

The **AEIOU** of mediating family disputes...

Mariette Peters
Judge
High Court (Family Division)
Kuala Lumpur



The A.E.I.O.U.s

A  **APPROACH**

E  **ENVIRONMENT**

I  **INDIVIDUAL**

O  **OUTCOME**

U  **UPCOME**

A – Approach

- **Facilitative**
- **Transformative**
- **Evaluative (Solutional)**

Approach – Facilitative

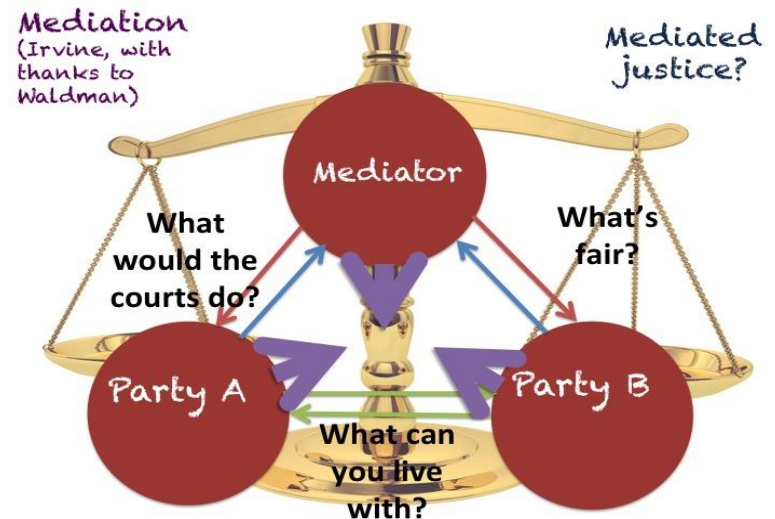
- Ask the relevant questions
- **Validates or justifies the parties' points of view**
- Assists the parties in finding and analysing options for resolution
- **Does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case.**
- Mediator in charge of the process but Parties in charge of the outcome.

Approach – Transformative

- **Relatively new concept**
- **It is a ‘repackaging’ of the facilitative approach**
- **Parties are in charge of the process and outcome**

Approach – Evaluative

- Point out the weaknesses of their cases
- Predict what a judge would be likely to do
- Make recommendations to the parties as to the outcome of the issues.
- Mediator in charge of the process and outcome



Approach – Solution

- Understand the issues
- Evaluate
- Have a solution in mind
 - Re-strategise
 - New solutions

Approach - Know your law and procedure...

- **Law Reform (Marriage & Divorce) Act 1976**
- **Guardianship of Infants Act 1961**
- **Adoption Act 1952**
- **Registration of Adoptions Act 1952**
- **Legitimacy Act 1961**
- **Married Women Act 1957**
- **Married Women and Children (Maintenance) Act 1950**
- **Married Women and Children (Enforcement of Maintenance) Act 1950**
- **Contracts Act 1950**
- **Federal Constitution**
- **Rules of Court 2012**
- **Courts of Judicature Act 1964**
- **Divorce and Matrimonial Proceedings Rules 1980**
- **Evidence Act 1950**
- **Evidence of Child Witnesses Act 2007**

Approach – Knowing what to do, how to do it, and whom to deal with

- **Maintenance**
 - Cause of breakdown
 - Means and needs
- Damages against third party for adultery
- **Division of Asset/ other properties**
- **Children**
 - Maintenance
 - Custody, care, control

Section 58 of the LRA –

Damages for adultery may be claimed against co-respondent

- (1) On a petition for divorce in which adultery is alleged, or in the answer of a party to the marriage praying for divorce and alleging adultery, the party shall make the alleged adulterer or adulteress a co-respondent, unless excused by the court on special grounds from doing so.**
- (2) A petition under subsection (1) may include a prayer that the co-respondent be condemned in damages in respect of the alleged adultery.**

Approach – Evaluative

- **Saves time**
- **Instill confidence**
- **Light at the end of the tunnel**
- **Legally compliant**

E – Environment

- **Suitable environment**
 - **Calming**
 - **Pacifying**
- **Lighting**
- **Temperature**
- **Nourishment**
- **Judge's chambers**
- **Judge's lounge**
- **Children's room**

Judge's Chambers



Judge's Chambers



Judge's Chambers



Judge's Lounge/ Room



Judge's Lounge/ Room



Judge's Lounge/ Room



Judge's Lounge/ Room



Judge's Lounge/ Room



Children's Room



Children's Room



Children's Room



I – Individuals

- **Parties**
- **Third party
(alleged adulterer)**
- **Solicitors**
- **Family members**
- **Children**

Section 88 of LRA – Power for court to make order for custody

(2) In deciding in whose custody a child should be placed the paramount consideration shall be the welfare of the child and subject to this the court shall have regard –

(a) to the wishes of the parents of the child; and

(b) to the wishes of the child, where he or she is of an age to express an independent opinion

