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## Managing Communication Challenges Towards Dispute Resolution in Court Annexed Mediation

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### ABSTRACT

The general aim of this study is to manage the communication challenges that surface during the court annexed mediation proceedings. This research identifies the facilitation techniques and communication strategies currently used in dispute resolution, with the end in view of enhancing the mediation process, thereby reducing the number of cases in courts. This research also evaluates the level of satisfaction of the parties on the perceived performance of the mediators. Validated questionnaires were administered to the mediators and parties in the six Philippine Mediation units in Laguna, Philippines. The research shows significant results and conclusions like mediators frequently used effective techniques and strategies to facilitate direct communication between parties and to overcome an impasse. But there were techniques and strategies which the mediators seldom used. It was found that the parties and mediators encountered problems and challenges sometimes but still the mediators were able to address them. The parties were highly satisfied with the court annexed mediators' facilitation techniques and communication strategies. The researcher drafts a development plan to enhance the current practices that can eventually lead to a successful mediation process.

### INTRODUCTION

Mediation is one method of conflict resolution. It is a third – party intervention process that aims at helping the parties to a dispute reconcile their differences, reach a compromise and attain settlement of their conflict. In mediation, a neutral third party tries to help disputants resolve disagreements and negotiate settlement. Because the researcher has been a court annexed mediator for more than a decade, this study presents several ways to end conflicts and interpersonal disputes due to the problems and challenges that emerge from the communication blockage that prevents their resolution. This is the first time that a study has been made regarding the communication strategies and facilitation techniques currently used by the court annexed mediators in the Philippine Mediation Center units nationwide. Mediation is presented as the main form of amicable settlement of a conflict. The communication skills and techniques of the mediators or facilitators during the dialogue between the parties involved are hoped to assist in the formation of a compromise agreement. Finally, the researcher crafts a development plan that can help make the mediation process successful. The study highlights the importance and role of communication strategies and facilitation techniques used by the mediator, as a specialized facilitator in resolving disputes in court annexed mediation. In the long term, the study helps to reduce the number of cases in the courts by amicable settlement through the court annexed mediation thereby de - clogging the courts nationwide. The specific objectives of the study are as follows:

1. To determine the facilitation techniques that are currently used by the court annexed mediators to facilitate

direct communication between the parties.

2. To ascertain the communication strategies presently used by the court annexed mediators to handle impasse during the proceedings.

3. To determine the biggest challenges and problems encountered during the court annexed mediation and how are they being addressed by the court annexed mediators

4. To ascertain the level of satisfaction by the parties regarding the communication strategies and facilitation techniques used by the mediators in the mediation proceedings.

5. To formulate a development plan that can help enhance the current practices in mediation and eventually attain a successful mediation process.

### LITERATURE REVIEW

The researcher discusses the role of mediation in conflict resolution and also the characteristics of mediators in this article. It also states the facilitation techniques and communication strategies that the mediator can use in mediation proceedings to effectively communicate and achieve a positive outcome.

### How Mediators Resolve Conflict

Mediation focuses on the interests, needs and rights of the parties to the conflict. The mediator manages the interaction between the parties and facilitates open communication and dialogue. Usually, parties to a conflict accept that they have a conflict situation and are willing and committed to resolving it. The mediator then enters to provide assistance and create an enabling environment for parties to the dispute to iron out their differences. Mediators in conflict reconciliation have certain characteristics and

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roles ( Francis, 2019 ).

#### Characteristics of a Mediator

1. He must be experienced in the negotiation process and techniques.

2. He exhibits the tendency to be fair, objective, neutral and balanced in his judgements and style of handling conflict.

3. He possesses critical questioning skills that enables him to draw out facts, maintain communication and throw light on hidden or neglected areas in the dispute.

4. He possesses reasonable level of knowledge and understanding of the area of a particular conflict whether it is family, land, organizational or international.

5. He has confidence, shows authority and inspires parties to the conflict to common ground ( Francis, 2019 ).

The role of the mediator includes:

1. To map the conflict formation ( parties, goals, contradictions )

2. To assess legitimacy or not of all goals

3. To bridge legitimate goals by creative hump, imagining a new reality with contradictions transcended and conflicts transformed ( Francis, 2019 ).

