill your enemies with kindness." Melanie Wilkes, the effusively kind, devoted and understanding wife of Ashley Wilkes in "Gone With The Wind" represents the accommodating personality.

The Advantages of Being

Accommodating: Accommodators tend to be popular. They are generally well liked by their colleagues, subordinates, and supervisors-although not necessarily feared or respected.

The accommodating conflict-handling mode is especially useful when you realize that you are wrong. It allows a better position to be heard.

Accommodators are able to learn from others, and show that you are reasonable.

When issues are much more important to the other person than to the accommodator, the accommodator is willing and able to satisfy the needs of others, and as a goodwill gesture, help maintain a cooperative relationship. Similarly, when continued competition will only damage their cause, when they are outmatched and losing, accommodators are able to walk away with dignity, and choose to fight another day. This accommodating mode is well suited for situations when preserving harmony and avoiding disruption are important.

The accommodating conflict-handling mode is often seen at the end of bruising political campaigns, when losing candidates graciously acknowledge their defeat, endorse their conquerors, and attempt to unify their party for victory on Election Day.

Accommodators are good mentors, willing to assist in the managerial development of subordinates by allowing them to experiment and learn from their own mistakes.

The Disadvantages of Being

Accommodating: Are you resentful? Accommodators may feel as if their own ideas and concerns are not getting the attention they deserve. By deferring too much to the interests, needs and concerns of others, accommodators may be deprived of influence, respect, and recognition they deserve. This may also deprive the organization of the full benefit of their potential talent and contributions.

Do you feel powerless? Accommodators are unaware of the power they have, unskilled in its use, and/or uncomfortable with the idea of using it-which hinders their effectiveness and restricts their influence.

Do you have trouble taking a firm stand? Accommodators are sometimes so concerned for other's feelings and worried about using their own power that they vacillate, postpone decisions that need to be made, and prolong the suffering and resentment of others.

Is discipline lax? The implementation of rules, procedures and assignments is essential for the success of every organization. Colleagues and subordinates may "take advantage" of accommodators who are reluctant to enforce discipline. This can adversely affect office morale and productivity.

3. The Avoider: Avoiding individuals are unassertive and uncooperative, and do not immediately pursue their own concerns or those of the other person.

The Avoider never addresses the conflict. The evasion might take the form of diplomatically sidestepping an

issue, postponing an issue until a later or better time (which might never come), or ostrich-like, simply withdrawing from a threatening situation. Avoiders simply want to "leave well enough alone."

The Advantage Of Being Avoiding:

Avoiders are tactful and able to avoid the potentially disruptive aspects of issues. They are reluctant to hurt people's feelings and stir up hostilities.

Since they avoid making as many decisions as possible, they are not usually harried or overwhelmed by a vast number of issues that need to be decided. This mode is particularly useful when an issue is trivial, of minor importance, or when other more important matters need to be addressed.

This mode is useful when the potential damage of confronting a conflict outweighs the benefits of its resolution, or when gathering more information outweighs the advantages of an immediate decision. And, when people need to cool down, and tensions need to be reduced in order for people to regain their composure and perspective, before they can engage in productive problem solving discussions.

This mode is also useful in situations where avoiders perceive that they cannot affect change, and they would otherwise be "running into a brick wall."

The Disadvantages Of Being

Avoiding: Do people have difficulty getting your input and feedback on important issues? Does it appear as if you are "the last to know" about what's going on even when you should be one

of the first to know? Are you so cautious that nothing ever seems to get decided-or accomplished?

Colleagues and subordinates may be reluctant to bring issues to your attention, believing that you will never address and resolve these matters. Are important decisions being made by default? Frustrated colleagues may believe that they don't have time for you to (not) decide, and may make decisions without consulting with you.

Avoiders frustrate people with their reluctance to acknowledge the existence of any conflict (what problem?) and their subsequent refusal to attempt to resolve any conflicting situation.

4. The Collaborator: The collaborating personality is both assertive and cooperative, and is the opposite of the avoider. Collaborating individuals attempt to work with the other person to find some solution that fully satisfies the concerns of both persons. They dig into an issue to identify the underlying concerns of the two individuals and to find an alternative that meets both sets of concerns.

Collaborating between two persons might take the form of exploring a disagreement to learn from each other's insights, concluding to resolve some condition which would otherwise have them competing for resources, or confronting and trying to find a creative solution to an interpersonal problem.

This "win-win" negotiator believes that "two heads are better than one."

The Advantages Of Being Collaborating: Collaborators are

generally regarded as being fair and reasonable. The collaborating conflict-handling mode is especially useful when it is necessary to find a solution when the concerns of the parties are too important to be compromised. This mode is effective in helping people work through hard feelings which have interfered with their interpersonal relationship, and when that relationship is likely to continue.

