

**BASIC INFORMAL
RESOLUTION
TRAINING -
MEDIATION**

July 2023



The Texas A&M University System
System Ethics and Compliance Office (SECO)
All Rights Reserved


1

1

MEDIATION TRAINING (BASIC)

Your Presenters

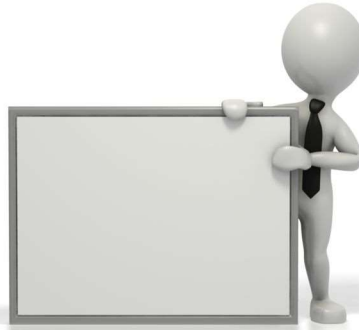
<p>Rick Olshak Director, Title IX and Student Conduct Compliance The Texas A&M University System</p>	<p>Joseph Alfe Informal Resolution Facilitator & Mediator Texas A&M University</p>
---	---

The Texas A&M University System 

2

2

Advisory Notices



3



Advisory Notice #1

This training material is provided for public review in accordance with federal law. The material may be utilized only for non-commercial educational and training purposes with the user assuming all risk for utilization of any content herein. Commercial utilization of this material is strictly prohibited.



4



Advisory Notice #2

The presentation handout is intentionally text-heavy in order to serve as an ongoing resource for all civil rights mediators in The Texas A&M University System. Please annotate the document as needed to better ensure that this material is meaningful for you.



Advisory Notice #3

The presenters are not providing legal advice; the presenters are compliance officers and mediators and are offering compliance guidance as provided for under System Regulation 08.01.01. System regulations are subject solely to the interpretation of the System Offices.





Advisory Notice #4

The training program includes material under the current System Regulation 08.01.01, previews some of the changes coming under the next regulation and demonstrates areas where we will be transitioning to new practices prior to the implementation of the new regulation.



7



Advisory Notice #5

Please note that the material being addressed in this program may involve explicit language that some may find offensive or triggering. Nothing is done in this training for “shock value” but will be consistent with the real-world language and details that we are confronted with in civil rights compliance work. If you find yourself reacting negatively, please step away to the degree that you need to, and please seek appropriate assistance if necessary.



8

Ground Rules



Ground Rules

1. We intend to start and end on time. Please be prompt.
2. There will be a forty-five minute break for lunch (Tuesday and Wednesday), a ninety-minute break for lunch (Thursday) and ten-minute breaks each morning and afternoon.
3. Please minimize distractions (cell phone, email, internet) to focus on the presentation.





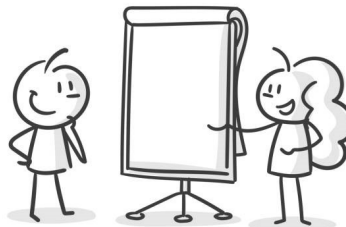
Ground Rules

4. We will provide opportunities for questions but ask you to keep track of questions that you have and be sure to ask any unanswered questions before the end of the training program.
5. Each person who will mediate the resolution of civil rights complaints on behalf of a system member or in the System Offices must pass a post-test following the completion of this program.



11

Learning Outcomes



12



Learning Outcomes

As a result of completing this training, attendees should:

1. Be able to define facilitative mediation and distinguish it from other models of mediation practice.
2. Be able to define the steps of the mediation process.
3. Be able to articulate and apply listening and questioning skills as needed in the mediation process.
4. Be able to define the components of an opening statement in mediation.
5. Be able to identify the potential effects of culture on the mediation process.



Learning Outcomes

As a result of completing this training, attendees should:

6. Be able to identify the forms of power and the roles they play in conflict.
7. Be able to identify the purpose of a caucus.
8. Be able to articulate options for managing impasse.
9. Be able to articulate the conditions and best practices for terminating a mediation session.
10. Be able to develop a mediated agreement.





Day One Agenda

1. Introduction
2. Defining Mediation
3. Overview of the Mediation Process
4. Revisiting Conflict Theory
5. Step One: The Opening Statement
6. Step Two: Telling the Story



15



Introduction of Post-Test

We are providing a twenty-question test that we will be utilizing to test your knowledge following the training program. Please keep this document at hand throughout the training and make notes as needed.

Instructions for completing the post-test will be provided at the end of the training program. In order to serve as a mediator in the civil rights process, you must score at least an 80% on the post-test.



16



Defining Mediation



17



Four Selected Conflict Resolution Methods

- o Degrees of formality and structure



- o All of these methods are voluntary methods of conflict resolution that require parties who are acting in good faith



18



Informal Resolution: Practice

Overview of the Process

Reporting & Intake

1. Closure
2. Supportive Measures
3. Emergency Actions
4. **Informal Resolution**
5. Formal Resolution

Investigation

1. Dismissal / Closure
2. **Informal Resolution**
3. Adjudication

Adjudication

1. **Informal Resolution**
2. Decision
3. Appeal

Post-Adjudication: Informal Resolution can be utilized to complement the formal resolution process once a case has been adjudicated.



Mediation

Models of Mediation Practice

Transformative Mediation

In this form of mediation, the focus is less on resolving specific disputes and more on working to improve (transform) the relationship between parties and how they view conflict. This is generally a long-term approach that has some resemblance to counseling. The process is party-based, focusing on empowerment of the parties.





Mediation

Models of Mediation Practice

Evaluative Mediation

In this form of mediation, the focus is on parties making their “cases” to a mediator and the mediator determining (based on subject matter expertise) who would be likely to prevail in court, often offering recommendations for resolution. This is a strongly rights-based approach that focuses less on the parties and their interests.



Mediation

Models of Mediation Practice

Social Justice Mediation

In this form of mediation, the mediators operate from the perspective that the perspectives of all parties are informed by racism, classism, sexism and other forms of social inequities. As a result, conflicts must be engaged at this level for socially just solutions to be created. This process is party-based, and influenced by post-Colonial studies, critical race theory, and multicultural education.





Mediation

Models of Mediation Practice

Legal Forms of Mediation

The legal system employs a wide range of things that are called mediation but vary greatly. Family mediation, for example, can be a party-based process that aids families in communicating better or resolve custody issues, where divorce mediation addresses legal rights, while also trying to address parties and interests. In the mediation of business matters, some applications of mediation are simply attorney mediators resolving points of law for disputants, with no focus on the parties or their interests.



Mediation

Models of Mediation Practice

Hybrid Models of Mediation

In some cases, mediation is paired with another CR Menu item to create a flexible approach. This is often employed when different parts of the conflict might require different approaches, or where parties are willing to enter mediation but may not be motivated to reach an agreement without the possibility of a third-party decision-maker (Med-Arb). Hybrid forms of mediation that include conflict coaching, shuttle diplomacy, arbitration, and adjudication can all be of value.





What is Facilitative Mediation?

- **Facilitative Mediation** is a voluntary, structured process where a trained multipartial facilitator fosters an environment for open communication between the parties. Goals of mediation may include improving relationships, resolving issues, and/or achieving specific outcomes. Facilitative Mediation is rooted in the values of safety, multi-partiality, self-determination, and privacy (Yampolsky & Olshak, 2021).



25



What is Facilitative Mediation?

- Facilitative Mediation is not:
 - Adjudication
 - Counseling
 - Recommending or making decisions for parties
 - Determining right or wrong in a conflict



26



What is Facilitative Mediation?

- If done well, Facilitative Mediation can:
 - Solve the underlying issue(s) that brought the parties to mediation
 - Role model methods of communication and conflict resolution skills that the parties take with them when they leave the room
 - Be transformative in the relationships of the parties
 - Be rooted in social justice to ensure that differences in cultural perspectives, systemic inequities, and microaggressions are accounted for in both the facilitative process and any agreement



27



What is Multipartiality?

