

Wait – Are We Really Still Saying “Facilitative Mediation”?

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This listserv exchange reminded me how common this language is in our field, which prompted me to write this comment.

It illustrates something we have known for years: many experienced mediators use a wide range of techniques in a single case. They may begin by helping parties communicate, then raise questions about bargaining strategy, explore risks, and sometimes imply views about legal issues through tone, framing, or direct comments.

This raises a question that has been simmering for decades: What exactly do we mean when we call a mediation or mediator “facilitative” or “evaluative”? The terms are deeply embedded in our dispute resolution culture, publications, teaching materials, and even court rules.

Len Riskin originally developed the facilitative-evaluative framework in the 1990s to promote clarity. By 2003, he wrote a [lengthy critique of the framework](#), warning that the terms had been misunderstood and misapplied.

Dwight Golann’s work, often in collaboration with Marjorie Aaron, has pointed out flaws in these concepts.

In a 2005 article, [Schmediation](#), Michael Moffitt critiqued reliance on prescriptive-acontextual definitions of mediation styles – as if they could accurately describe mediation behavior in all contexts and identify which approaches are ethically superior or inferior.

In my 2024 piece, [Oxymorons R Us](#), I showed how even experienced mediators mangle these terms.

Joan Stearns Johnsen’s 2025 article, [Evaluative v. Facilitative Mediation Style: RIP to an Outdated Paradigm](#), made a similar point: the dichotomy is not just outdated – it’s inaccurate.

I’m sure that others have made similar arguments. Many practitioners ignore the terms, finding them irrelevant to their work.

I recently [surveyed mediation experts](#) about their understandings of the terms and found that they have dramatically different interpretations. In other words, we casually – and incorrectly – assume that others accurately understand what we mean when we use these terms.

If we want to communicate clearly, we should describe specific behaviors and contexts instead of using words that perpetuate counterproductive conflict in our field.

For example, we could describe whether mediators express opinions about likely court outcomes or pressure parties to settle. Instead of making broad prescriptive-
acontextual assumptions, we could consider the context, such as whether the case involves an unsophisticated self-represented party or large corporations represented by powerful law firms. We might consider when in the process mediators take particular actions and the effects of those actions. Most importantly, we could consider whether the parties feel that the mediators' actions helped them make good decisions. Considering issues like these provides much more useful information than using simple adjectives.

Which makes you wonder why we're still saying "facilitative mediation" in 2026.