Collaborators try to understand the views of others, try to help people understand that others share different perspectives on a problem, and work to help the parties attain a consensual solution.

Since subordinates are involved in consensual decisions, they tend to be more committed to these collaborative decisions and policies.

The Disadvantages Of Collaborating: Do you spend too much time discussing issues that do not seem to deserve it? Collaboration requires all participants to invest significant amounts of time and energy. Most organizations have limited resources, and do not believe they can afford to allow their employees and managers to devote significant amounts of time to collaborative problem solving.

The overuse of collaboration and consensual decision-making on minor problems that don't require perfect solutions could seriously overburden management and staff.

5. The Compromiser: On the negotiating continuum, the compromiser is somewhere between "assertive" and "cooperative." The goal of the compromising conflict-handling mode is

to find some expedient, mutually acceptable solution that partially satisfies both parties. It falls in the middle ground between "competing" and "accommodating."

The compromiser gives up more than the competitor, but less than the accommodator. This individual addresses an issue more directly than the avoider, but does not explore it in as much depth and detail as the collaborator.

Compromising might mean splitting the difference, exchanging concessions, or seeking a quick middle-ground position. The compromiser is usually quick to say: "Let's split the difference!"

The Advantages of Compromising:

The compromising conflict-handling mode is particularly useful in situations that require parties to arrive at an expedient solution under time pressures.

It is also useful when goals are moderately important, but not worth the time, effort or potential disruption of more assertive modes like collaboration. This method can also help parties achieve temporary settlements to complex issues.

The Disadvantages Of Compromising:

Much like a Band-Aid, the compromising conflict-handling mode provides a "quick fix" to a problem. The process emphasizes expediency.

Compromisers may concentrate so heavily on the practicalities and tactics of compromise that they lose sight of larger, underlying issues that will need to be addressed and resolved in the future.

The compromising conflict-handling mode does not invest the time and energy needed to allow parties to fully explore and discuss important matters involving principles, values, and the long term interests, needs, and objectives of the company and its employees. If left untreated, the wounds from these unresolved conflicts can fester and endanger the existence of the entire organization.

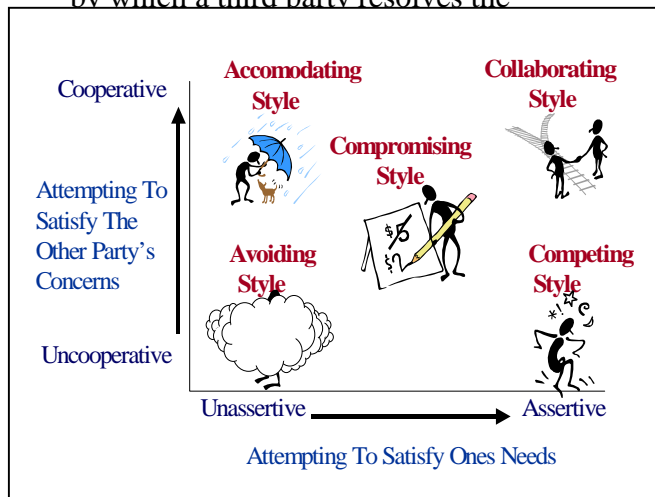
Conclusion: Somewhere in this article, you have probably seen yourself, or someone you know. Remember, that no one conflict-handling mode is "better" or "worse" than any other. Each style has its positive and negative attributes. You are not a bad (good) human being because you demonstrate a preference for the competing conflict-handling mode or the accommodating conflict-handling mode. The conflict behaviors you use are the result of both your personal dispositions and the requirements of the situations you were in at the time. We tend to use the negotiating strategies that have "worked" best for us in given situations.

Understanding The Different Processes of Alternative Dispute Resolution (ADR)

Conflict is as old as humankind itself. We have battled over causes as diverse as love, honor, country, religion, and money. Human beings possess an insatiable appetite for "more." We are consumed with the notion of consuming. In our rush to acquire more of everything, it is inevitable that we should collide with one another. Indeed, in a world of finite resources, it is inevitable that conflict will occur.

Throughout history, we have developed new ways for dealing with conflict. Prehistoric man first wielded fists, and then invented clubs and weapons, to fend off the hostile advances of enemies. In feudal times, knights in shining armor used swords and longbows to defeat the invading hordes. With the invention of gunpowder and the advent of firearms, dueling with pistols became an accepted (and even more final) method of settling differences. The gunfight is a fabled part of the American Wild, Wild West.