- Multipartiality is the recognition that none of us are entirely neutral or “removed” from situations and our community. Rather, mediators are partial to getting the interests of all parties met in a manner that protects the integrity of all individuals, institutions, and the greater community. In multipartiality, there is empathic interaction with everyone involved in the conflict or system at a given point in time, without favoring one party. Impartiality does not mean alternately taking sides for one side and for the other. However, it is acceptable for a mediator (or one of the mediators within a team of mediators) to temporarily take sides by providing special assistance to one of the parties. The goal of multipartiality is to give all participants the means and opportunity to tell their stories.



28



What is Multipartiality?

- As mediators, we are objective (or neutral) only in that we are removed from the particular conflict in question, that we are able to assist the parties with no personal interest in the resolution, and that we will refrain from making judgments about the parties or the conflict that compromise our ability to facilitate the process.



29



Conditions for Mediation

- Non-adjudicatory in nature (no formal findings)
- Voluntary participation by all parties
- Good faith exercised by all parties
- Privacy
- Safety
- Self-Determination
- Qualified Facilitator (trained, experienced, multi-party, non-directive, and not invested in parties, content, or outcome)



30



Prohibitions for Mediation

- Any cases involving sexual assault, dating/domestic violence, rape, statutory rape, or any case in which imminent threats of harm to any party may exist.
- Cases in which there is a student complainant and an employee respondent (sex-based)
- Cases involving minors



31



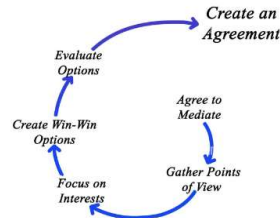
Types of mediated outcomes

1. No formal agreement
2. Verbal agreement
3. Written agreement (non-enforceable)
4. Written agreement (enforceable)

Mediated agreements are non-adjudicatory in nature; for any civil rights complaint to be resolved through mediation it will require a withdrawal of the complaint once the parties have reached an agreement.



32

Mediation Process**Overview of the Mediation Process**

33

Mediation Process**Overview of the Facilitative Mediation Process**

Intake and Preparation

FMPS1: The Opening Statement

FMPS2: Telling the Story (Past Orientation)

FMPS3: Setting the Agenda (Current Orientation)

FMPS4: Developing Options (Future Orientation)

FMPS5: Testing Options (Future Orientation)

FMPS6: Creating the Agreement

Outtake



34

MEDIATION TRAINING (BASIC)

Mediation Process

The Facilitative Mediation Process

PAST

- Step 1: Introductory Statement
- Step 2: Telling the Story

PRESENT

- Step 3: Setting the Agenda

FUTURE

- Step 4: Developing Options
- Step 5: Testing Options
- Step 6: Creating the Agreement

© 2023 – Richard T. Olshak

The Texas A&M University System

35

35

MEDIATION TRAINING (BASIC)

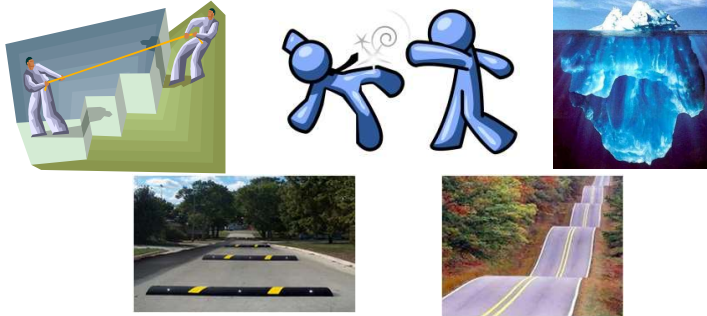
Defining Mediation

The Texas A&M University System

36

36

MEDIATION TRAINING (BASIC)



Revisiting Conflict Theory

© 2023 – Richard T. Olshak

The Texas A&M University System



37

37

MEDIATION TRAINING (BASIC)



Revisiting Conflict Theory

- a. Definition of Conflict
- b. Positions, Interests, & Needs
- c. Perceptions, Assumptions, & Values
- d. The Lens Model of Conflict
- e. Power and Conflict

© 2023 – Richard T. Olshak

The Texas A&M University System



38

38



Definition of Conflict

CONFLICT is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from others in achieving their goals.

(Wilmot & Hocker)



Perceptions, Assumptions, and Values

CONFLICT is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from others in achieving their goals.

(Wilmot & Hocker)





Conflict

The PIN Model of Conflict

POSITIONS

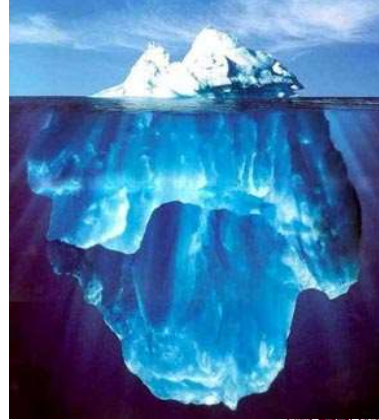
(what we say we want)

INTERESTS

(what we really want)

NEEDS

(what we must have)

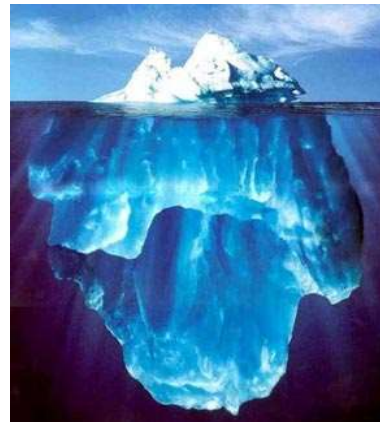


41



Barriers to Conflict Resolution

- **Visible**
 - Behaviors
 - Positions
- **Not Visible**
 - Perceptions
 - Assumptions
 - Attitudes
 - Beliefs
 - Values

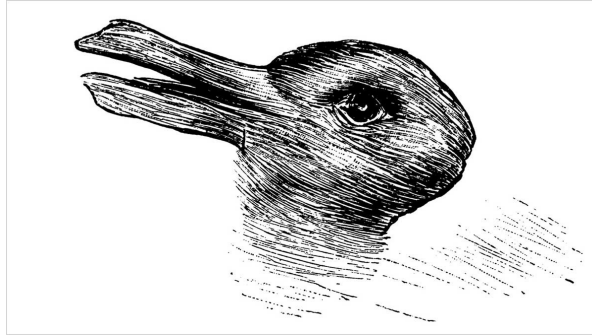


42



Perceptions...

- Write down the first thing that you see...



43



Perceptions...

- Write down the first thing that you see...



44



Assumptions...

- **Write down the first answer that comes to mind...**

It is a hot August afternoon. The location is the living room in an old Victorian mansion. The 7-foot window is open, and the curtains are blowing in the breeze generated by the thunderstorm that just passed through the area. On the floor are the bodies of Bill and Mary. They are surrounded by puddles of water and broken glass. Please close your eyes and picture the scene in your head. Neither Bill nor Mary has clothing on. How did they die?



45



Assumptions...

- **Write down the first answer that comes to mind...**

There is a cabin on the side of a mountain. Three people are inside; they are dead. How did they die?



46



Assumptions...

- **Write down the first answer that comes to mind...**

A man leaves home and makes three left turns. He returns home again. On the way he passed two men with masks. Who are the two men?



47



Assumptions...

- **Write down the first answer that comes to mind...**

It is a hot August afternoon. The location is the living room in an old Victorian mansion. The 7-foot window is open, and the curtains are blowing in the breeze generated by the thunderstorm that just passed through the area. On the floor are the bodies of Bill and Mary. They are surrounded by puddles of water and broken glass. Please close your eyes and picture the scene in your head. Neither Bill nor Mary has clothing on. How did they die?

Bill and Mary are fish. They died when the wind from the thunderstorm blew their fishbowl over and they were out of water for too long.



48



Assumptions...

- **Write down the first answer that comes to mind...**

There is a cabin on the side of a mountain. Three people are inside; they are dead. How did they die?

The three people are in an airplane cabin that crashed into the side of the mountain. They died in the crash.



Assumptions...