Individuals – Listening

- **Active listening**
- **Without fault-finding**
- **Sympathetic listening**
- **Empathetic listening**
- **Relational listening**
- **Task-focus listening**

Individual – Factors to consider

- **Age**
- **Gender**
- **Ethnicity**

Individual – Factors to consider

- **Concept of Marriage**
- **Relationship between parents and children**
- **Gifts/ dowry given during marriage**
- **Role of extended family**
- **Roles of husband and wife**

- ***Changing Patterns of Marriage and Household Formation in Peninsular Malaysia***
 - **Sojourn: Journal of Social Issues in Southeast Asia - Vol. 5, No. 2 (AUGUST 1990)**
 - **Tan Poo Chang and Gavin W. Jones,**

- ***The Changing Spousal Differentials in Socio-demographic Characteristics in Malaysia - Institutions and Economies Vol. 13, No. 4, October 2021 - Nai Peng Tey***

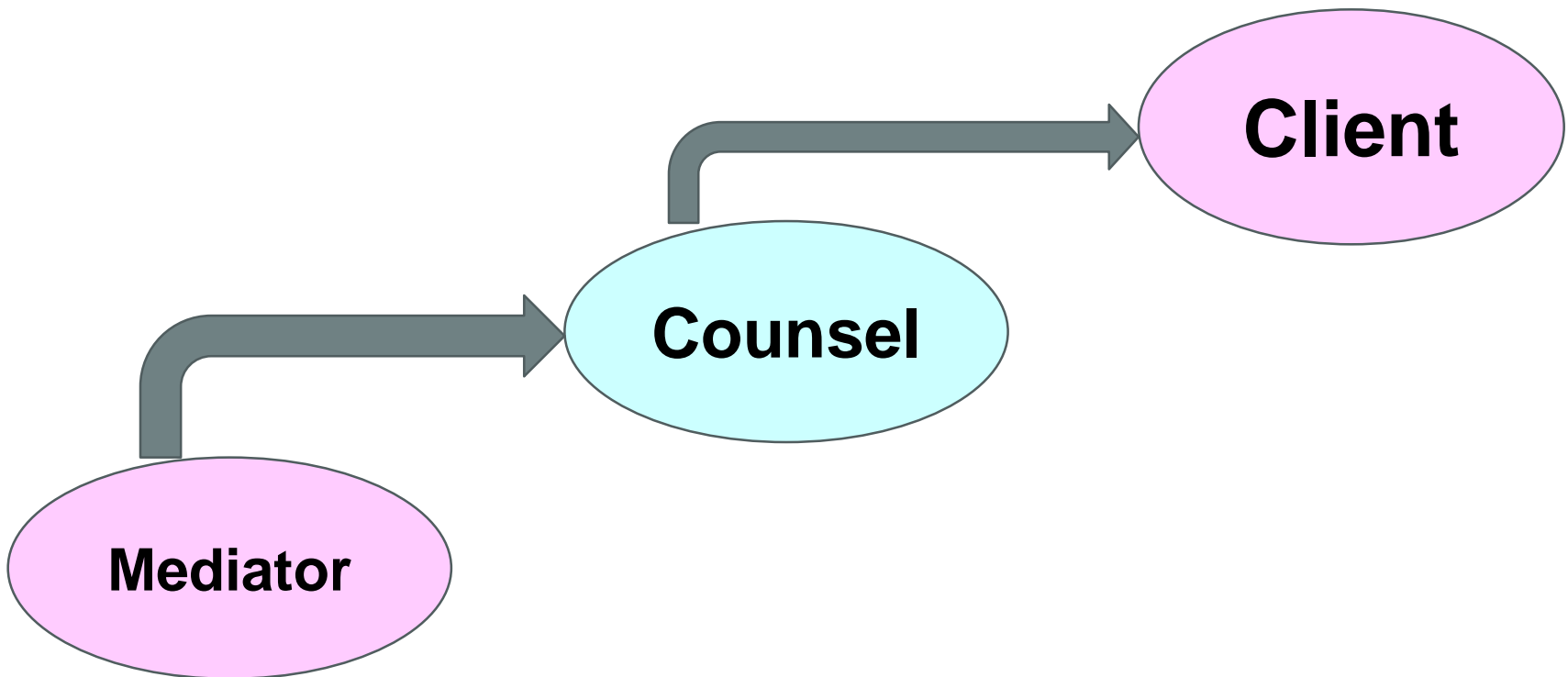
Individuals – individually

- **Caucus style**
 - **Freer to speak/vent**
 - **Avoid ‘shouting matches’**
 - **Easier to lower expectations**