#### Facilitation Techniques in Mediation

The communication that takes place in mediation is facilitative, by stimulating interpersonal communication with the help of the facilitator, and it is a collaborative type, being generated by the voluntary involvement of the parties in resuming the dialogue as the main form of communication, through which the solution can be identified. In mediation, the collaboration of the parties through the communication assisted by the mediator leads to the final situation ( win – win ), when the participants in the process can conclude the dispute and sign the agreement generated in the mediation process ( Hategan, 2020 ).

Mediation is a process based on communication between the parties, which is part of the collaborative strategy for resolving a conflict and which can result in both parties winning when the mediation process ends by reaching a mutually beneficial agreement ( win – win ). This strategy of approaching a conflict is becoming more and more specific to the mediation process, it being mostly acquired by all practitioners in mediation, as a form of conflict management. The facilitation process performed by the mediator is achieved through the communication approaches used in mediation, which becomes an assisted negotiation process. The mediator is concerned with restoring the communication between the parties, that can generate the agreement or understanding of the parties. This will implicitly lead to overcoming the dispute and resolving the conflict between parties. The restoration of the communication process will start first of all from the identification of the communication errors that appeared during the dispute and that led to the conflict. This can be analyzed in the mediation process along with facilitating the resumption of communication of the participants or clarifying the conflict situation, which have been avoided until then for various reasons ( Hategan, 2020 ).

#### Communication Strategies in Mediation

All these communication barriers generate personal attitudes that can block the dialogue or communication of the participants, which manifests itself in various forms, especially through stubbornness in supporting a certain idea, inability to engage in dialogue with the other, lack of trust in other people as well as the inability to work together to restore communication and overcome conflict. Overcoming these communication barriers requires the mediator to make major efforts to adapt his working methods, by giving clear pauses for reflection to those involved in mediation, or by requesting arguments that could lead to some clarifications or stop immediate effects of the dispute subject to mediation, aiming at resuming the process in optimal conditions, which would facilitate communication, highly necessary for the mediation process ( Hategan, 2020 ).

The mediation process aims at restoring the dialogue between the parties involved in the conflict, like an initiated dialogue between the mediator and each party, either during the joint mediation meeting or also at the mediator's separate meetings with the parties involved. This may have the effect of negotiating an amicable solution which will implicitly lead to the realization of the communication between the parties by generating agreement that will be signed and adopted by them. The dialogue, seen as an essential premise of mediation, leads the parties to reconciliation and the elimination of communication blockage situations ( Hategan, 2020 ).

## MATERIALS AND METHODS

### Research Design

This study uses the quantitative research method. This method emphasizes objective measurements and the statistical, mathematical or numerical analysis of data collection through polls, questionnaires and surveys or by manipulating pre – existing statistical data using computational techniques. Survey research design is also used in this study. It is a procedure in quantitative research in which a researcher administers a survey to a sample or to the entire population of people which is the total number of mediators of Laguna in this study. The opinions, attitudes, behaviors and characteristics of the population were described in this research. One advantage of this design is that the current attitudes and practices can be measured.

### Sampling

In this study, the respondents are the ten court annexed mediators and the 59 parties who attended mediation proceedings in the six Philippine Mediation Center units. Non – probability sampling method specifically convenience sampling was used to select the respondents in this study. This sampling method was used because of the nature of the mediation proceedings. The parties and mediators do not stay regularly in the PMC units. They only go to the said offices if they have schedules of mediation proceedings and stay for only an hour or



two. Once their mediation proceedings are completed, the parties will not go back anymore to the PMC units. Questionnaires were given to the respondents who attended the mediation proceedings from June 26 to July 16, 2022. So these respondents are the ones accessible to the researcher during the time of data gathering. The said PMC units are situated in the cities of Binan, San Pablo, San Pedro and Calamba and the towns of Sta. Cruz and Siniloan all in the province of Laguna, Philippines.

### Data Gathering Procedure

The data were gathered through survey using structured questionnaires. The researcher personally administered the questionnaires in the six Philippine Mediation Center units in Laguna, Philippines.

After a week, the researcher came back to pick up the remaining questionnaires.