- **Write down the first answer that comes to mind...**

A man leaves home and makes three left turns. He returns home again. On the way he passed two men with masks. Who are the two men?

The umpire and the catcher. The man is running around the bases after hitting a homerun in a baseball game.





The Lens Model of Conflict

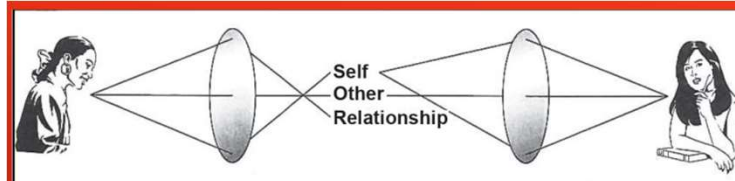


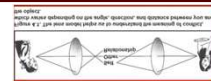
Figure 4.1. The lens model helps us to understand the meaning of conflict, which varies depending on the angle, direction, and distance between you and the object.



51



The Lens Model of Conflict



Fundamental Aspects of Conflict:

- (1) communication behaviors
- (2) the perceptions of those behaviors

Each person has a view of:

- (1) themselves
- (2) the other person
- (3) the relationship

Each person looks at the same conflict through a different lens



52

MEDIATION TRAINING (BASIC)



Conflict Theory



The Texas A&M University System  53

53

MEDIATION TRAINING (BASIC)



Step 1: Introductory Statement

The Texas A&M University System  54

54

MEDIATION TRAINING (BASIC)

Mediation Process

The Facilitative Mediation Process

PAST

- Step 1: Introductory Statement
- Step 2: Telling the Story

© 2023 – Richard T. Olshak The Texas A&M University System

55

55

MEDIATION TRAINING (BASIC)

Beginning the Mediation

In Mediation, nothing is left to chance...

© 2023 – Richard T. Olshak The Texas A&M University System

56

56



Beginning the Mediation

At the mediation:

- Single Mediator or Co-Mediation Model
- Arrival of parties (physical or electronic)
- If in person, the physical arrangement is important (table, chairs, paper, pens, water, tissue, room, temperature, etc.)
- Involvement of third parties in the mediation process (institutional protocols)
- Time allotted
- What happens if additional time is needed?
- Introductory Statement (starts the actual session)



57



Beginning the Mediation

Introductory Statement (elements):

- Establish party names
- Explain the mediation process
- Establish the responsibility and authority of the mediator
- Outline the ground rules
- Define privacy and note-taking
- Describe the Caucusing process
- Answers questions of parties
- Protect the member (Agreement to Mediate form)



58



Beginning the Mediation

Homework:

- Develop an Introductory Statement that contains all the necessary elements while placing it in language that you are comfortable with.



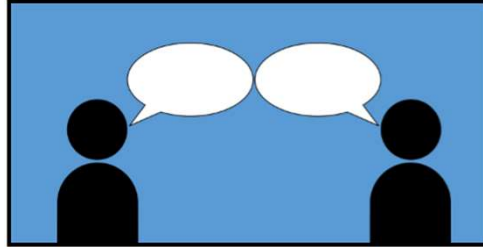
59



Introductory Statement



60



Step 2: Telling the Story



61



The Facilitative Mediation Process

PAST

- Step 1: Introductory Statement
- **Step 2: Telling the Story**

Order of Events:

1. Party A tells their story as the mediator develops an issue list
2. Party B tells their story as the mediator develops an issue list
3. Party A responds to Party B and provides additional information
4. Party B responds to Party A and provides additional information
5. This process may be repeated as long as it is productive



62



Telling the Story

Purposes of this step in the process:

- Provide space for both/all parties to share their complete stories without interruption
- Allow parties to appropriately voice strong emotions
- Promote listening by both parties
- Assist the mediator in gathering information through questioning and listening
- Question the perceptions and assumptions of both the story-teller and the listener
- Assist the mediator in finding out what the parties want (or say they want), as well as understand their underlying interests and needs



63



Telling the Story

Characteristics of this step in the process:

- Uninterrupted Time
- Effective listening skills on the part of the mediator
- Effective questioning skills on the part of the mediator
- De-escalation of emotional statements by parties and reframing of statements to move past blocking language/behaviors
- May engage in several “rounds” with parties who feel the need to respond to information provided
- Develop a “shopping list” of possible solutions that we will return to in Step Four



64



Telling the Story

Cautions for this step in the process:

- Don't assume that intake notes regarding conflict are accurate
- Don't interrupt the parties during individual story-telling
- Don't share personal stories with the parties
- Set ground rules up front so that we don't give the appearance of making up rules as we go along (favoritism)
- Use questions to gain more information; never accept the "Reader'sDigest" condensed version of the story (don't make assumptions)




Telling the Story

Cautions for this step in the process:

- Allowing direct exchanges between the parties too early can often be non-productive and/or damaging to the process
- Failing to aid parties in de-escalating and reframing may reinforce positions held prior to mediation
- Acting on the "shopping list" too early is almost always a bad thing; take time and trust the process



MEDIATION TRAINING (BASIC)




Listening



How well do we listen?


Estimates from government studies suggest that we learn:

- 83% through vision
- 11% through hearing
- 3.5% through smell
- 1.5% through touch
- 1% through taste


The Texas A&M University System  67

67

MEDIATION TRAINING (BASIC)




Listening



How well do we listen?


Estimates from government studies suggest that we retain:

- 10% of information from oral presentations
- 35% of information from visual presentations
- 65% of information from visual and oral presentations

The Texas A&M University System  68

68

MEDIATION TRAINING (BASIC)




Telling the Story

Active Listening:

- Physically Attending
- Restatement and Summarizing
- Reframing
- Empathy/Validation
- Affect Labeling (tied to “You/I” statements)
- Mirroring
- Note-taking

© 2023 – Richard T. Olshak


The Texas A&M University System




69

69

MEDIATION TRAINING (BASIC)



Telling the Story




Reframing:

- Restating what someone says while also removing negative (toxic) language and seeking to promote resolution; a difficult skill because we generally do not speak this way
- Reframing = Restating + Deescalating
- Looking for an opportunity to seek definitions or turn “mental tables”
- Be careful not to use reframing to minimize the effects of a situation

© 2023 – Richard T. Olshak


The Texas A&M University System



70

70

MEDIATION TRAINING (BASIC)



Telling the Story


Reframing:

Example – using reframing to deescalate

Party A: He’s a liar! He said he would give me 50 dollars and then he only gave me 10.


Toxicity: Name calling, Amount

Mediator: It sounds like you are upset because you did not get the amount you thought you deserved. Let’s talk more about what led to this.



© 2023 – Richard T. Olshak


The Texas A&M University System



71

71

MEDIATION TRAINING (BASIC)



Telling the Story


Reframing:

Example – using reframing to challenge party mindset

Party B: I’m so fed up with all of this I’ll do anything.


Toxicity: Frustration

Mediator: It sounds like you really want to resolve this and put it behind you. Agreeing to mediation is a great step towards finding a resolution that will satisfy you.



© 2023 – Richard T. Olshak


The Texas A&M University System



72

72


MEDIATION TRAINING (BASIC)



Telling the Story


Reframing Activity:

Please get out a separate sheet of paper and do not consult your training materials. Work in pairs to identify toxic language and develop re-framing statements to each of the following examples:



© 2023 – Richard T. Olshak


The Texas A&M University System



73

73


MEDIATION TRAINING (BASIC)



Telling the Story


Reframing Activity Statements:

1. Every time he has made promises to me he has broken them. I can't trust him.
2. She is just so irresponsible.
3. He is telling you that he didn't take it, but I know for a fact that he is lying (spoken to the mediator).
4. She is always unfair to me.
5. He doesn't care about what this has done to me.
6. I should have known this would happen; she acts just like her mother.
7. He showed a lot of nerve going to my boss without talking to me first. Only a coward would do that.
8. She's a racist.



