



MEDIATION IN FAMILY BUSINESS: FINDING A SOLUTION IN FAMILY AND COMMERCIAL ISSUES

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Abstract. *This article is about the aspects of mediation in family business disputes. Nowadays, all developed countries of the world are considered the recognition mediation as one of the most efficient methods to resolve a dispute. A mediator is a professional who acts as a third party to resolve a dispute and helps opponents to communicate with one another, to guide the parties in their finding a solution that satisfies the interests and needs of both parties. In the article we discover a correlation between a family and business interests, analyze the meaning of the “family business conflict” concept, and discover a detailed and structured procedure of mediation in family business disputes. Moreover, it was compared the basic pros and cons of the family business mediation, which helps us to find out the strong and weak sides of such brand new type of mediation.*

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JEL Classification: *K10, K22, K36, K38, K49, D74*

Formulas: *Fig.: 2; tabl.: 1; bibl.: 8.*

Introduction

The essence of our social nature requires us to communicate with other people. Interpersonal communication reflects a common need to establish contacts and get together efforts to achieve a common goal. For productive communication, it must be conflict-free. But each of us is unique in his vision of the world, manifestations of emotions, behavior. Therefore, a clash of opposing opinions and views is simply inevitable.

In our civilized world, we should follow some rules for the realization of personal needs and interests. Such kinds of rules must be regulated by governments and corresponded to the realities of today. Every human being is considered as the main social value. We suppose that family and business, as basic human needs can lead us to various kinds of conflicts.

Nowadays, we cannot imagine our life without a happy family and accomplished business, especially, when they complement each other. That is why mediation in the family business is one of the best alternative ways for resolving conflicts. It could help to save both kinds of interests: a peaceful family life and running a successful business.

This article is focused on the concept and special features of the mediation process in family business cases. In Ukraine, mediation has been slowly but steadily spreading in the family and business mediation separately. Mediation in the family business is out of the academic community, due to the lack of legal regulation of mediation in

general and the established practice of the Ukrainian judicial system in resolving disputes.

Theoretical basis

The issue of proper formation and development of existing alternative methods of resolving disputes, the need to legislatively consolidate the globally recognized mediation procedure, the creation of a qualitatively new mechanism for protecting human and civil rights and freedoms covered by the subject of this publication, are attracting more and more attention of scientists. But currently, the family business mediation is almost out of the attention of the academic community in Ukraine and in the developed countries. That is why it determines the relevance of our research.

It was made a significant contribution to the study of mediation in family business by a few Ukrainian researchers as N. Krestovska, L. Romanadze, R. Havrylyuk, N. Kovalko, D. Kostya and others, and foreign scientists as Blair Trippe, Churchill N., Lewis. V., Ortín García, Martín Castejón, Pérez Pérez, Michelle Jernigan, Richard B. Lord, Christopher W. Moore, John J. Upchurch, Rodney A. Max, Stephen G. Fischer, and others.

Aims

The purpose of this article is to study the nature of mediation in a family business, to determine a connection between family and business interests, and to explore the specifics of the mediation process in this field.

Methods

To study the mediation in family business



disputes, we used a few methods of scientific research. The following methods were used: the dialectical method, with the help of which the specifics of mediation in a family business are analyzed in dynamics and interdependence; a comparative method, for disclosing the essence of mediation in a family business by comparing its basic categories. However, the basis of our research is the anthropo-sociocultural approach, which allows us to consider a mediation in family business in a new way as a natural human right as a single creator of society and its full-fledged subject with the help of the social code of public needs.

Results

1. Family versus Business: correlation of the interests

Family support and stable financial independence are the most important requirements for emotional stability and well-being. Frequently when family and employment come together in the form of a family business, they cause each other instability. There are a lot of ways to find a solution in such type of cases as negotiation, arbitration, facilitation, mediation, judicial procedure, etc. Mediation can play a crucial role in resolving such family business dispute, allowing cohesion to move forward.