## RESULTS AND DISCUSSION

This section presents, analyzes and interprets the data gathered that identified the facilitation techniques and communication strategies currently used in court annexed mediation process including the challenges and problems. The results were used as basis for developing an action plan to enhance the current practices and attain a successful mediation process.

### Facilitation Techniques Used by Court Annexed Mediators to Facilitate Direct Communication Between Parties

**Table 1:** Frequency Distribution on the Facilitation Techniques Used by Court Annexed Mediators to Facilitate Direct Communication Between Parties as Perceived by the Parties

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	create an inclusive environment	50	84.7%	6	10.2%	3	5.1%	0	0.0%	0	0.0%
2.	communicate the guidelines and instructions clearly	52	88.1%	6	10.2%	0	0.0%	1	1.7%	0	0.0%
3.	show empathy	50	84.7%	4	6.8%	3	5.1%	0	0.0%	0	0.0%
4.	listen actively	52	88.1%	5	8.5%	2	3.4%	0	0.0%	0	0.0%
5.	use verbal skills	47	79.7%	10	16.9%	2	3.4%	0	0.0%	0	0.0%
6.	manage conflicts effectively	49	83.1%	10	16.9%	0	0.0%	0	0.0%	0	0.0%
7.	possess consensus-building skills	50	84.7%	9	15.3%	0	0.0%	0	0.0%	0	0.0%
8.	manage time expertly to complete the mediation process within 30 days.	45	76.3%	13	22.0%	1	1.7%	0	0.0%	0	0.0%
9.	exercise flexibility in communicating	47	79.7%	10	16.9%	2	3.4%	0	0.0%	0	0.0%
10.	stay neutral on content	48	81.4%	7	11.9%	3	5.1%	0	0.0%	0	0.0%
11.	record important points of the conversation	46	78.0%	10	16.9%	2	3.4%	0	0.0%	1	1.7%
12.	possesses verbal skills	42	71.2%	13	22.0%	4	6.8%	0	0.0%	0	0.0%

Table 1 shows the extent of the use of facilitation techniques by court annexed mediators, as perceived by the parties.

As perceived by the parties, the facilitation techniques being used by the mediators that got the highest frequencies are communicating the guidelines and listening attentively. This means that since the court annexed mediators are mandated to attend the Refresher Courses every two years that are being conducted by the Philippine Judicial Academy, the mediators have been trained well to use these facilitation techniques in mediation. According to Ford ( 2016 ) emphatic or reflective listening is central to the work of the mediator. As an intervention tool, it is second to none for its ability to build trust and confidence. It enables mediators to demonstrate that they grasp what is going on and understand the participants' perspective – their needs, thoughts and feelings.

The parties gave the lowest ratings to the facilitation technique of using verbal skills to facilitate conversation

like probing, paraphrasing and redirecting questions or comments. The use of facilitation techniques by the mediators would depend on the referred cases during the mediation proceedings and the parties attending them. So the mediators might have thought that this facilitation technique did not suit the cases at hand so they did not use it. The issue on what facilitation techniques to use in the mediation proceedings will largely depend upon the prerogative of the mediators.

Table 2 shows the extent of use of facilitation techniques by court annexed mediators, as perceived by the mediators. The mediators disclosed that the facilitation techniques that they always used the most were managing time expertly and staying neutral on content while being expert on the process. The court annexed mediators are trained very well by the Philippine Judicial Academy so they are professional enough to use these facilitation techniques to handle court annexed mediation. This means that the court annexed mediators, under the conditions of neutrality and

**Table 2:** Frequency Distribution on the Facilitation Techniques Used by Court Annexed Mediators to Facilitate Direct Communication Between Parties as Perceived by the Mediators