© 2023 – Richard T. Olshak


The Texas A&M University System




74

74

MEDIATION TRAINING (BASIC)



Telling the Story



Reframing Activity Statements:


1. Every time he has made promises to me he has broken them. I can't trust him.

Toxicity: "Every" (generalization), accusation, absolute statement (can't versus won't)

Response: You are concerned that because previous agreements haven't gone well that this one might not succeed either. What could he could do that might help you trust him?

© 2023 – Richard T. Olshak


The Texas A&M University System




75

75

MEDIATION TRAINING (BASIC)



Telling the Story



Reframing Activity Statements:


2. She is just so irresponsible.

Toxicity: Attack, Generalization

Response: What does responsible mean to you? What could she do to demonstrate that she can be responsible?

© 2023 – Richard T. Olshak


The Texas A&M University System



76

76

MEDIATION TRAINING (BASIC)




Telling the Story

Reframing Activity Statements:

3. He is telling you that he didn't take it, but I know for a fact that he is lying (spoken to the mediator).


Toxicity: Accusation, seeking to influence the mediator and "win" a point

Response: You feel that he is not being honest with you. I know it is important to you that the truth is told today, but I need to remind you that I am not here to determine what took place. Let's discuss the impact of losing the iPad.




© 2023 – Richard T. Olshak

The Texas A&M University System


77

77

MEDIATION TRAINING (BASIC)




Telling the Story

Reframing Activity Statements:

4. She is always unfair to me.


Toxicity: Generalization, undefined term ("unfair")

Response: I am not sure what you mean by "unfair." Please tell me what you believe is unfair in this particular situation, and how you would like to be treated.




© 2023 – Richard T. Olshak

The Texas A&M University System


78

78

MEDIATION TRAINING (BASIC)




Telling the Story

Reframing Activity Statements:

5. He doesn't care about what this has done to me.


Toxicity: Assumption, undefined term ("what this has done to me")

Response: Let's talk about the impact that this situation has had on you, and how you believe he could demonstrate caring.




© 2023 – Richard T. Olshak

The Texas A&M University System


79

79

MEDIATION TRAINING (BASIC)




Telling the Story

Reframing Activity Statements:

6. I should have known this would happen; she acts just like her mother.


Toxicity: Generalization, self-pity

Response: I am not sure what you mean by that. Let's talk specifically about this situation as it applies to you and Sarah.




© 2023 – Richard T. Olshak

The Texas A&M University System


80

80

MEDIATION TRAINING (BASIC)




Telling the Story

Reframing Activity Statements:

7. He showed a lot of nerve going to my boss without talking to me first. Only a coward would do that.


Toxicity: Indignation, name-calling (as a form of blame)

Response: You are upset that Michael chose to speak to your boss before speaking to you. What do you think might have been different if Michael approached you directly?



© 2023 – Richard T. Olshak


The Texas A&M University System



81

81

MEDIATION TRAINING (BASIC)




Telling the Story

Reframing Activity Statements:

8. She's a racist.


Toxicity: Accusation, name-calling (with an undefined term)

Response: What is it that makes you feel this way?



© 2023 – Richard T. Olshak

The Texas A&M University System



82

82



Telling the Story

Affect Labeling and “You/I” Statements:

- You-Statements emphasize Blame, I-Statements take responsibility
- Starting a sentence with “you” sets the speaker up to focus on the listener’s actions rather than their own experience.
- I-Statements in contrast encourage the speaker to take full responsibility for their feelings and needs.
- Mediator can role model the use of You/I statements while delivering the party’s message in a less toxic way:

Mediator: “Joe, what I am hearing is that it causes you inconvenience and frustration when Mike takes your car without any advance notice because you can’t make plans for yourself and have had to cancel plans that you had on at least two occasions.”



83



Telling the Story


Note-Taking:

- We take notes of important aspects of the conflict, stated positions, expressed interests and needs, and key points needing further elaboration
- Must be balanced in taking notes between parties
- Don’t get distracted by taking notes; they are there to aid you, not distract from what is being said
- Separate Caucus notes from joint session notes
- Two preferred methods of taking notes



84

MEDIATION TRAINING (BASIC)



Telling the Story


Note-Taking:

Note-Taking Methods:

Party A	Party B	Party A	Party B
Note	Note	Note	Note
Note	Note ***	Note	Note
Note ***	Note ***	Note	Note
Note ***	Note		
Note			
		Issues	
		Issue A	
		Issue B	

© 2023 – Richard T. Olshak

The Texas A&M University System



85

85

MEDIATION TRAINING (BASIC)



Listening



The Texas A&M University System



86

86

Questioning



87

Telling the Story

Questioning:

- What is the purpose of questioning in mediation?
 - Aid the parties in telling their stories
 - Assists in clarifying perceptions and assumptions about the other party and about the conflict
 - Gathering enough facts to help the parties move past their positions and identify interests and needs



88



Telling the Story

Questioning:

- We are NOT asking questions for the purpose of:
 - Determining right/wrong or truth/fiction
 - Determining who is at fault
 - Investigating violations
 - Acting as counselor/therapist
 - Satisfying our curiosity



89



Questioning

Through questions prompted by story-telling, we seek to paint a picture of the overall conflict situation



90

MEDIATION TRAINING (BASIC)

Questioning

Open-ended questions help give a basic overview of the situation...


What brings you to mediation today?

Tell us what happened.

Please tell me more about that...

© 2023 – Richard T. Olshak

The Texas A&M University System



91

91

MEDIATION TRAINING (BASIC)

Questioning


Open-ended questions help give a basic overview of the situation...

Open-ended questions allow the party to take the story in the direction they like, noting what is of importance to them

Then...

© 2023 – Richard T. Olshak

The Texas A&M University System



92

92



Questioning

Closed-ended questions help fill in the details of the situation...

Can you walk me through a specific timeline of events?

What was damaged? How much did it cost?

Tell me more about the assignment.

What did you do when you became aware the money was missing?



93



Questioning

Closed-ended questions help fill in the details of the situation...

Closed-ended questions narrow down the subject matter to provide specific information that the mediator is seeking

Even then...



94

MEDIATION TRAINING (BASIC)

Questioning

Open-ended questions allow us to understand impact, feelings, intentions, and relationships (“big picture”)

Tell me about your relationship...


What were you feeling at the time?

What impact did this have on you?

How are you feeling now?

© 2023 – Richard T. Olshak

The Texas A&M University System



95

95

MEDIATION TRAINING (BASIC)

Questioning

Probing Questions


- Probing questions can be used to clarify confusing or contradictory information

Example

Mediator: John, earlier you said this even happened on Wednesday, but twice now I have heard you say it occurred on Friday. Could you please clarify this for me in case I am getting something confused? (*responsibility on mediator*)

© 2023 – Richard T. Olshak

The Texas A&M University System



96

96



Questioning

Probing Questions

- Probing questions can be used to determine if there are personal boundaries or other issues in play

Example

Mediator: Kendra, I am getting the sense that there is another issue that we have not addressed. Are there other factors that I am not yet aware of?



Questioning

Probing Questions

- Probing questions can be used to determine if there are personal boundaries or other issues in play

Example

OR...

Mediator: Kendra, I heard you mention some difficult personal circumstances. Would you be willing to share what those circumstances are and whether or not they are related to what we are discussing today?





Questioning

Shopping List Questions

- Shopping List Questions help us understand the mindset of the party, what they might hope to gain through mediation, and whether or not they are negotiating in good faith

Examples

What are you hoping to gain through mediation?

What are you seeking?

Do you have a specific resolution in mind?




Questioning Cautions


- Don't bombard a disputant with questions ("rapid fire")
- Don't offer suggestions through your questions (leading)
- Be careful not to ask too many questions beginning with the word "Why"; these questions tend to put parties on the defensive and create discomfort
- Remember your role; you are not serving as an arbiter for the truth, but are instead here to assist parties to resolve a conflict
- Be sensitive to cultural differences with respect to asking questions
- Pay attention to your tone of voice and body language when asking questions; both should reflect being a "helper"




MEDIATION TRAINING (BASIC)




Questioning



The Texas A&M University System  101

101

MEDIATION TRAINING (BASIC)



SEE YOU TOMORROW!

