The Environment of Conflict Mediation and Utilization of Coaching in Korea

Korea Association of Mediators
Chang Hee WON
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1. History of Mediation in Korea
Labor dispute mediation started first in 1953

- Regional Labor Relations Commission (RLRC) and National Labor Relations Commission (NLRC) was established in 1953 and 1954 respectively according to Labor Relations Commission Act.
- A labor mediation committee consists of labor, employer and public-interest committee member in a tripartite form.
- The committee members are mostly part-timers who are appointed for specific cases with 3 years’ term.
- The labor mediation committee provides mediation services to disputes between a labor union and employer in collective bargaining to set wage rates and working conditions.
- NLRC set up labor mediation committees for teachers in 1999 and governmental officers in 2005.
Construction dispute mediation set up in 1975

◆ Construction Dispute Mediation Committee was established in 1975 according to Construction Industry Act.
◆ A construction mediation committee consists of less than 5 members appointed by the Chair.
◆ The committee members are mostly part-timers who are appointed for specific cases with 3 years’ term.
◆ The construction mediation committee provides a mediation proposal to dispute parties. The parties should notice whether they accept the proposal or not within 15 days.
Consumer dispute mediation set up in 1986

- Consumer Dispute Mediation Committee was established in 1986 according to Consumer Protection Act
- A consumer mediation committee consists of 150 members appointed by the Chair. Five members are full-timers
- Five of the committee members are full-timers and all others part-timers who are appointed for specific cases with 3 years’ term.
- A consumer mediation meeting consists of 5~9 members while a consumer mediation session consists of 2~4.
Government dispute mediation committees widely spread in 1990s and 2000s

- Environment Dispute Mediation Committee was established in 1990 according to Environment Dispute Mediation Act. The committee consists of less than 20 members.
- E-Commerce Dispute Mediation Committee was established in 2002. The committee consists of 15~50 members.
- Fair Trade Mediation Agency was established in 2007 to set up Fair Trade Mediation Council(FTMC), providing mediation services. The Council consists of less than 7 members.
- Contents Dispute Resolution Committee was established in 2010. The committee consists of 10~30 members.
Court-annexed mediation has developed since 1990

- **Civil Mediation** was introduced in 1990 according to Civil Mediation Act. A party may apply for mediation or the court can submit the case to mediation on the condition of both parties’ consent.
- Early mediation system was established in 2010, which means the court can submit a case to mediation according to its decision.
- **Family Mediation** was introduced in 1990 by Family Litigation Act.
- Divorce-related cases should be submitted to mediation before litigation.
- **Criminal Mediation** was established in 2010 by Crime Victim Protection Act.
- A prosecutor can submit a criminal case to mediation when either party applies or the prosecutor recognizes its necessity.
Private dispute mediation rarely served so far

- Korean Commercial Arbitration Board (KCAB) was established and approved by Arbitration Act in 1970. It has been subsidized by Ministry of Industry, Trade and Energy (MOTIE) and Korea International Trade Association.

- Korea Association of Mediation and Arbitration (KAMA) was established in 2007. KAMA had a role to serve private mediation to foreign investors but has focused on mediator certificates.

- Dankook Center for Dispute Resolution was established in 2007. It has conducted researches and published a journal.

- Korea Social Conflict Resolution Center was established in 2008 and has conducted public conflict research and opinions.

- Korea ADR Center was established in 2010. It has provided mediation certificate programs and conducted research projects.

- Korea Institute of Conflict Management and Mediation (KiCoMM) was established in 2015. It has provided mediation certificate programs, focusing psychology and counselling.
2. Characteristics of Mediation in the Public Sector
A. Judicial Mediation

- There are three types of judicial mediation: civil mediation, family mediation, and criminal mediation.
- Mediation committee consists of one judge and two mediators in a tripartite form.
- A typical mediation procedure
  - Pleadings by a plaintiff and defendant
  - Questioning and hearing of the case
  - Urging a compromise
  - Success or failure
  - In case of failure, compulsory mediation proposal is offered.
  - If declined, the case returns to the litigation procedure.
Procedural Flow of Civil Mediation

1. Apply for Mediation
2. Bring a Lawsuit
3. Decision to submit to Mediation
4. Judge in charge of Mediation (JCM)
   - Mediation by JCM
   - Mediation by Mediation Committee *
5. Success of Mediation
   - Decision Replacing Mediation
   - Confirmation
6. Failure of Mediation
   - Objection
   - Return to Lawsuit