Modern society has developed a system by which a third party resolves the



for dispute resolution – litigation. Alternative dispute resolution is widely being adopted by state and federal courts throughout the United States. This article will provide an overview of the various alternatives that are now being employed to resolve disputes.

ADR refers to a diverse array of dispute resolution approaches, often involving a neutral third party, that can help disputing parties resolve their differences. These approaches can frequently help the parties avoid the time, expense, delay, and stress, which

frequently accompany protracted litigation.

Traditional methods for resolving conflicts, such as a courtroom trial, are frequently lengthy and expensive. Litigation often does not help the parties resolve the underlying issues that lie at the heart of the dispute. Any party seeking a prompt and equitable resolution to a dispute should consider ADR. These approaches – which include negotiation, mediation, arbitration, summary jury trials, early neutral evaluations (ENE), magistrates, mini-trials, med-arb (mediation-arbitration) and arb-med (arbitration-mediation), negotiated rulemaking, and an ombudsman-can provide the conflicting parties with additional settlement options.

Negotiation: This is the consensual bargaining process in which parties attempt to reach agreement on a disputed potentially disputed matter. We engage in negotiations, both formal and informal, almost every day of our lives. The parties have a chance to sit down and speak directly with each other. The parties have complete control over this process. The negotiation is generally private, informal (it can take place anywhere), and generally requires minimal involvement by attorneys.

Usually, the costs to the parties at this stage are very low, and for that reason, they may have greater flexibility in their settlement options. The parties are in a position to resolve their dispute quickly, and preserve their relationship “before things get ugly.”

Unfortunately, disputes often take on a life of their own once the parties become seriously embroiled in the adversarial process. By contrast, in negotiation, the parties have an opportunity to settle their disputes quickly and inexpensively, preserve their relationship, satisfy their mutual needs and interests, and all parties can walk away as “winners.”

Mediation: Mediation is a process in which a neutral third person, a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement.

In mediation, decision-making authority rests entirely with the parties. The mediator helps the parties identify issues, foster joint problem solving, and explore settlement alternatives.

Arbitration: This is the most formalized alternative to the adjudication of disputes by courts. In this process, the disputing parties present their case to a neutral third party who is empowered to render a decision.

In the United States, arbitration has been a preferred method of private adjudication for many years. Congress enacted The Federal Arbitration Act in 1925. In 1947, Congress passed the Taft-Harley Act, which established the National Labor Relations Board (NLRB) to arbitrate disputes involving unfair labor practices. For many years, arbitration has been the traditional procedure employed to resolve labor-management disputes.

Summary Jury Trials: The summary jury trial (SJT) gives lawyers and their clients an advance assessment of what a jury might do in their case. It is a non-binding process in which the attorneys briefly present their cases to the jury, which then renders a non-binding advisory decision.

After attending the SJT, the parties are given the opportunity to settle the case. If they are unable to reach an agreement, the parties are entitled to a full trial. The SJT provides the parties with some test as to what a jury really thinks of their case. However, the summary jury is usually not given an opportunity to see or hear directly from the witnesses in the case. Accordingly, the parties will not really have a clear picture of how a jury is likely to evaluate the credibility or “non-credibility” of their witnesses.

Usually, the SJT takes place after discovery has been completed and the case is ready for trial. The greatest advantage of the SJT lies in helping to educate the parties as to how a jury is likely to evaluate their case. When the parties have an idea of what the jury is likely to do, they have a more reasonable understanding of the parameters of the case’s settlement range. The SJT can provide them with a “reality check” as to the true strengths and weaknesses of their case.

Early Neutral Evaluation: This is a relatively new form of judicial, court-annexed ADR which involves early, systematic case assessment by a private attorney who is experienced in the subject area of the dispute. It is hoped that an objective analysis by a respected,

neutral evaluator will help the attorneys and their clients look at both the strengths and weaknesses of the cases early in the litigation process, and before they become so embroiled in the litigation process that they are unable or unwilling to settle.

There are no formal rules of evidence in this procedure, and there is no formal examination or cross-examination of witnesses. All communications during the session are confidential. After an opening statement from the neutral evaluator, the parties present a narrative of their case and exchange detailed information. After the parties have presented their cases, the neutral helps the parties identify the areas of agreement, assess the strengths and weaknesses each side's case, and helps the parties formulate a plan for conducting discovery.

It is hoped that this exchange of information will stimulate settlement discussions between the parties.

Magistrates, Special Masters, And Neutral Experts: In accordance with the Federal Magistrates Act of 1968, judges from each district may appoint magistrates to perform specified statutory functions to assist them. Magistrates assist federal district judges by conducting discovery in mass tort cases, conducting early neutral evaluation conferences, and hosting judicial settlement conferences.