The Texas A&M University System  102

102

MEDIATION TRAINING (BASIC)



The Texas A&M University System



103

103

MEDIATION TRAINING (BASIC)

**Day Two Agenda**

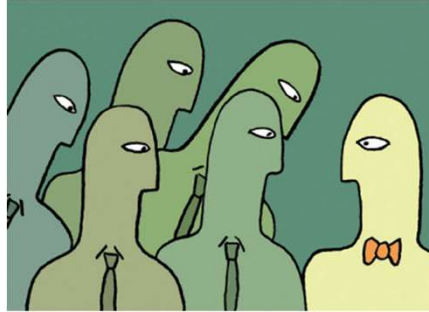
1. Culture, Conflict, & The Mediation Process
2. Step Three: Setting the Agenda
3. Step Four: Developing Options
4. Caucusing
5. Power and Conflict
6. Role Play Activities

The Texas A&M University System



104

104



Culture, Conflict, and the Mediation Process

© 2023 – Richard T. Olshak

The Texas A&M University System



105

105

*“Greetings. I am pleased to see that we are different.
May we together become greater than the sum of both
of us.”*

- Vulcan greeting from Star Trek (Vulcan philosophy celebrates IDIC – Infinite Diversity in Infinite Combinations)

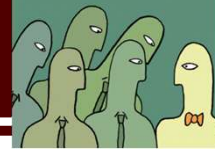
© 2023 – Richard T. Olshak

The Texas A&M University System



106

106

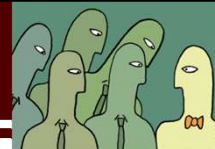


Culture

What is culture?

Take five minutes to identify one or more cultures that you are a part of. How do you know that you are a part of these cultures? What identifying characteristics do they have?

Next, take another five minutes to discuss your identifications with a partner. Hear theirs. Do you both define culture in the same way? Do you share cultures? If so, are your identifiers similar or different? Do you come from a different culture? If so, can you still identify commonalities across cultures? Can you identify issues that might serve as a source of conflict with someone from a different culture?



Culture

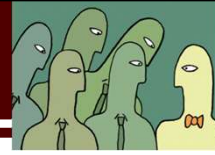
What is culture?

Culture is a compilation/combination of:

- A collective's demographic characteristics/traits
- A shared ethnicity and/or national origin
- A shared language
- A collective's values, beliefs, customs, mannerisms, foods, and traditions
- A collective's achievements in arts, literature, music, and other human intellectual manifestations

Cultures can vary from small groups to very large groups of people.

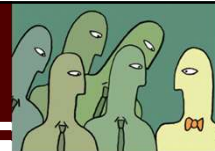




Culture

What is culture?

- Culture is a combination of seen and unseen things
- We are all part of many different cultures and subcultures, and we are all members of both dominant and subordinated groups
- We all have stories to tell
- Those stories are not always (or even usually) stories that we would expect

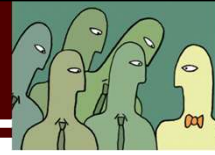


Culture

What is culture?

- Our brains naturally make assumptions in order to help us make sense of the world in an efficient way. Making assumptions about people based on their appearance is called stereotyping. Stereotyping is natural but must be guarded against... **DON'T ASSUME** that you already know someone else's story before they have a chance to tell it.





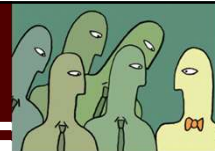
Culture

What is Intersectionality?

- Intersectionality is an analytical framework for understanding how aspects of a person's social and political identities combine to create different modes of discrimination and privilege
- We want to understand that any person coming into a facilitation or mediation session brings their entire being with them into the room, and this affects how they interact with the other party, as well as how they interact with the facilitator



111



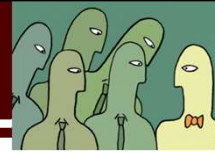
Culture

What is Intersectionality?

- While we cannot “level the playing field” and remove privilege or discrimination, we can strive to understand how it affects the way that people communicate, as well as how they process information (through a lens)
- Further, as the facilitator we should strive to not commit “microaggressions” that trigger and/or reinforce elements of perceived oppression/discrimination



112



Culture

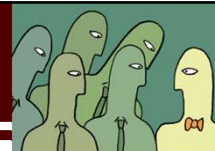
What are Microaggressions?

– “Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership.”

Dr. Derald W. Sue, as cited by Kathy Obear



113



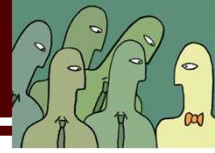
Culture

How does culture affect the mediation process or our work as mediators/facilitators?

- Language issues lead to miscommunication and/or misinterpretation
- Incorrect assumptions cause and/or exacerbate conflict
- We want and/or expect others to be familiar with our norms
- Our brains are wired to be biased against the unfamiliar
- Values often drive our feelings and reactions in conflict; anything that is outside of our own value system creates internal conflicts that may manifest in the external conflict



114



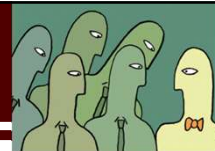
Culture

How does culture affect the mediation process or our work as mediators/facilitators?

- As mediators, we strive to create a physical and emotional space that provides a level playing field; in truth, there is rarely such a thing
- Be aware of the visible identities of the parties, as well as listen for the invisible identities that may affect someone’s perspective; what may look like someone being “obstinate” may in fact be someone seeking to protect themselves based on past experiences
- Identities do not make negative behaviors acceptable, but do provide a context – it is within the context that we may find seeds for resolution



115



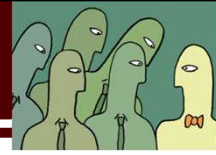
Culture

How does culture affect the mediation process or our work as mediators/facilitators?

- Physical space considerations (formal v informal)
- Time sense
- Personal greetings, names, and pronouns
- Eye contact
- Direct v indirect communication (high context v low context; group v individual)



116



Culture

How does culture affect the mediation process or our work as mediators/facilitators?

- Dealing with emotions
- Don't "diagnose" and assume; listen for cues and know how and when to ask about matters that may be affecting your ability to reach a resolution
- Resolutions and agreements



117




Culture




118

MEDIATION TRAINING (BASIC)



Step 3: Setting the Agenda



 119

© 2023 – Richard T. Olshak The Texas A&M University System

119

MEDIATION TRAINING (BASIC)

Mediation Process



The Facilitative Mediation Process

PAST


- Step 1: Introductory Statement
- Step 2: Telling the Story

PRESENT

- Step 3: Setting the Agenda**

FUTURE

- Step 4: Developing Options
- Step 5: Testing Options
- Step 6: Creating the Agreement


 120

© 2023 – Richard T. Olshak The Texas A&M University System

120



Setting the Agenda

Purposes of this step in the process:

- Acknowledge the interests that each party has in the conflict
- Develop a set of issues to seek solutions to in the remainder of the mediation process
- Develop and acknowledge issues that may not be solvable via the mediation process
- Bring the parties into the “present” and determine their readiness to transition from the past into the future; help determines if there are additional issues that have yet to be addressed or determine if one or more parties are more invested in emotions and/or the past (blocking)
- Determine if the parties are negotiating in good faith



Setting the Agenda

Characteristics of this step in the process:

- Asking parties to develop a shared list of issues
- Verbally acknowledging the interests that each party has in seeing the conflict resolved
- Asking parties if there are other issues that have not yet been brought to light
- Asking parties to develop a shared list of issues that will be explored throughout the remainder of the mediation process
- Determining what issues cannot be resolved through mediation
- Determining if parties are holding back information or are otherwise not yet ready to move forward





Setting the Agenda

Cautions for this step in the process:

