



# Inside mediation

## Book review:

**How Mediation Works: Resolving Conflict through Talk, by Angela Cora Garcia, (2019) UK, Cambridge University Press.**

**by Dr Treasa Kenny**

Angela Cora Garcia has written an interesting book which looks in depth at how mediation works. She does this by using examples from research undertaken into divorce mediation and small claims court mediation.

This book differs from other mediation publications in that it is the first to use conversational analysis of real mediations. Conversational analysis is an approach to the study of social interaction and talk-in-interaction which is well suited to mediation. It sets out to present findings that will be useful to mediators and disputants. For mediators, it extends training beyond understanding recommended techniques into understanding how these are used effectively by real mediators working with real disputants.

She is also hopeful that the book can help disputants to understand what may happen in mediation session, how they can best present their case and most constructively work to reach a fair resolution. Some chapters of the book are based on previously published research articles (1991, 1995 and 2000). The author has also published more widely in this area in 1996, 2010, 2012 and 2013.

Angela draws on findings from mediators and mediation clients in three mediation programs. Mediators and mediation clients agreed to participate in the project and allowed themselves to be videotaped. Reading the interactions between mediators and disputants illustrates how mediators work with disputants to ensure that the focus is not solely on settling the dispute. They have ample opportunity to explain what happened and to convey their side of the story.



The book includes transcripts of interactions which allow the reader to follow how disputants processed emotions, conveyed things that mattered to them, expressed problematic issues in the presence of the person they are in conflict with and decided whether to negotiate a settlement, drop a claim or pursue a different dispute resolution process. By analysing techniques in their interaction context, the author shows how mediators show they are listening closely, empower disputants, maximise disputant autonomy and display neutrality – or work against these goals.

The way in which the interactions are explored gives an opportunity for mediators to understand what techniques make a difference for participants in mediation. Chapter 4, for example, highlights the importance of mediators being trained to observe how participants construct their arguments and to notice differences in skill or interactional competence so that they can empower disputants and maximise autonomy.

Chapter 5 reveals how mediators' representations of disputants' positions can increase or decrease disputant autonomy and mediator neutrality. Maximising opportunities for disputant self-representation of their positions leads to greatest disputant autonomy.

Chapters 6 reveals how disputant autonomy is impacted by how and when mediators solicit disputants' proposals for resolution.

Chapter 7 highlights dilemmas for mediators when deciding whether to make suggestions for resolution or leave the ideas to the disputants. This emphasises the need for mediators to facilitate the free use of brainstorming processes.

There is a range of learning offered for mediation procedures and processes through the observation of both small claims mediation and divorce mediation. Divorce mediators using a question on a topic of mutual interest addressed to both parties in the opening session began mediation by identifying some common ground



which could be built on during the mediation. This was seen as more effective than small claims' mediators soliciting opening statements which emphasised division and increased the adversarial relationship between them.

Co-mediation was also observed to offer support, reinforcement, information, ideas and guidance from one mediator to another. Co-mediators also model co-operative behaviour for the disputants.

The proposal-generation process can be strengthened by mediators facilitating genuine brainstorming, reminding disputants that making suggestions does not imply they are committed to those suggestions, and using private caucus for brainstorming to increase disputants' freedom to suggest ideas for resolution. Mediators also need to take care to consider when and why they pursue proposals when disputants display reluctance to produce a proposal at that time.

The multiple session model of divorce mediation was found to have many positive advantages for participants. They can make progress on their own between sessions, learn and practice constructive communication techniques over time. Pre-meetings with individuals were found to offer some scope for this where multiple joint sessions were problematic in a small claims court setting.

Another option would be to design small claims mediation as a two-part process: an initial information gathering stage, followed by an idea-generation stage where ideas for resolution and negotiation over proposals could be held.

In addition to offering insight for researchers into the use of conversational analysis as a research method, this book offers a number of suggestions for future research. Studies are needed on the interactional organisation of different types of mediation – narrative, transformative, evaluative, facilitative – to explore the effect of any differences on the resolution of disputes.

Although some research has taken place on cross-cultural exchanges in mediation, more is needed to build on cultural differences in conflict style, politeness and



etiquette, directness and indirectness, how listener responses are produced, how turn-taking is organised and how preference organisation works. Mediators are advised to use caucuses for purposes such as defusing anger between disputants or facilitating brainstorming of ideas. There is a need to study the nature of these interactions to determine how these private exchanges contribute to dispute resolution.

The author also makes a plea for mediators and mediation services to work with researchers and disputants to offer opportunities to participate in research. Her experience has been that data collection has not changed the mediation in any significant way. Participants have reflected back that they forgot they were being recorded; her observations from her own research is that participants do not censor their actions because of being recorded and nor do mediators. Measures can be taken to protect privacy, confidentiality, and autonomy to ask for recording to stop or for recordings to be erased.

## References

- Garcia, A. C. 1991, "Dispute resolution without disputing: How the interactional organization of mediation hearings minimizes argument" *American Sociological Review* 56(6):818-835
- Garcia, A. C. 1995, "The problematics of representation in community mediation hearings: Implications for mediation practice" *Journal of Sociology and Social Welfare* 22(4):23-46
- Garcia, A. C. 1996, "Moral reasoning in interactional context: Strategic uses of care and justice arguments in mediation hearings." *American Sociological Review* 56(6):818-835
- Garcia, A. C. 1997, "Interactional constraints on proposal generation in mediation hearings: A preliminary investigation." *Sociological Inquiry* 66(2):197-214
- Garcia, A. C. 2000, "Negotiating negotiation: The collaborative production of resolution in small claims mediation hearings." *Discourse and Society* 11(3):315-344
- Garcia, A. C. 2010, "The role of interactional competence in mediation." *Conflict Resolution Quarterly* 28(2):205-228
- Garcia, A. C. 2012, "Advice-giving and disputant empowerment in divorce mediation sessions." *Language and Dialogue* 2(3):398-426



Garcia, A. C. 2013, "Mediation talk in cross cultural perspective: The contribution of conversation analysis." *China Media Research* 9(4):85-101

**Angela Cora Garcia is a Professor of Sociology at Bentley University, USA. She conducts conversation-analytic research on mediation, emergency phone calls to the police, computer-mediated communication, air traffic communication, and political interviews and speeches.**

**Dr Treasa Kenny is based in the Department of Law, Maynooth University. Her practice and academic interests are predominantly negotiation, mediation and conflict intervention.**