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	create an inclusive environment	8	80%	2	20%	0	0%	0	0%	0	0%
2.	communicate the guidelines and instructions clearly	8	80%	2	20%	0	0%	0	0%	0	0%
3.	show empathy	8	80%	1	10%	0	0%	1	10%	0	0%
4.	listen actively	8	80%	2	20%	0	0%	0	0%	0	0%
5.	use verbal skills	8	80%	2	20%	0	0%	0	0%	0	0%
6.	manage conflicts effectively	8	80%	2	20%	0	0%	0	0%	0	0%
7.	possess consensus-building skills	8	80%	2	20%	0	0%	0	0%	0	0%
8.	manage time expertly to complete the mediation process within 30 days.	9	90%	1	10%	0	0%	0	0%	0	0%
9.	exercise flexibility in communicating	4	40%	6	60%	0	0%	0	0%	0	0%
10.	stay neutral on content	9	90%	1	10%	0	0%	0	0%	0	0%
11.	record important points of the conversation	6	60%	3	30%	1	10%	0	0%	0	0%
12.	possesses verbal skills	7	70%	3	30%	0	0%	0	0%	0	0%

impartiality are able to support parties in understanding their common objectives, help them collectively move through the process, structure conversation and apply appropriate facilitation techniques to keep discussion effectively, foster participation and get people to come up with ideas, thoughts and perspectives that add value, and get all parties realize their shared interests. A facilitator should maintain a position of joining the discussion as a neutral party, hence simply make the conversation happens or facilitates, as the name suggests. He needs to influence the parties to help them stay on track but must avoid dictating to them.

It is essential that the parties feel they have ownership of the outcomes they reach, that they have been guided to

find their own solutions, without being told or offered solutions (Cukik, 2020).

The facilitation techniques that are least used by the mediators according to them are exercising flexibility in communication and recording important points. The court annexed mediator may choose which facilitation techniques to use in given cases taking into consideration the situation and the parties at the time of the mediation proceedings.

### Communication Strategies Used by the Court Annexed Mediators to Handle an Impasse

Tables 3 and 4 show the extent of use of the communication strategies by court annexed mediators to

**Table 3:** Frequency Distribution on the Communication Strategies Used by Court Annexed Mediators to Handle an Impasse as Perceived by the Parties

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	propose a break	36	61.0%	16	27.1%	6	10.2%	0	0.0%	1	1.7%
2.	divert the issue	38	64.4%	14	23.7%	4	6.8%	2	3.4%	1	1.7%
3.	look through	32	54.2%	16	27.1%	10	16.9%	0	0.0%	0	0.0%
4.	step forward	39	66.1%	15	25.4%	5	8.5%	0	0.0%	0	0.0%
5.	recapitulate	38	64.4%	13	22.0%	6	10.2%	0	0.0%	0	0.0%
6.	make a progress report	41	69.5%	13	22.0%	5	8.5%	0	0.0%	0	0.0%
7.	set a standard	39	66.1%	16	27.1%	4	6.8%	0	0.0%	0	0.0%
8.	act as a catalyst	36	61.0%	14	23.7%	7	11.9%	0	0.0%	0	0.0%
9.	offer a model	42	71.2%	8	13.6%	8	13.6%	1	1.7%	0	0.0%
10.	undertake role-reversal	39	66.1%	13	22.0%	5	8.5%	0	0.0%	2	3.4%
11.	listen and look for opportunities to clarify	41	69.5%	11	18.6%	6	10.2%	1	1.7%	0	0.0%
12.	check the war chest	39	66.1%	16	27.1%	3	5.1%	1	1.7%	0	0.0%
13.	use reality-checking	44	74.6%	12	20.3%	3	5.1%	0	0.0%	0	0.0%

handle impasse during proceedings, as perceived by the parties and the mediators.

As perceived by the parties, the communication strategy that has the highest frequency is the use of reality checking because the Philippine Judicial Academy has been training the court annexed mediators on dealing with impasse in mediation using the enumerated communication strategies. Therefore the mediators are practicing what they have learned in the training programs on communication strategies which include the use of reality checking. When one party comes to the table and appears unready or unwilling to compromise, alter their position, or change the ideas and sentiments that may have caused

the problem in the first place although it can be incredibly difficult to make progress then this is the time for a reality check or as it is called in the mediation field, reality testing (Curtis, 2011).