- Issue lists may not match; the mediator must assist parties to determine if there are issues that can be addressed
- One or both parties may insist that an issue be addressed or avoided against the wishes of the other party; the mediator must help parties determine if this is a real or perceived barrier to resolution
- DON'T start looking for solutions; we are in an important transition phase that can be easily derailed (TRUST THE PROCESS)
- Be cautious of direct party exchanges; they may or may not be ready to let go of some of their emotions and/or strongly held positions
- Don't stress out if you missed something important in Step Two; simply go back and repeat the process



123



Setting the Agenda



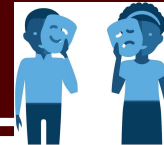
124



Role Play Activity #1



125

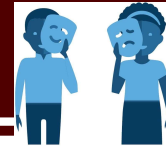


Role Play Activity #1 Instructions

1. Mediators – Take a few minutes to prepare with one another and determine how you will interact with the parties
2. Role Players – Please take this time to carefully read your role... highlight important aspects. Stick to the role and do not add any complicating factors.
3. The mediators are to complete the introductory statement, allow the parties to share their stories, and set the agenda for the rest of the mediation session



126

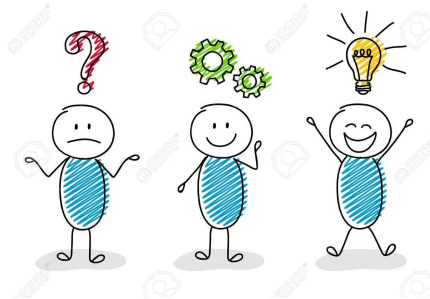


Role Play Activity #1 Processing

1. Mediators – What was your reaction to this process? How did the process feel?
2. Role Players – What did your mediators do well that encouraged your engagement in the process? Did the mediators do anything to detract from your engagement in the process?
3. Observers – What was your perspective on the engagement of the mediators with the parties and their management of the process?



127

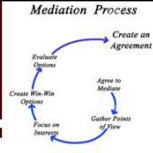


Step 4: Developing Options



128

MEDIATION TRAINING (BASIC)




The Facilitative Mediation Process

FUTURE


- **Step 4: Developing Options**
- Step 5: Testing Options
- Step 6: Creating the Agreement

Order of Events:
 Issue A – Develop and then test options, before moving to...
 Issue B – Develop and then test options before moving to...
 Issue C... and so on...

© 2023 – Richard T. Olshak The Texas A&M University System  129

129


MEDIATION TRAINING (BASIC)



Developing Options

Purposes of this step in the process:

- To assist the parties to find any agreements they can at first (develop a “yes set”)
- To aid the parties in moving through each identified issue to create a mutually-satisfying outcome
- To allow the parties to think creatively about the generation of options in a shared and non-judgmental environment

© 2023 – Richard T. Olshak The Texas A&M University System  130

130



Developing Options

Characteristics of this step in the process:

- Choosing an issue to start with
- Whenever possible, start with “easiest” and then gauge readiness to address “harder” issues
- Providing an environment for parties to think creatively through Brainstorming
- Visibly listing the options generated



Developing Options

Characteristics of this step in the process:

- Reaching and Managing Impasse
 - Methods include Moving to Other Issues, Exploring Positions, Exploring BATNAs, WATNAs, and MLATNAs, Caucusing, Role Reversal, Paradox, and Termination





Developing Options

Cautions for this step in the process:

- Issue lists may not match; the mediator must assist parties to determine if there are issues that can be addressed
- One or both parties may insist that an issue be addressed or avoided against the wishes of the other party; the mediator must help parties determine if this is a real or perceived barrier to resolution
- DON'T start looking for solutions; we are in an important transition phase that can be easily derailed (TRUST THE PROCESS)
- Be cautious of direct party exchanges; they may or may not be ready to let go of some of their emotions and/or strongly held positions
- Don't stress out if you missed something important in Step Two; simply go back and repeat the process



133



Caucusing



134



Caucusing

Caucusing:

- Is when the mediator meets with both/all parties individually
- Can be used at any time during the mediation process; it is not a part of every mediation and serves to complement the mediation process
- Should not be used lightly; new mediators tend to overuse caucusing because they are uncomfortable dealing with the emotions surrounding the conflict in a joint session
- Should be used for a specific purpose rather than to serve as a “mediation session for one”
- Can be used between mediators to address process/stylistic/ strategic issues



Caucusing

Caucusing is useful:

- If a mediator suspects that one or both parties have an underlying issue or hidden agenda that is affecting the mediation session
- If it would be beneficial to separate the parties because they are angry, tense, or hostile
- If one party seems too willing to concede points and not state his or her own needs, or is having difficulty communicating
- If the mediator senses that one party is intentionally blocking the mediation process and preventing progress
- If the mediator senses that one party is dealing with an extremely sensitive or personal issue





Caucusing

Questions to Ask Before Caucusing:

- Do I need to review discrepancies in information?
- Do I need to de-escalate anger or hostility that a disputant may be feeling?
- Do I need to explore hidden issues or agendas?
- Do I need to confront behaviors or attitudes that are blocking the process?
- Do I need to determine how committed the disputants are to achieving a resolution?



Caucusing

Caucusing Process:

- Discuss with your co-mediator whether or not a caucus is desired
- If a caucus is desired, explain this decision to the parties and reiterate the rules of the caucus
- The mediators keep one party in the room an assignment to work on while he/she is waiting
- The mediators meet with the first party, taking notes that are separate from those notes taken in the joint session
- Ask the first party how she/he feels about the process and explore any issues or concerns that the mediators may have
- Confirm if any information is to be shared with the other party
- Repeat with the other party





Caucusing

Caucusing Cautions:

- Don't default to a caucus simply because you are uncomfortable or unsure; TRUST THE PROCESS
- Take notes separate from the joint session and don't confuse notes
- Resist the urge to help the parties exchange information through the caucus; this gives the mediator too much control over the content and creates too much room for error... instead, help the parties "build a bridge" to bring caucus information into a joint session
- You cannot guarantee the parties equal caucusing time but be careful not to spend a noticeably different amount of time with each party (try to limit to a maximum of ten minutes for each party)



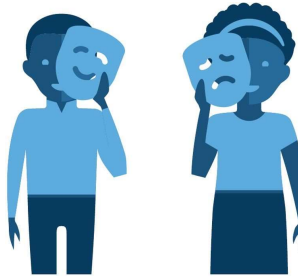
139



Developing Options



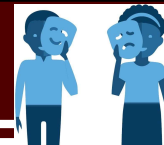
140



Role Play Activity #2



141

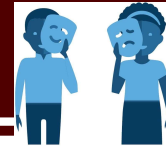


Role Play Activity #2 Instructions

1. Mediators – Take a few minutes to prepare with one another and determine how you will interact with the parties
2. Role Players – Please take this time to carefully read your role... highlight important aspects. Stick to the role and do not add any complicating factors.
3. The mediators are to complete the introductory statement, allow the parties to share their stories, and set the agenda for the rest of the mediation session



142



Role Play Activity #2 Processing

1. Mediators – What was your reaction to this process? How did the process feel?
2. Role Players – What did your mediators do well that encouraged your engagement in the process? Did the mediators do anything to detract from your engagement in the process?
3. Observers – What was your perspective on the engagement of the mediators with the parties and their management of the process?



143



Power and Conflict



144



Power and Conflict

Conflict is often rooted in power

- Attempts to gain power
- Attempts to wield power
- Power can be real (tangible) or perceived (emotional)
- We can often only address power imbalances in a temporary way for the purposes of resolving a conflict; parties will resume their lives when the mediation session is over
- Four “Power Currencies” (RICE)



Power and Conflict

Power Currencies (Wilmot & Hocker)

Resource Control

- What you have (money, time, scheduling, grades, performance reviews, hiring, firing, rewards, punishments)

Interpersonal Linkages

- Who you know (personal and professional contacts, influence in friendships and in families, influence in professional relationships)





Power and Conflict

Power Currencies (Wilmot & Hocker)

Communication Skills

Who you are (leadership skills, charisma, listening and speaking skills, ability to form bonds and alliances, ability and willingness to demonstrate caring, love affection, respect, etc.)