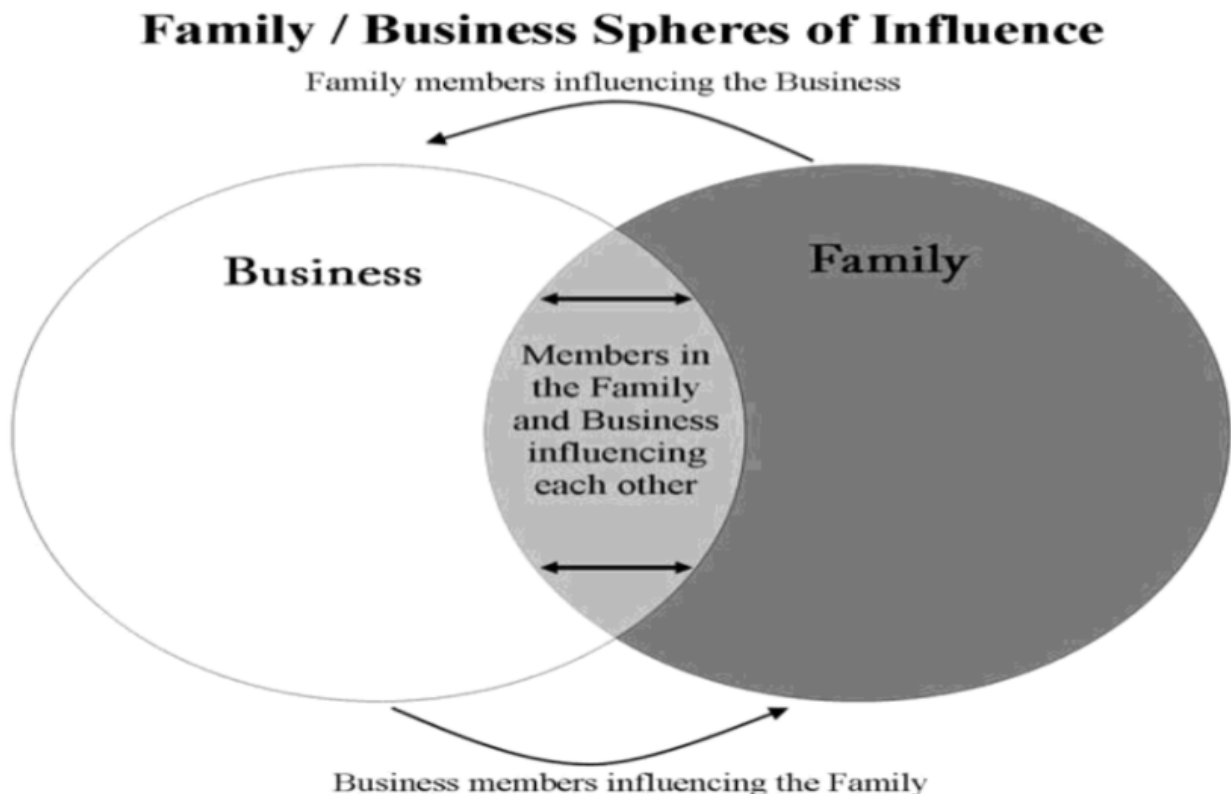
Conflicts occur in approximately half of

the family businesses, and relatives are more concerned with the management of the company and the distribution of profits. Among all employees, relatives are less likely to break discipline, but when they do, it is more difficult for family business owners to resolve the conflict so as not to spoil family relationships.

Above picture shows us the possible process of arising some conflicts between family and business, which makes the family business so sensitive to an argument. Moreover, the consequences might be unpredictable for both business and family. In the business context, unmanaged or unresolved conflict can create devastation in the work environment, waste resources, and prevent the realization of goals. In the family context, unmanaged or unresolved conflict can cause strife, tension, and competition for power – leading ultimately to fractured relationships, resentment, and distrust.

One of the features of a family business is the long term - such companies do not have a goal of earning quick income. The main goal of family business owners is to stay on the market for as long as possible and to inherit the business. Family business owners are reluctant to take big risks that would jeopardize what was achieved by previous generations.