* Mediation Committee in the Court
  - Mediation Committee Connected to the Court
    - Korean Commercial Arbitration Board
    - Korea Fair Trade Mediation Agency
    - Korea Consumer Agency
    - Korea Association of Beommu Sa Lawyer
    - Seoul Bar Association
    - Others (10 Organizations)
Procedure of Family Mediation

1. Apply for Mediation
2. Bring a Lawsuit
3. Decision to submit to Mediation
4. Mediation Committee
   - Success of Mediation
     - Report Divorce
   - Failure of Mediation
     - Apply for Lawsuit
     - Compulsory Mediation
       - Objection
         - Divorce by Judgment
9. Divorce by Judgment
   - Oral Proceedings
     - Judgement
     - Report Divorce
Procedure of Criminal Mediation

Accused or General Criminal Affairs

Decision to submit to Mediation

Mediation Committee

Success of Mediation
Non-prosecution

Failure of Mediation

Investigation

Prosecution

Non-prosecution

If a serious affair or clear crime
B. Administrative Mediation

◆ There are so many types of administrative mediation, say one or more mediation committees per ministry.

◆ Major mediation committees are for labor, construction, consumer, environment, and commercial disputes.

◆ A typical mediation procedure
  ✓ Pleadings by a petitioner and respondent
  ✓ Questioning and hearing of the case
  ✓ Urging a compromise or offering a proposal
  ✓ If accepted, the case ends.
  ✓ If declined, the case may be brought to adjudication or lawsuit or legal action.
National Labor Relations Commission

Collective Labor Disputes (Interest Disputes)

Private Mediators

National Labor Relations Commission

Mediation Committee

Private Mediation

Success or Failure

Labor Unions

Eligible to Strike

Very Few
National Environment Conflict Resolution Commission

- Environment Conflict
  - District Court
  - National Environment Conflict Resolution Commission
  - Seoul Administrative Court
    - Objection
  - Conciliation, Mediation, Arbitration
    - Administrative Litigation
  - Civil Litigation
Korea Consumer Agency

- Consumer Disputes
  - District Court
  - Korea Consumer Agency
    - Consumer Dispute Mediation Committee
  - Fair Trade Commission
    - Transfer
  - Mediation
  - Adjudication

Conflicts Mediation and Coaching in Korea
Korean Commercial Arbitration Board & Korea Fair Trade Mediation Agency

- Commercial Disputes
  - District Court
  - Korean Commercial Arbitration Board
    - Mediation/Arbitration Committee
  - Fair Trade Commission
    - Korea Fair Trade Mediation Agency

- Civil Litigation
- Mediation, Arbitration
- Mediation
C. Public Mediators’ Qualification

◆ Court or administrative mediation committee usually consists of three or more members. Most of the members are appointed as part-timers for 1~3 years, mediating 1 or 2 hours each time.

◆ Their qualification is regulated in the act they belong to.
  ✓ High-ranking government officers who worked for 3 or more years
  ✓ Judges, prosecutors and attorneys who worked for 6 or more years
  ✓ Associate professors who worked for 3 or more years
  ✓ Field experts approved who worked for 15 or more years

◆ No qualification for mediation skills!
D. Cost of Public Mediation

◆ Court mediation does not impose a cost on the plaintiff when the court submits the case to mediation or impose a small stamp duty on the petitioner when the petitioner applies for mediation.

◆ It does not cost to apply for administrative mediations. Labor, construction, environment, consumer, and fair trade mediation do not require any stamp duty on applying for mediation.
3. Bottlenecks of Mediation in the Private Sector
Activities of Private Mediation Organizations

- Korea Association of Mediators (2017): advertisement
- Korea Institute of Conflict Management & Mediation (2015): certificate trainings, counselling
- Korea ADR Center (2010): certificate trainings, research
- Korea Center for Social Conflict Resolution (2008): trainings, research
- Korea Mediation and Arbitration Association (2007): certificate trainings
- Dankook Center for Dispute Resolution (2007): research, journal
- Conflict Resolution Center, Women Making Peace (2003): youth and women trainings
Characteristics of Mediation in the Private Sector

◆ Most private mediation organizations have engaged in trainings and research but not in mediation itself.