The parties disclosed that the communication strategy which was the least used by the mediators during the proceedings was looking through by asking the parties to explain their perspectives on why they appear to be at an impasse. Again, the use of communication strategies largely depended on the cases at hand and the prerogative of the mediators. The mediators might have thought that this strategy was not suited to be used in the cases at hand. Table 4 shows the perceptions of the mediators on the

**Table 4:** Frequency Distribution on the Communication Strategies Used by Court Annexed Mediators to Handle an Impasse as Perceived by the Mediators

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	propose a break, if the parties reach an impasse.	4	40%	4	40%	2	20%	0	0%	0	0%
2.	divert the issue	4	40%	3	30%	3	30%	0	0%	0	0%
3.	look through	2	20%	5	50%	3	30%	0	0%	0	0%
4.	step forward	6	60%	4	40%	0	0%	0	0%	0	0%
5.	recapitulate by summarizing both parties' sides	5	50%	4	40%	1	10%	0	0%	0	0%
6.	make a progress report	5	50%	5	50%	0	0%	0	0%	0	0%
7.	set a standard	6	60%	2	20%	2	20%	0	0%	0	0%
8.	act as a catalyst	2	20%	5	50%	3	30%	0	0%	0	0%
9.	offer a model by saying	3	30%	3	30%	4	40%	0	0%	0	0%
10.	undertake role-reversal	1	10%	6	60%	2	20%	1	10%	0	0%
11.	listen and look for opportunities to clarify	5	50%	2	20%	1	10%	1	10%	1	10%
12.	check the war chest	6	60%	2	20%	1	10%	0	0%	0	0%
13.	use reality-checking	4	40%	5	50%	0	0%	0	0%	0	0%

use of communication strategies.

The communication strategies commonly used by the mediators as stated by them were undertaking role reversal, making progress report, offering what if scenarios and use of reality check. The mediators have been trained by the Philippine Judicial Academy to use these communication strategies to handle an impasse during the mediation proceedings. Role reversal is a form of counter-attitudinal advocacy. For mediators, this strategy involves inviting each party to better understand the other party's perspectives and arguments by asking them to put aside their own perspectives, sincerely try to see the dispute as the other party sees it and articulate that other perspective.

As disclosed by the court annexed mediators, the communication strategies least used by them were checking the war chest, listening and looking for opportunity and setting a standard. The mediators based their strategies in overcoming an impasse on the situation and the parties involved in the mediation process. So there were strategies which they think were more reliable to use in breaking an impasse during mediation.

### Challenges and Problems Encountered during Court Annexed Mediation

The challenges and problems encountered during court annexed proceedings, as perceived by the parties and the mediators, are presented in Tables 5 and 6

The parties perceived that the three biggest problems and challenges in mediation were insufficient time to complete the mediation proceedings in 30 days, significant power imbalance among the parties and one party or both parties fail to attend the mediation proceedings as ordered by the court. One of the causes of the insufficiency of time to complete the mediation proceedings in 30 days is when one party or both parties fail to attend. Sometimes the parties do not want to attend the mediation because they lack knowledge of the process and its benefits. They would rather have their cases tried in courts for their merits. Power imbalance in mediation occurs when one party is educated and the other is not, when one party is rich, the other is not and when one party is powerful and the other is an ordinary citizen. Usually if this happens, one party just keeps silent while the other do the talking.

**Table 5:** Frequency Distribution on the Challenges and Problems Encountered During Court Annexed Mediation as Percieved by the Parties

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	Disagreement of the disputing parties on key issues	16	27.1%	12	20.3%	20	33.9%	5	8.5%	6	10.2%
2.	One party or both parties fail to attend the mediation proceedings	4	6.8%	12	20.3%	28	47.5%	12	20.3%	3	5.1%
3.	Insufficient time to complete the mediation proceedings in 30 days	5	8.5%	11	18.6%	31	52.5%	6	10.2%	5	8.5%
4.	One party or both parties show no interest to talk during the mediation proceedings	6	10.2%	7	11.9%	22	37.3%	16	27.1%	8	13.6%
5.	Significant power imbalance among the disputing parties	9	15.3%	6	10.2%	30	50.8%	7	11.9%	7	11.9%
6.	One party or both parties do not want to enter into a compromise agreement even at the start of the mediation proceeding	7	11.9%	12	20.3%	21	35.6%	10	16.9%	8	13.6%
7.	One party is willing to enter into compromise agreement but he or she is not financially capable to pay the other party	12	20.3%	10	16.9%	23	39.0%	5	8.5%	6	10.2%
8.	No privacy in the room where the mediation is being heard	11	18.6%	8	13.6%	21	35.6%	10	16.9%	8	13.6%

The mediator must be aware of this situation and apply his mediation skills to overcome power imbalance between the parties.