The parties and their attorneys can also agree to have the magistrate serve as the judge in their case. Similarly, courts have authority to appoint special masters when exceptional conditions are present

in a case or because the complexity of the case requires additional assistance.

Masters can render accounting, preside over hearings and make findings of fact and recommendations. Special masters may preside over traffic hearings or city code enforcement proceedings.

In cases involving complex technical or scientific issues, the court can appoint a neutral expert to study a particular issue and render an oral or written report to the court or to the parties. Such neutral experts may be especially useful in cases involving patent infringement, copyright, trade secret violations, antitrust cases, or other areas where their unique expertise may put them in a better position to understand the dispute than the presiding judge.

Mini-Trial: This is not really a trial, but rather a formalized settlement process, usually involving business entities and sophisticated business people on both sides. This process can be quite powerful because the parties with full decision-making authority are physically present and actively participate in the settlement process.

Usually there are two parts to this process. The attorneys make short opening statements to senior management executives with full settlement authority. After the hearing, the executives discuss settlement.

This process is private and voluntary, and is usually presided over by a mutually agreeable neutral advisor. While the mini-trial may take only one day, it may take some time for an agreement to ultimately be reached.

The mini-trial has been used in cases, involving patent infringement, government contracts, products liability, antitrust, and construction cases.

Med-Arb and Arb-Med: In the traditional med-arb process, the same person serves as both mediator and arbitrator in a dispute. If the parties are unable to reach an agreement at mediation, then the mediator “changes hats” and becomes an arbitrator, rendering a decision in the case. One can see that it would be extremely challenging for one person to occupy both roles as mediator and arbitrator.

Conversely, in the arb-med procedure, the arbitrator may be asked by the parties to render a confidential decision in the dispute. The arbitrator will then seal the decision. Before divulging the decision to the parties, the arbitrator will assume the role of mediator, and assist the parties in reaching a mutual resolution of their dispute. If the parties are able to reach a mutually acceptable agreement, the sealed decision is destroyed without being revealed to the parties. However, if the parties are not able to resolve their dispute during the mediation conference, the decision of the arbitrator is unsealed and announced to the parties.

Negotiating And Rulemaking: This concept involves direct participation in rulemaking by public agency regulators and private business and advocacy groups that are affected by regulations.

Face-to-face negotiations during the initial drafting stages enable the affected parties to actively participate in the rulemaking process. By reaching consensus, it is believed that the affected

parties will be less likely to challenge these rules in court.

Private Adjudication: In private adjudication, sometimes referred to as “rent-a-judge”, the parties agree to accept the decision of a mutually approved neutral who will preside as judge over the proceedings. This can be used when the parties need special expertise and do not care to set precedent or may wish to avoid publicity.

This procedure also enables the parties to have their “day in court” more quickly and without the delays that usually accompany going to trial at the public courthouse.

On the other hand, the decisions of the private judges are subject to limit, if any, judicial review. If the private judge rules against you, you may be stuck with that decision. A party’s rights of appeal may be limited or nonexistent. This ADR process is derisively referred to as “rich person’s justice” by critics; who claim that it enables affluent citizens and corporations to circumvent the delays and inconveniences of the traditional legal system.

Conciliation: In this process, the conciliator is called upon by the parties to make a non-binding recommendation or finding that often concerns the factual or legal issues in dispute, as well as what the conciliator considers to be the appropriate resolution of the dispute.

This finding may or may not be made after a failure by the parties to reach an agreement. The finding or recommendation is made to the parties jointly by the conciliator. This process is

akin to non-binding arbitration, in that the parties are not bound by the neutrals' decision. However, the reasoning that supports the conciliator's recommendations may be extremely useful and persuasive to the parties and their attorneys, and may assist them in reevaluating their case.

Ombudsman: An ombudsman is a neutral individual who hears complaints, engages in fact finding, and generally promotes the resolution of disputes through informal methods like mediation, negotiation, and counseling.

The concept of the ombudsman originated in Scandinavian countries, where a public official would be designated to listen to complaints from the public and then attempt to respond to these complaints. In the United States, an ombudsman is frequently employed by private organizations and corporations, universities, and hospitals to handle employment problems and complaints. Employees can complain to the ombudsman with the understanding that their conversations are confidential.

As one can see, there are indeed many alternatives to traditional litigation. One or more of these ADR procedures may be useful in any given dispute. Several years ago, *The People's Court* was an extremely popular television program. At the conclusion of each of Judge Wapner's sessions, host Doug Llewellyn would cheerfully remind the members of audience that if they ever had a dispute, they should not get angry. Instead, they should simply "take them to court." Should you, as a health care professional, ever have a dispute that

you cannot resolve, you should consider all of your ADR options.