In addition to profit, a family business can





bring many intangible rewards. For example, employees who work in a non-family business have struggled for years to build strong trusting relationships with colleagues, whereas in a family business there is no such problem. Here everyone is focused on one common result that allows you to achieve success.

As we found out, Family Business Center of Ukrainian Catholic University of Lviv Business School together with the Sociological Agency “Fama” during the spring-summer of 2019 studied the peculiarities of the functioning of the family business in Ukraine. The most widespread is a family business, created by several family members and relatives are involved in the work and management of which (30%); every tenth business is founded using a family loan. The depth and breadth of family ties involved in setting up, running, and operating a family business make the network quite spacious. However, most often parents (74%), brothers / sisters [hereinafter in the report - siblings, 44%] and husband / wife (36%) are involved in the development of a family business, they also mainly occupy leadership positions. Most often, it is the parents who own the share of ownership in the business (51% of cases). Family leaders tend not to invite outside managers: most do not have collective governing bodies and do not involve an outside executive director [1, p.6].

The main problem of a family business can be safely called the transfer of work issues and problems in the family and vice versa. Work difficulties affect family life, and conflicts that arise in the family are reflected in the work process.

In those companies where the number of relatives significantly exceeds the optimal indicators (from 3 to 5 percent), there is a risk of losing important key specialists who are not relatives. Therefore, business owners should be careful about recruiting.

The situation when “everyone does everything” or “nobody does anything” also often arises in the family business. At the heart of any properly functioning business is a clear hierarchical system with written job descriptions. This is what makes the business more “working” and less “family”.

The application of the family business mediation in Ukraine would be an extremely effective

and convenient technique if to consider a high percentage of existing family business corporations. For businesses, especially with relatives, speed and flexibility are the key factors for resolving a dispute.

2. Family Business Conflict: meaning and significance.

Before going into more details about family business mediation, we must define a concept of conflict, its common features for a better understanding of the conflict sources and finding a possible solution.

Conflict (from Lat. Conflictus - collision) is a clash of opposing goals, interests, positions, or views of opponents - subjects of social interaction. Each side does everything to make its point of view or goal accepted and prevents the other side from doing the same.

It is extremely important to recognize conflicts and be able to distinguish them from other phenomena that are similar in their manifestations to conflict. In conflicts, as a rule, there is always a tension between the parties and mutual exclusion of interests. On the other hand, such phenomena as a competition or trials, although they are characterized by the presence of confrontation between the parties, do not tend to turn into hostile behavior, which distinguishes them from conflict in character and nature. For the most complete understanding of the differences between these phenomena, the features of conflict can be distinguished, which are:

- the presence of a situation perceived by the participants as a conflict;
- indivisibility of the object of the conflict, i.e. subject cannot be divided fairly between the participants in the conflict interaction;
- the activity of the parties and the desire to continue conflict interaction to achieve their goals, and not to search for ways to resolve the conflict;
- uncertainty of the result, the difference in goals and behavior of each of the parties [2, p. 11-13].

As Blair Trippe mentioned, “mediation works best when the issues can be well articulated and are fixed in time. Conflicts in family business are not well bounded by circumstance because they typically involve many stakeholders whose issues are very intertwined and commingled. In addition, these issues are not static; they change as the family changes and develops” [3, p.16]. That is why



family matters are indeed always very emotional, and the causes of such conflicts usually have hidden components. Those same components could be the “keys” for a peaceful settlement of a dispute.

Each family has a special and unique structure. Family businesses often are usually flexible when it comes to innovations. Each owner knows every part of his business from personal experience. Today no less important is a correct setup of communication in the team. “The fact that many family members spend a long time together does not imply that there is good communication between them. Good communication within the company depends on several factors [4], among which are, in first place, one called "active listening", in that to establish good communication one must first be a good listener. Secondly, the appropriate means of communication must be chosen. In family businesses, verbal communication is overused; although effective, this form of communication is sometimes vague. Written communication can clarify points and is durable; it also achieves compromise between family members. It is important to know when to use written communication and when to use other forms of communication. Finally, in third place, is the need to establish an open, honest communication with sensitivity. That is to say, one should always speak with clarity and honesty, but weighing words carefully, which is par-

ticularly important when it comes to family matters” [5, p. 27], as Ortín García, Martín Castejón and Pérez Pérez said.