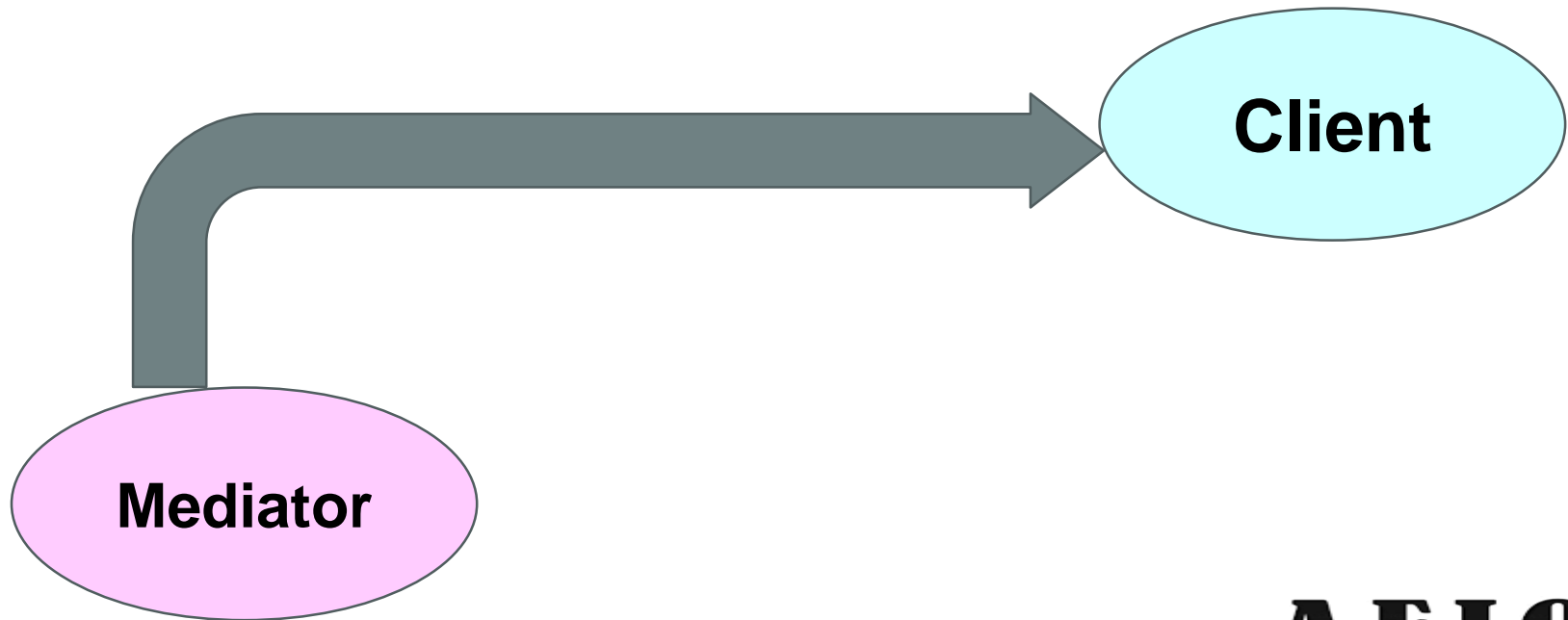
Individual – Lowering expectation

- **Pruning**
- **Recalibrating**
- **Downsizing**
- **Tempering**
- **Re-anchoring**
- **Adjusting**

Outcome – sell the solution



Outcome – sell the solution



A E I O U

Outcome – if mediation fails?

- **BATNA**
 - **Best Alternative To a Negotiated Agreement**
- **WATNA**
 - **Worst Alternative To a Negotiated Agreement**
- **MLATNA**
 - **Most likely Alternative To a Negotiated Agreement**

Outcome – Push and pull factors

- Time
- Expense
- Emotional toll

Outcome – the 3Rs

- Reasonable
- **Realistic**
- **Resilient**

U – Up-come

- Whether the settlement/ resolution is something that the parties can move forward with
- Family cases has to be forward moving
- Dealing with the loss
- New phase
- Therapeutic

A E I O U

A nuanced mediation

- **The layers**
- **The added acrimony**
- **The multi-disciplines**
- **The loss**
- **The unrepresented**
- **The future**

The A.E.I.O.U.s

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A word cloud where the central focus is the words 'THANK YOU' in large, bold, blue capital letters. Surrounding this central text are numerous words in various languages and scripts, including English, Spanish, French, German, Italian, Dutch, and others. The words are arranged in a roughly circular pattern, with some appearing vertically and others horizontally. The colors range from light blue to dark blue. The overall composition is a collage of gratitude words from different cultures.

client, OBRIGADO, communication, dziękuję, дякую, business, DANKKE, logotype, kiitos, спасибо, mahalo, תודות, dakujem, client, TACK, merci, DANKKE, logotype, kiitos, спасибо, mahalo, תודות, dank je, GRAZIE, merce, sagolun, communication, THANK YOU, grazzi, dankeschon, diolch, AKUN, ngiyabonga, misaotra, sukriya, maururu, obrigado, arigato, TAKK, gracias, TAK, мерси, maururu, obrigado, dakujem, dank je, GRAZIE, merce