

Doing Legally Assisted FDR

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'Doing it Differently' FLPN Conference

Port Macquarie 21 June 2019

FDRP / Lawyer roles and focus

FDRP

To act as mediator
between ex-partners in
working out:

- a co-parenting plan
- a division of property

**The focus is on BOTH
parties.**

The lawyer

To act as advocate for the
interests of their client
so that their client is
not disadvantaged.

**The focus is on the
individual client.**



The similarities

Both must **operate** under the aegis of the Family Law Act:

The child has the right to ‘a meaningful relationship with both parents’ and to be safe.

Any property settlement must be ‘just and equitable’.

Both have the **responsibility** to keep the conflict as low as possible in order to minimise the effect on children of unresolved family conflict.

Neither professional can **enforce** compliance.



Inter-dependency

- For parenting matters the lawyer needs the FDRP to supply a certificate if proceeding to Court.
- In property settlement, parties must consult a lawyer before submitting to the Court their application for Consent Orders.



How can we work together to fulfil our roles and responsibility?

The process of mediation has been described as **'structured negotiation'** whereby the mediator helps people in conflict to 'do business' by facilitating the path for them to:

- identify the causes of a difference of opinion,
- define what must be resolved,
- and explore their options for settling the dispute.



Effective Negotiation

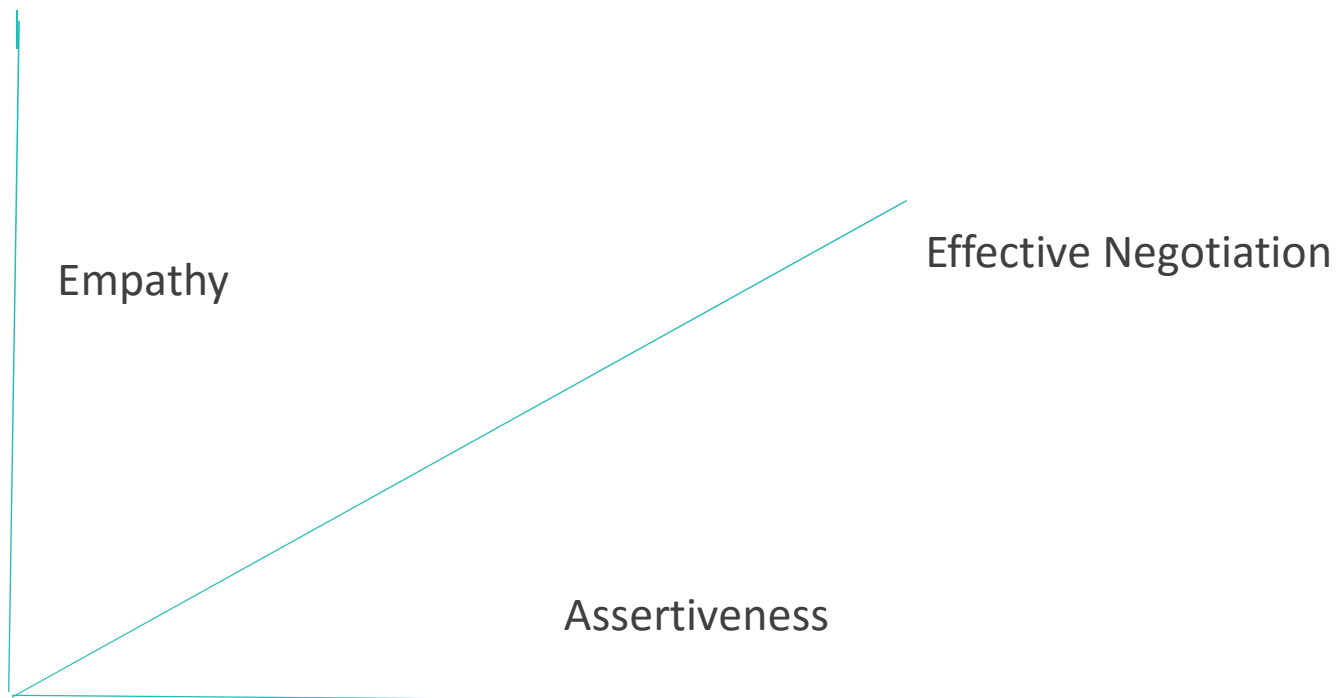
In debunking the belief that negotiation means grinding the opponent into the ground, Mnookin, Peppet and Tulumello (1996) proposed that effective negotiation depends on two elements:

Empathy – the capacity to demonstrate an accurate, non-judgmental understanding of the other’s perspective, **even if not agreeing with it.**

Assertiveness – the capacity to express clearly and advocate for one’s interests.



The ideal situation – a balancing act



FDRP / Lawyer pre-mediation

- FDRP is working to **encourage** in the client perspective-taking towards the other party while also showing empathy to the client's situation. (This is not traditionally the lawyer's focus.)
- The lawyer is **forensically** examining the client's case – checking grounds of the claims, precedents, and strengths and weaknesses of their case, and advising on matters of law. (The FDRP cannot do this. The FDRP deals with perceptions of reality, not 'the truth'.)