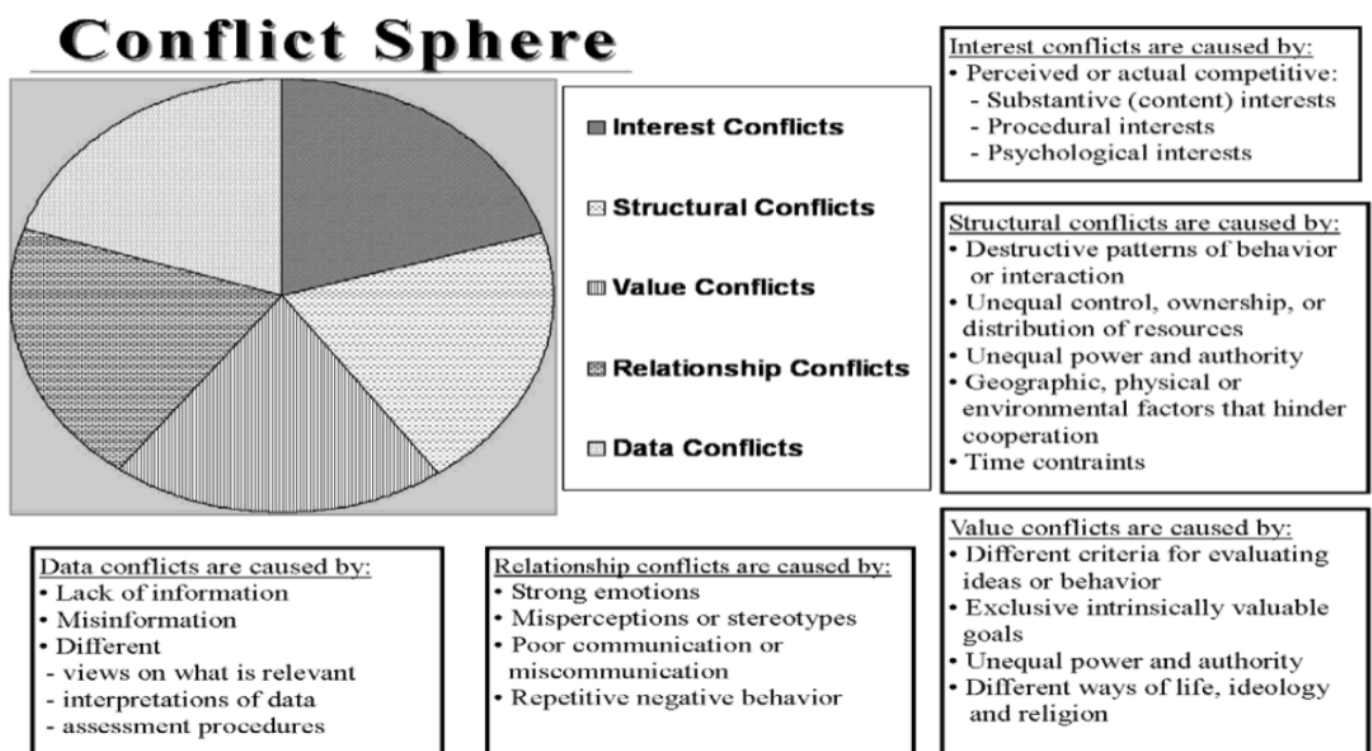
We agree with Christopher Moore [6] that “the conflict sphere” plays an important role in various aspects of the family business. The next illustration demonstrates conflict into five basic causes, with each category containing a few specific sub-causes.

3. Mediation procedure in family business cases

Family business conflicts are a complicated process that lasts for years and could be resolved by courts at different stages of judicial procedure. As we know, there are a lot of distinct alternative ways to resolve a dispute, where one of them is mediation – an entirely effective method to find a solution.