The mediators stated that the problems and challenges that they sometimes encountered were one party or both parties fail to attend the mediation proceedings as ordered

**Table 6:** Frequency Distribution on the Challenges and Problems Encountered During Court Annexed Mediation as Percieved by the Mediators

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	Disagreement of the disputing parties on key issues	4	40%	3	30%	2	20%	0	0%	0	0%
2.	One party or both parties fail to attend the mediation proceedings	1	10%	0	0%	7	70%	1	10%	0	0%
3.	Insufficient time to complete the mediation proceedings in 30 days	4	40%	0	0%	4	40%	0	0%	1	10%
4.	One party or both parties show no interest to talk during the mediation proceedings	1	10%	2	20%	2	20%	4	40%	0	0%
5.	Significant power imbalance among the disputing parties	1	10%	1	10%	5	50%	2	20%	0	0%
6.	One party or both parties do not want to enter into a compromise agreement even at the start of the mediation proceeding	1	10%	0	0%	5	50%	3	30%	0	0%
7.	One party is willing to enter into compromise agreement but he or she is not financially capable to pay the other party	0	0%	4	40%	4	40%	0	0%	0	0%
8.	No privacy in the room where the mediation is being heard	1	10%	3	30%	0	0%	4	40%	1	10%

by the court, significant power imbalance among the disputing parties and one party or both parties do not want to enter into a compromise agreement even at the start of the mediation proceeding and just want to take back the case to court. Parties sometimes do not want to attend mediation because they lack knowledge on the process of mediation and its benefits and they just want to try their cases in court. Significant power imbalance among the parties occur when one party is rich and the other is poor, when one party is highly educated and the other is not and when one party occupies a high government position and the other is an ordinary citizen. There are parties who do not want to enter into a compromise agreement even at the start of mediation proceeding and just want to take

back the case to court because they want their cases to be tried on their merits. Others feel that they would win the case in courts and one party may not have the finances to satisfy the compromise agreement.

### Court Annexed Mediators Address Challenges and Problems Encountered

As problems and challenges occur like disagreement, failure to attend proceedings and reach a compromise agreement, the court annexed mediators address such issues to ensure an effective mediation process. The responses of the parties and the mediators are presented in Tables 7 and 8.

As perceived by the parties, the means by which the

**Table 7:** Frequency Distribution on How Court Annexed Mediators Address the Challenges and Problems Encountered as Percieved by the Parties

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	Listen to the concerns of disputing parties	40	67.8%	8	13.6%	9	15.3%	0	0.0%	1	1.7%
2.	Foster participation	33	55.9%	14	23.7%	12	20.3%	0	0.0%	0	0.0%
3.	Manage the time well	34	57.6%	15	25.4%	8	13.6%	2	3.4%	0	0.0%
4.	Control the duration of time that each party may speak to neutralize power imbalance	35	59.3%	11	18.6%	8	13.6%	0	0.0%	5	8.5%
5.	Check with both parties that any agreement reached are realistic and positive	39	66.1%	12	20.3%	7	11.9%	1	1.7%	0	0.0%
6.	Explain fully to the disputing parties the relevance of the court annexed mediation and its benefits to them	42	71.2%	10	16.9%	6	10.2%	1	1.7%	0	0.0%

mediators address the problems and challenges during the mediation process that have the highest frequencies are explaining fully to the disputing parties the relevance of the court annexed mediation and its benefits, listening to the concerns of the parties and checking with the parties

that any agreement reached are realistic and positive. Again ,since the court annexed mediators are trained by the Philippine Judicial Academy, they are able to address most of the problems encountered during the mediation process.