Expertise

What you know (knowledge, skills, talents of use or value)



Power and Conflict

Power Currencies (Wilmot & Hocker)

Power Currencies permeate our relationships

- Resource Control
- Interpersonal Linkages
- Communication Skills
- Expertise

In professional settings, what we refer to as “politics” is a short-handed reference to real and perceived power surrounding these currencies.





Power and Conflict

How does power impact the mediation environment?

Parties may:

- Demand or refuse to speak first
- Engage in very aggressive, very passive, or passive-aggressive non-verbal (body language, eye contact, etc.) and verbal behavior
- Dominate the conversation or refuse to actively participate
- Presume to make decisions for others
- Interrupt frequently
- Change the topic frequently
- Seem oblivious to “personal space”



Power and Conflict

How does power impact the mediation environment?

Examples of Passive-Aggressive Behaviors:

- Showing up for a mediation session and claiming a scheduling conflict despite a defined time commitment
- Saying unkind things, then apologizing
- Demonstrating physical agitation (slamming things, sighing, eye-rolling) while denying that anything is wrong
- Utilizing sarcasm when speaking about a situation/party
- Focusing on minor issues or distractions while ignoring larger issues
- Self-pity





Power and Conflict

How can a mediator respond to these behaviors?

- Be sensitive to power issues through intake and introductions
- Offer the option of speaking first to the less powerful party
- Acknowledge the power imbalance
- Acknowledge the imbalance directly
- Determine if the power imbalance itself is blocking progress toward an agreement, or if the party is applying power (or a lack of it) for another reason
- If the former, determine if the parties can find a way to minimize/neutralize impact of power on an agreement
- If the latter, attempt to determine what is causing the behavior to determine if mediation can proceed



151



Power and Conflict

How can a mediator respond to these behaviors?

- Wait/be patient
 - Allow the parties to work through the power imbalance by sticking to the process (TRUST THE PROCESS)
- Offer supportive comments and seek opportunities to acknowledge progress, as well as identify shared interests
- Point out consequences
 - For people using power to block progress, reiterate expectations/ground rules; we may eventually terminate the mediation session (explore what happens in this case)
 - For people refusing to engage, we can acknowledge the costs of remaining silent (loss of influence)




152

MEDIATION TRAINING (BASIC)




Power




The Texas A&M University System  153

153

MEDIATION TRAINING (BASIC)



SEE YOU TOMORROW!

The Texas A&M University System  154

154



Day Three Agenda

1. Step Five: Testing Options
2. Direct Challenges from Parties
3. Terminating a Mediation
4. Step Six: Creating the Agreement
5. Role Play Activities





Step 5: Testing Options



The Facilitative Mediation Process

PAST	<ul style="list-style-type: none"> • Step 1: Introductory Statement • Step 2: Telling the Story
PRESENT	<ul style="list-style-type: none"> • Step 3: Setting the Agenda
FUTURE	<ul style="list-style-type: none"> • Step 4: Developing Options • Step 5: Testing Options • Step 6: Creating the Agreement





Testing Options

Purposes of this step in the process:

- To find or create mutually-satisfying solutions to issues based on options generated in Step Four
- To test the options for application in the “real world”
- To modify options in order to make them sustainable once an agreement is reached



Testing Options

Characteristics of this step in the process:

- After identifying options, assisting the parties in sorting the options into those that are workable and those that are not
- Assisting the parties to think of the outcomes associated with any given option (positive, negative, intended, unintended); also known as playing the “Reality Agent”
- Assisting the parties in identifying ways to improve potential outcomes
- Assisting the parties in selecting options that work best for them





Testing Options

Cautions for this step in the process:

- Don't recommend particular outcomes as a mediator
 - Don't classify options as "best" or as "unworkable"; trust the parties to reach those conclusions
 - Don't be afraid to forecast potential difficulties with the option; if it is workable the parties will work to overcome any shortcomings
- Make sure to assist the parties in making the agreement as specific as it needs to be in order to avoid misunderstanding(dates, times, amounts, etc.)



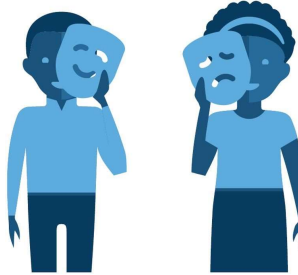
161



Testing Options



162



Role Play Activity #3



163

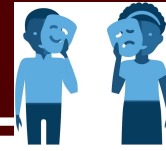


Role Play Activity #3 Instructions

1. Mediators – Take a few minutes to prepare with one another and determine how you will interact with the parties
2. Role Players – Please take this time to carefully read your role... highlight important aspects. Stick to the role and do not add any complicating factors.
3. The mediators are to complete the introductory statement, allow the parties to share their stories, set the agenda for the rest of the mediation session, and identify and test solutions



164

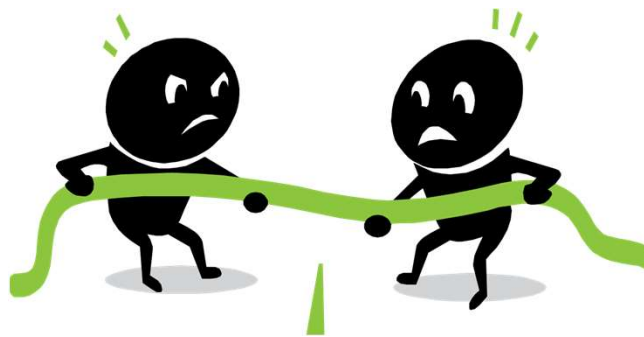


Role Play Activity #3 Processing

1. Mediators – What was your reaction to this process? How did the process feel?
2. Role Players – What did your mediators do well that encouraged your engagement in the process? Did the mediators do anything to detract from your engagement in the process?
3. Observers – What was your perspective on the engagement of the mediators with the parties and their management of the process?



165



Direct Challenges from Parties



166



Direct Challenges from Parties

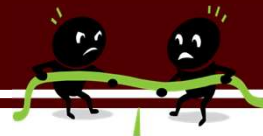
Six types of challenges:

- Non-partisanship
- Non-directiveness
- Non-involvement with content
- Non-judgmental
- Credibility
- Control

Don't take challenges personally. People are often in mediation because their conflict resolution skills need improvement... old habits will not vanish in one mediation session!



167



Direct Challenges from Parties

Challenges to Non-Directiveness (the party trying to get the mediator to weigh in on the outcomes):

Examples:

- Party: What do you think we should do?
- Mediator: I think you should decide what best meets your needs.
- Party: It's a fair offer, isn't it?
- Mediator: I don't have an opinion on that. What do you think?
- Party: Shouldn't AI do that?
- Mediator: AI, what do you think? OR Let's ask AI.
OR Do you think AI should do that?



168

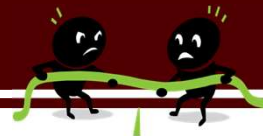


Direct Challenges from Parties

Challenges to Non-Involvement with Content (the party trying to get the mediator to weigh in on content):

Examples:

- Party: Shouldn't I be concerned about this...?
- Mediator: You clearly seem concerned about this.
OR Are you concerned about this?
OR What is your concern?
- Party: Don't you think this is a big issue?
- Mediator: Do you think it is a big issue?
OR That is for you to decide.



Direct Challenges from Parties

Challenges to Being Non-Judgmental (the party trying to get the mediator to agree with the party's perceptions/assumptions):

Examples:

- Party: See what I mean? They're all alike.
- Mediator: What do you mean by that?
- Party: Don't you think she's acting a little weird?
- Mediator: I'm not sure what you mean by "weird."
OR What do you mean by that?