Currently, mediation is a relatively new thing, but a quite promising trend of legal services in Ukraine. At the legislative level in Ukraine, the mediation procedure still is not established, which complicates its development and dissemination. Despite this, mediation is used successfully in Ukrainian society.

The mediation in family-business conflicts is more than just involving a neutral third party (mediator) to guide the parties to settle. As we mentioned above, such conflicts are always very





emotional, and the causes of them often have hidden components. We share Michelle Jernigan's and Richard B. Lord's opinions who wrote: "While statutes, case law, or procedural rules throughout the country may define mediation differently, it is generally thought of in the family business context as a confidential process whereby a trained professional neutral helps promote healthy family communications and negotiations for the purpose of resolving conflict. In this same context, the mediator is a neutral, impartial facilitator who: 1) develops procedures for problem solving, communication and solution implementation, 2) serves as a translator of family and business members' communications, promoting empathy and understanding 3) educates family and business members on how to

negotiate and communicate more effectively, 4) serves as a reality-tester, exploring the validity of members' views and positions, 5) assists the members in reconciling differing interests, diminishing hostility and establishing trust, and 6) assists the members in drafting action plans for solution implementation" [7, p. 6]. Thus, the role of the mediator is to manage the process for the parties so that they can speak, he must help them better to understand the problems and help them to reach a solution that satisfies their needs.

Family business mediation is a significant example of resolving a dispute with a neutral mediator, which is based on the work and interests of the parties, not their position. We propose to characterize some advantages and disadvantages of media-

Mediation in family business	
Pros	Cons
Confidentiality. Every mediator must keep all information that he possesses in secret.	In the process of mediation, it could be defined that the parties do not have any business argue, but it is only a family issue. That is why it stops to be family business mediation.
Real-time economy. The process of mediation is much faster than judicial procedure, which can last for years or even decades.	It is almost impossible to put yourself in other's shoes. For mediator it is a specific dimension to combine business and personal interests.
Save money. It is a cheaper way to resolve a family business dispute, especially for a small one.	Inequality of the parties in power. The side that has more wealth will feel the advantage.
Mediation helps to prevent the arising of common conflicts in the future.	Big number of participants in the process. Despite the relatives, such disputes can affect business partners, stakeholders, etc.
Guarantee of a decision's fulfillment. If it were a successful mediation procedure, the parties would reach the agreement. If someone breaks the agreement, there will be a responsibility for him.	During resolving a family business dispute, there is a high probability of losing a business or even a family itself.

tion in the family business.

Every kind of process has some stages and periods. Mediation is not an exception. The process of mediation (even in family business cases) consists of phases (stages), each of which has its purpose and structure.

It is necessary for every successful media-

tion process, that each phase is coming after reaching all aims and tasks in the previous one.

We believe there are three main stages (phases) of family business mediation. Let us to describe every of them.

1. Preparing for mediation.

Preparation is a crucial step in the mediation



process. At this stage, the mediator has the opportunity to lay a solid foundation for a successful mediation. The preparation stage for a joint meeting involves working with two important components: establishing contacts with the parties and organizing space for mediation.

The mediator first talks to each participant in the conflict separately. Such a conversation is conducted in order to: inform the participants about the mediation procedure, the role of the mediator and participants in it and obtain consent to participate in mediation; explain the principles and rules of mediation and obtain the consent of the parties to adhere to these rules; make sure the meeting time is convenient for everyone; answer the questions of the parties to the conflict.

“The importance of this “introduction” by the mediator may be greater in the family business mediation context than in other types of mediations. This is due to the complexity of the interrelationships of the participants. The mediator will also make any disclosures that may be relevant to the members’ perception of her neutrality, as well as any clear or potential conflicts of interest” [7, p. 8], as Michelle Jernigan and Richard B. Lord said.

Before mediation, it is necessary to prepare the room for the general meeting: arrange chairs (better - around), bring all the documents and writing materials necessary for work, and the like.