◆ Private mediators are highly trained but do not have opportunities to conduct mediation in the private mediation market.

Why private mediators don’t engage in mediation but in trainings and research?
Bottlenecks of Private Mediation

1. Public mediation is provided for free under court or government control in almost all the fields of disputes, leaving no room for private mediation.

2. The qualification of public mediation committee focuses on social status and occupational experience but not on mediation knowledge and skills.

* The Attorneys-at-Law Act

Article 109 Anyone described below can be imprisoned for up to 7 years or fined up to 50 million won.

Those who dealt with arbitration and conciliation for benefits as a non-attorney regard to:
1) litigation case, non-litigation case, family mediation or adjudication case;
2) claim or objection to administrative adjudication or examination and appeal for disobedience to an administrative organ;
3) criminal investigation treated by an investigative agency;
4) other legal cases.
Bottlenecks of Private Mediation (cont’d)

4. People and enterprises do not like to pay for resolving their conflicts and disputes in Korea.
5. Korean society has a culture people would conceal conflicts inside their own organization.
6. Korean government does not support for private mediation systems and for training mediators.
4. History and Effectiveness of Conflict Coaching
What is Coaching?

◆ Coaching is derived from coach which means ‘horse.’ Coaching was used for transportation from one place to another (Park et al., 2018).

◆ Coaching is defined as ‘partnering with clients in a thought-provoking and creative process that inspires them to maximize their personal and professional potential.’ (ICF)

◆ Coaching has various values such as
  ✓ a value of achieving one’s needs
  ✓ a value of developing ability to change
  ✓ a value of promoting self-awareness
  (Won, 2019)
History of Conflict Coaching

- Conflict coaching emerged as a combination of conflict and coaching when conflict played a role in managers coaching in 1994 or when coaching was used in conflict resolution in 1993 (Jones & Brinkert, 2008).
- The first conflict coaching program is ‘the problem solving for one (PS1)’ developed at Macquarie University, Australia in 1993.
- The name ‘conflict coaching’ was used for the first time at Temple University, USA in 1996.
What is conflict coaching?

Definition of conflict coaching

“face-to-face communication between a coach and a client in which the coach helps the client develop skills and strategy to solve his or her conflict.”

Usual pattern of conflict coaching

- A coach and a client sign on coaching contract.
- A coach and a client participate in an hour session weekly or every two weeks.
- The conflict coaching ends in three months.
- The coach gives feedbacks to the client
- The client gives an assessment to the coach.
Effectiveness of Conflict Coaching in Korea

✦ Difficulty in using mediation for conflicts in Korea:
  ✓ hard to receive benefits according to Attorneys-at-Law Act;
  ✓ hard to receive benefits because of free mediation services in public sectors;
  ✓ conflict parties reluctant to show up together in front of the mediator.

✦ High possibility of conflict coaching in Korea:
  ✓ conflict coaching is itself a business;
  ✓ conflict coaching is not competitive with mediation services in public sectors;
  ✓ conflict coaching works for one party, not both parties.
5. Utilization of Coaching in Managing Conflicts
Training CR Experts for Conflict Coaching

◆ Most mediators have been trained through certificate or professional programs of conflict resolution or mediation.
◆ The mediators have quite much knowledge and skills of conflict resolution or mediation.
◆ If the mediators are trained for conflict coaching, they can provide its service. This is a regular training path of conflict coaching.
◆ If a professional coach is trained for conflict resolution, the coach may conduct conflict coaching. This is a rare case because conflict resolution is one of many topics which he or she can deal with.
Expansion of Services to Conflict Coaching

◆ Most mediators have engaged in trainings and research on conflict resolution.
◆ They can provide conflict coaching services after they are familiar with coaching knowledge and skills through learning conflict coaching.
◆ Now they can expand their services to include conflict coaching beyond trainings and research although they can’t conduct conflict mediation.
◆ Conflict coaching is an additional business that Korean mediators can pursue.
Support for Conflict Coaching Business

- For successful conflict coaching business (CCB), it is necessary to establish CCB Model that can be used easily.
- It is also beneficial to set up an organization which represents CCB professionals.
- CCB need to get a recognition and support from related organizations such as Korea Coach Association.
- CCB need to acquire governmental and legal supports.
References


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Thank you for your attention!