Direct Challenges from Parties

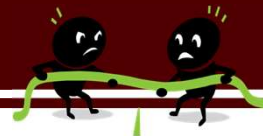
Challenges to Mediator's Credibility (Party makes "power play" with the mediator):

Examples:

- Party: You're just a mediator. What do you know about...?
- Mediator: Tell me what you think I need to know.
OR Whatever you explain to me today.
- Party: What are your credentials?
- Mediator: I am a mediator for the university, trained by certified mediators. What is your concern?



171



Direct Challenges from Parties

Challenges to Mediator's Control (Party makes "power play" with the mediator):

Examples:

- Party: I want to meet individually right now.
- Mediator: I will meet with you both when it seems helpful, but first I need to...
- Party: They can go first. (OR) I demand to go first.
- Mediator: As a matter of habit, I always begin to my left/right.



172

MEDIATION TRAINING (BASIC)



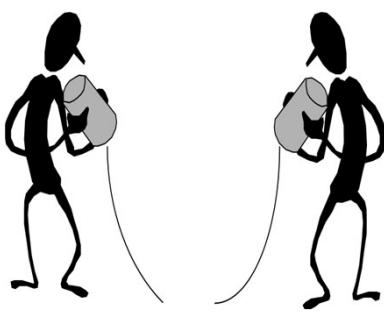
Direct Challenges




The Texas A&M University System  173

173

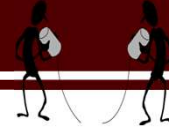
FACILITATION TRAINING (BASIC)



Terminating a Mediation

The Texas A&M University System  174

174



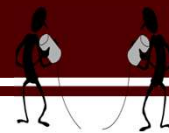
Terminating a Mediation

Conditions for Termination:

- the mediator becomes aware of felony-level criminal activity, child abuse, or other matters that invoke mandatory reporting
- the ground rules have been consistently ignored by one or both disputants
- threats of violence or harassment are made by any party
- the mediator feels that one or both disputants are no longer acting in good faith
- one or both disputants walks out of the session



175



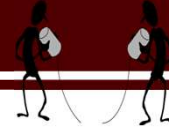
Terminating a Mediation

Tips for Termination:

- When co-mediating, always discuss the decision to terminate with your partner prior to announcing a termination.
- Never demonstrate anger or allow the disputants to see that you are taking the situation personally. Maintain the same tone of voice you have used throughout the session.
- State the reason that you are terminating the session to both disputants in a clear and firm voice. Take ownership of the decision and do not negotiate with the disputants.
- Place the responsibility for the action where it belongs. Do not apologize for your decision.



176



Terminating a Mediation

Tips for Termination:

- State the consequences of your decision. In cases of mandatory reporting, indicate to the disputants that you are required to report this information to your mediation supervisor. If these conditions do not exist, indicate to the disputants how they may go about reinitiating the mediation process if later desired.
- If possible and desired, develop a partial agreement over any points that have been successfully resolved by the disputants.
- End on a positive note. This may seem difficult to do, but even in the worst mediation sessions, it does no good to leave the disputants feeling that the situation is hopeless. Even if future mediation is out of the question, you may wish to review other options that the disputants may pursue.



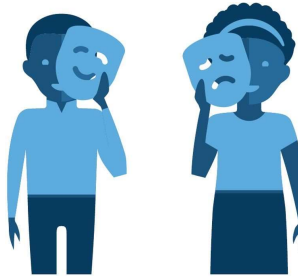
177



Terminating a Mediation



178



Role Play Activity #4



179

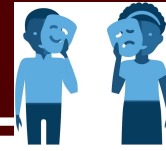


Role Play Activity #4 Instructions

1. Mediators – Take a few minutes to prepare with one another and determine how you will interact with the parties
2. Role Players – Please take this time to carefully read your role... highlight important aspects. Stick to the role and do not add any complicating factors.
3. The mediators are to complete the introductory statement, allow the parties to share their stories, set the agenda for the rest of the mediation session, and identify and test solutions



180



Role Play Activity #4 Processing

1. Mediators – What was your reaction to this process? How did the process feel?
2. Role Players – What did your mediators do well that encouraged your engagement in the process? Did the mediators do anything to detract from your engagement in the process?
3. Observers – What was your perspective on the engagement of the mediators with the parties and their management of the process?



181



Step 6: Creating the Agreement



182

MEDIATION TRAINING (BASIC)

Mediation Process

The Facilitative Mediation Process

PAST


- Step 1: Introductory Statement
- Step 2: Telling the Story

PRESENT

- Step 3: Setting the Agenda


FUTURE

- Step 4: Developing Options
- Step 5: Testing Options
- **Step 6: Creating the Agreement**

© 2023 – Richard T. Olshak The Texas A&M University System  183

183


MEDIATION TRAINING (BASIC)



Creating the Agreement

Purposes of this step in the process:

- Codifying mutual agreements in order to resolve a conflict, in order to avoid future conflicts, and for purposes of enforcing an agreement
- To build in “safety nets”

© 2023 – Richard T. Olshak The Texas A&M University System  184

184



Creating the Agreement

Characteristics of this step in the process:

- Documenting all points of agreement
- Providing specific details on all points of agreement
- Aiding the parties in creating “safety nets” in the event that there are unforeseen difficulties in carrying out the agreement
- Having both/all parties review and sign/approve the agreement; copies should be provided
- Commending parties for working through differences to arrive at a mutually-satisfying resolution



185



Creating the Agreement

Cautions for this step in the process:

- Separate the agreement into individual bulleted points; do not write a narrative
- Use names of parties instead of titles
- Use the language of the disputants
- Be specific
- Avoid “legalese” (e.g., aforementioned)
- Avoid nebulous terms (e.g., soon)
- Be careful to balance the agreement and avoid utilizing judgments and blame



186



Creating the Agreement

Example #1:

Agreement between John Carter and Dr. Mary Smith

- John will pay Dr. Smith for the replacement of the window that he broke last month while he was drunk. He will make sure that the window is replaced up to Dr. Smith's standards.
- The aforementioned John agrees to take care of replacing the window as soon as possible.
- John agrees not to host more than one party a month at his house and will let Dr. Smith know in advance when there will be a party. Dr. Smith will allow him to host this party as long as it ends at a reasonable hour and does not get too loud. John must control his guests at all times.
- Dr. Smith won't call the police immediately if the party gets loud but will give John one chance to correct the problem.



Creating the Agreement

Example #2:

Agreement between John Carter and Mary Smith

- Mary Smith and John Carter agree that there needs to be better communication between the two of them regarding parties that occur at John's house.
- John agrees to hold no more than one party per month at his house and will end each party before midnight. He will communicate his intent to have a party to Mary at least two days prior to the party and will do so by visiting her at home.
- Mary agrees to let John know if there are any special concerns she has related to the party, communicating these concerns to John when he visits.
- John agrees to keep the noise of the party to a level where it can not be clearly heard in Mary's house.





Creating the Agreement

Example #2:

Agreement between John Carter and Mary Smith

- Mary agrees to let John know if the party is getting too loud by calling him and informing him of the noise level. Mary also agrees to let John visit so that he can hear the noise level.
- John agrees to answer the phone during parties and not let the answering machine take the call.
- John agrees that if Mary can not reach him and the noise level is deemed by Mary to be too loud, Mary may contact the police.
- John agrees to reimburse Mary for the cost of the broken window. He will pay Mary \$75 in cash no later than February 3. He will hand deliver this payment in person to Mary's house. If John can not make the payment on time, he agrees to contact the mediation program to request an extension.



Creating the Agreement



Post-Test –



191



Post Test –

Investigators must pass the post-test (minimum score of **80%**) in order to be eligible to conduct civil rights investigations.

The post-test must be completed by July 31, 2023.

Post-test link:

https://tamusofficeofit.iad1.qualtrics.com/jfe/form/SV_d20D8Yf4GOBueO



192

Final Q&A –