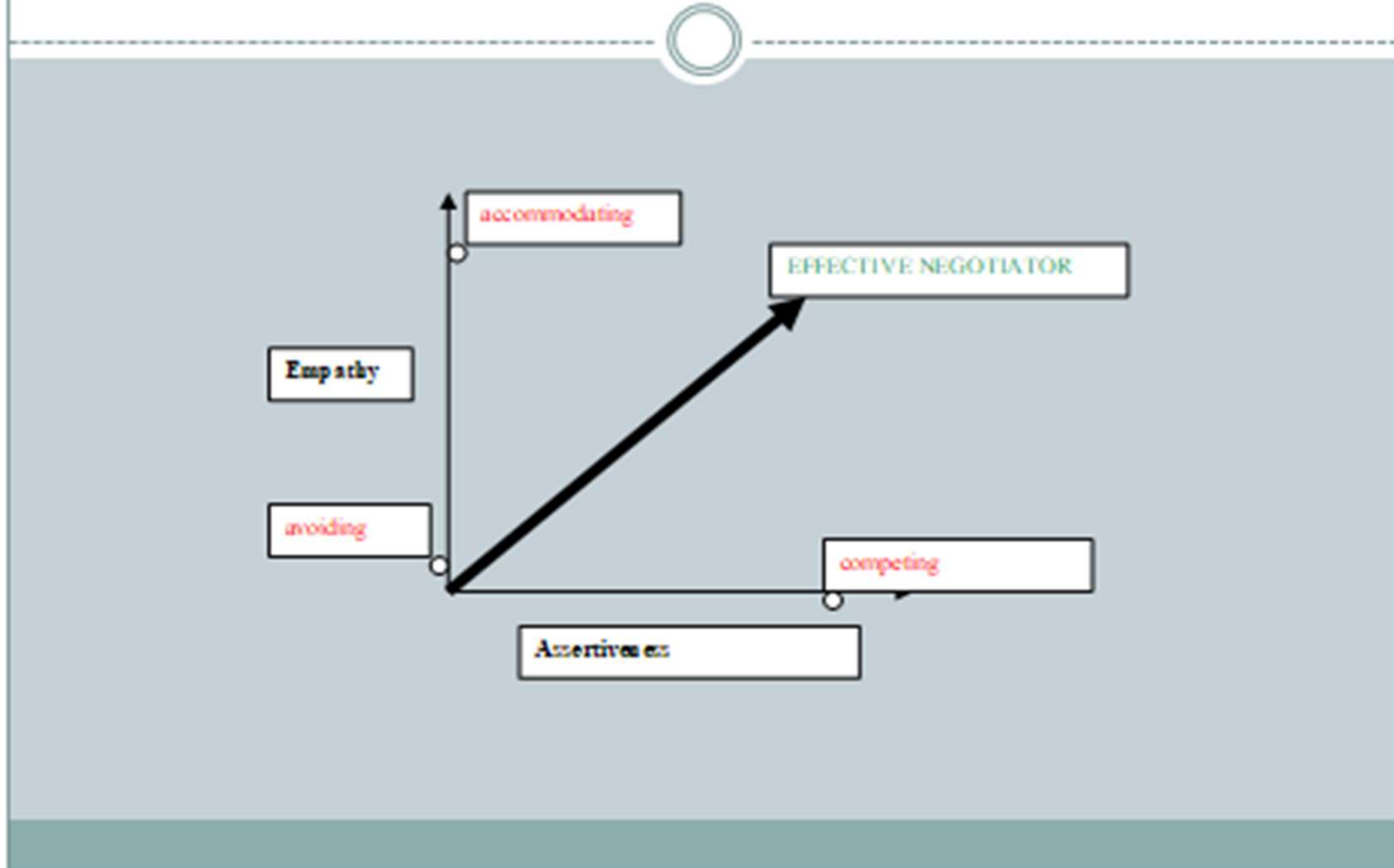
The pitfalls

Too much empathy MAY lead a client to move from empathy to sympathy, thereby selling themselves short and producing **inner** resentment.

Too much assertiveness MAY be perceived as aggression and bullying, particularly if the client has had difficulty in expressing themselves in the past. Hostility **between** the ex-partners results.



Empathy and Assertiveness (Mnookin)



A practical blend of the roles

The FDRP can encourage perspective-taking by focusing on outcomes, not personal feelings, e.g.:

- How will the children be faring in 2 years time, in light of the decisions you make in mediation?
- How will the property split enable you to live with greater certainty and less stress?

The lawyer can guard against assertiveness becoming aggression by careful wording of proposals, particularly in letters, and avoiding ambit claims.



The mediation meeting – reality hits

Each lawyer is hearing the case of the other side **for the first time**, and is able to provide a reality check for their client. The FDRP is checking in with **BOTH** parties – clarifying their options and helping them ‘save face’- and controlling the logical flow of the process. **Both lawyers and FDRP try to keep the conflict low.**

Lawyers and FDRPs are able to spell out realities:

- As parents you are linked together FOREVER. You must work together for the wellbeing of the kids.
- No one comes out of a separation better off financially.



The Outcome for Clients

When these two professionals work together - from different perspectives and with different emphases- clients experience **procedural justice**, in that:

- they are assured they have had the chance to have their say,
- they know they have been heard,
- they have been treated with respect.

This experience is the only contribution both professionals can make towards clients' ability to move beyond stress and conflict, and achieve for themselves the sort of familial harmony they can live with.