**Table 8:** Frequency Distribution on How Court Annexed Mediators Address the Challenges and Problems Encountered as Percieved by the Mediators

The court annexed mediators . . .		Always		Often		Sometimes		Rarely		Never	
		F	%	F	%	F	%	F	%	F	%
1.	Listen to the concerns of disputing parties	6	60%	2	20%	1	10%	0	0%	0	0%
2.	Foster participation	7	70%	1	10%	1	10%	0	0%	0	0%
3.	Manage the time well	6	60%	1	10%	1	10%	0	0%	0	0%
4.	Control the duration of time that each party may speak	7	70%	1	10%	1	10%	0	0%	0	0%
5.	Check with both parties that any agreement reached are realistic and positive	7	70%	2	20%	0	0%	0	0%	0	0%
6.	Explain fully to the disputing parties the relevance of the court annexed mediation and its benefits to them	8	80%	1	10%	0	0%	0	0%	0	0%



The actions taken by the mediators to address the problems and challenges as perceived by the parties that got the lowest frequencies are fostering participation and gets people to come up with ideas, thoughts and perspectives that add value and managing time well to ensure productive discussions and finish the proceedings in 30 days. Sometimes parties do not actively participate in the proceedings because mediators fail to give a good opening statement which would have involved parties in the process and allows each side the opportunity to tell its story. The mediator must strive to make each party feel that they have the chance to comment and rebut the narrative of the other party. Mediation proceedings are not completed sometimes in 30 days when one party or both parties fail to attend the proceedings.

The tactical measures that were mostly done by the mediators were explaining fully to the disputing parties

the relevance of the court annexed mediation and its benefits, controlling the duration of time that each party may speak to neutralize the power imbalance, checking with both parties that any agreement reached are realistic and positive and fostering participation and gets people to come up with ideas, thoughts and perspective that add value. The mediators have been trained by the Philippine Judicial Academy to handle problems and challenges in mediation so they are able to apply the measures once these problems and challenges arise.

### Level of Satisfaction on the Facilitation Techniques and Communication Strategies

The parties were asked on the level of satisfaction regarding the facilitation techniques and communication strategies used by court annexed mediators. The level of satisfaction is presented in Table 9.

**Table 9:** Frequency Distribution on the Level of Satisfaction of the Facilitation Techniques and Communication Strategies

The court annexed mediators . . .		VHS		HS		MS		LS		VLS	
		F	%	F	%	F	%	F	%	F	%
1.	facilitation techniques used by the mediators during the mediation proceedings	33	55.9%	23	39.0%	2	3.4%	1	1.7%	0	0.0%
2.	communication strategies used by the mediator during the mediation proceeding	34	57.6%	16	27.1%	8	13.6%	1	1.7%	0	0.0%
3.	performance of the mediator on the use facilitation techniques during the mediation proceedings	32	54.2%	20	33.9%	6	10.2%	1	1.7%	0	0.0%
4.	performance of the mediator on the use communication strategies during the mediation proceedings	35	59.3%	15	25.4%	8	13.6%	1	1.7%	0	0.0%
5.	how the mediators handle the problems and challenges encountered	35	59.3%	16	27.1%	8	13.6%	0	0.0%	0	0.0%

The high level of satisfaction given by the parties to the facilitation techniques and communication strategies used by the mediators during the mediation process shows that the training programs of the mediators that are conducted by the Philippine Judicial Academy are very effective. The court annexed mediators have seriously followed the lessons learned and applied them meticulously during

the process. But still there are areas of concern regarding the facilitation techniques and communication strategies that should be addressed and given emphasis. There are also problems and challenges encountered during the mediation process that cropped up during the study that should be given attention

Table10 shows the Development Plan crafted by the

**Table 10:** Development Plan for Successful Mediation Proceedings

Objectives	Tasks	Success Criteria	Time Frame	Resources
To enhance the facilitation techniques of possessing verbal skills like probing, paraphrasing, redirecting, questions to facilitate conversation and exercising flexibility in communication among mediators	Conduct a refresher course for mediators on facilitation techniques specifically possessing verbal skills like probing, paraphrasing, redirecting questions and exercising flexibility in communication	Evaluation of Feedback Mechanism	January, 2023	Training Officers of Philippine Judicial academy