2. Mediation process

First, the mediation starts with the introductory part. At this stage, the mediator introduces the participants to the mediation procedure and its principles, discusses the mediation rules with the parties, and answers the parties' questions. Before proceeding directly to the discussion of the content of the conflict situation, it is necessary to make sure that the parties understand the essence of the procedure, its principles and agree to abide by the rules and participate in mediation.

Secondly, the next part of the mediation process is a storytelling and identification of the problem. We agree with John J. Upchurch, Rodney A. Max and Stephen G. Fischer that “the central part of the mediation is the development of procedural and substantive solutions both long-range and short-range. As to procedure, the family participants will attempt to establish the following: protocols for communications; means of dealing with one another; means of making decisions; allocation

(of whatever the subject matter or issue is); alternative dispute resolution mechanism to resolve future disputes” [8, p. 6].

The final part of the mediation process is the solving of the problem. Here the parties are allowed to put forward possible options for resolving the conflict, discussing these options with a mediator, and making a final decision. If passions heat up during the discussion and it turns into a skirmish or the parties evade constructive dialogue under various pretexts, the mediator announces the need for caucuses to the parties.

3. Ending of the mediation

Unlike litigation, mediation is informal. But for the solution of the conflict to be effective and there are few positive consequences, it is necessary to draw up an agreement between the parties. The agreement clearly defines the ways of resolving the disputable situation, enshrines the rights and obligations of all participants.

The mediator at the stage of concluding the transaction helps the parties:

- determine in detail the solution (way of solving) each of the problems indicated by the parties that arose because of the conflict;
- check the agreements for realism (the parties' ability to complete the specified amount of work within a certain time frame);
- prepare the parties to the dispute to present the agreement they have reached to third parties (parents, head teacher, psychologist, and others), if there is such a need;
- determine the future relationships (interaction, communication) of the parties to the dispute.

The task of this stage is to receive feedback on the results of the work by the mediator. The parties assess, first, how satisfied they are with the agreement reached; secondly, how satisfied are they with the very procedure of negotiations with the participation of a mediator; and, finally, they assess their emotional state: it became easier for them after the mediation session, the psychological stress has dropped or, conversely, increased, etc. "

The mediator organizes the preparation of the plan, clarifies the wording, and writes down the decisions taken. When developing an agreement, attention is focused primarily on those points that require implementation in the first place, which are mandatory. This prepares the foundation for moving on to the next, more challenging issues. Often



the parties agree on the essence points, but they are not satisfied with the words recorded in the document, therefore the mediator must pay special attention to the fact that the agreement is acceptable and according to the stylistic aspect.

Discussions by the parties on the possible consequences of non-implementation of the agreement play a vital role at this stage. The parties should imagine the implications and actions of each other if one of them fails to implement the agreement.

Conclusions

Today, mediation is one of the most popular alternative ways of settling disputes (conflicts) in the developed countries of the world. It provides for the involvement of a conciliator (mediator) who helps the parties of the conflict to establish the communication process, to analyze the conflict situation in such a way that the parties can independently choose the solution that will satisfy the interests and needs of both parties of the dispute.

When we talk about conflicts in the family business, we mean three levels: family interests, business interests, and property interests. And a dispute that has arisen at one level can quickly move to others. Every family business is unique

and complex in its way, so standard solutions do not always work.

Mediation in the family business is that universal method of alternative dispute resolution, with the help of which it is possible to establish relationships both within the family and within the business, as interrelated and complementary categories.

Mediation is the best way to resolve this type of conflict, as it allows you to restore trust and relationships, and thus preserve the strength, assets, and values of the family and the company.

Unfortunately, nowadays mediation in Ukraine, in contrast to other European countries, is not regulated by law, which significantly reduces the effectiveness of its dissemination in our country. For example, there is no clear mechanism for training and certification of mediators, which is a consequence of the emergence in the Ukrainian mediation space of many entities that position themselves as professional mediators, but, unfortunately, do not have the appropriate profession to conduct mediation at the appropriate professional level. All this requires legal regulation at the legislative level.

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