To enhance the communication strategies of mediators specifically looking through by asking the parties, setting standard, listening and looking for opportunities to clarify and checking war chest	Conduct a refresher course among mediators on communication strategies specifically looking through, listening and looking for opportunities, setting standard and checking war chest.	Evaluation of Feedback Mechanism	March , 2023	Training Officers of the Philippine Judicial Academy
To inform the public about the process of mediation and its benefits to the disputants and the justice system and to achieve willingness among parties to attend the mediation proceedings	<ul style="list-style-type: none"> <li>• Create an Information Drive in social media such as facebook, twitter and other platforms</li> <li>• Put up posters about the process of mediation in the Regional Trial Courts and Municipal Trial Courts nationwide</li> </ul>	Cognizance of the importance of Social Media in Information Dissemination	December, 2023	Management level of the Philippine Mediation Center
To enhance the problem solving skills of the mediators like listening to the concerns of parties and facilitating consensus on main issues and managing the time well to ensure productive discussions and finish the proceedings in 30 days	Conduct a refresher course for mediators on problem solving skills specifically listening to the concerns of parties and facilitating consensus on main issues and managing the time well to ensure productive discussions and finish the proceedings in 30 days	Evaluation of feedback mechanism	May, 2023	Training officers of the Philippine Judicial Academy

researcher to further enhance the skills of the mediators that will eventually lead to successful mediation.

## CONCLUSION

According to the parties, mediators always used facilitation techniques which were communicating the guidelines and instructions clearly and listening attentively to the parties' concerns. On the other hand, possessing verbal skills like probing, paraphrasing, redirecting questions or comments and others to facilitate conversation was the least used by the mediator. The mediators stated that the facilitation technique that they always used was managing time expertly and the least used was exercising flexibility in communicating.

The communication strategy that mediators frequently used according to the parties was reality checking and the least used was looking through by asking the parties to explain their perspectives. According to the mediators the communication strategies that they always used was undertaking role reversal by asking each party to briefly assume the other's role. And the communication strategies least used by the mediators were setting a standard, listening and looking for opportunities to clarify and checking the war chest by asking what they are willing to offer. The parties perceived that problems and challenges were sometimes encountered like insufficient time to complete the proceedings in 30 days. The mediators also disclosed that they sometimes encountered problems and challenges during mediation like when one party or both

parties fail to attend the mediation proceedings as ordered by the court. As disclosed by the parties, they perceived that the mediators always addressed the challenges and problems encountered during the proceedings particularly when explaining fully to the parties the relevance of the court annexed mediation and its benefits to them. On the other hand, fostering participation and getting people to come up with ideas, thoughts and perspectives was the least used by the mediators in addressing the problems and challenges. On the part of the mediators, they stated that they always used the measure of explaining to the disputing parties the relevance of the court annexed mediation and its benefits on them. On the other hand, the tactical actions that were the least used by the mediators were listening to the concerns of the parties and managing time well.

The parties were highly satisfied with the facilitation techniques used by the mediators, the communication strategies used by the mediators, performance on the use of facilitation techniques, performance on the use of communication strategies and how the mediators handled the problems and challenges. The researcher drafts a development plan that can enhance the current practices of the mediators and eventually lead to successful mediation proceedings.

After a thorough analysis of findings and based on the conclusions drawn, several recommendations are suggested. The Philippine Judicial Academy, the training arm of the Supreme Court of the Philippines

should conduct a refresher course for mediators on possessing verbal skills like probing, paraphrasing, redirecting questions or comments and others to facilitate conversations and exercising flexibility in communicating and confirming the potential changes for the group to agree upon because these are very vital in ensuring success in mediation. With regards to communication strategies, it is recommended that a refresher course about looking through by asking the parties if they agree to set the issue aside temporarily and go on with an easier issue, setting a standard through helping the parties, listening and looking for opportunities to clarify and checking the war chest by asking what they are willing to offer should be conducted by the Philippine Judicial Academy.

Two problems and challenges came out of this study which are insufficient time to complete the mediation proceedings in 30 days and one party or both parties fail to attend the mediation proceedings as ordered by the court. These two are quite related in a way that one reason why the mediation proceedings are not completed in 30 days is because one party or both parties fail to attend the mediation proceedings on the schedule ordered by the PMC units. An information dissemination should be conducted by the Philippine Mediation Center through social media such as facebook, twitter and other platforms. It is also recommended that the Philippine Judicial Academy conduct a refresher course about

problem solving skills specifically listening to the concerns of parties and facilitating consensus on main issues and managing time well to ensure productive discussions and finish the proceedings in 30 days.

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