Mediation Skills in Conflict Resolution

Presented

by the

Federal Mediation and Conciliation Service
Considerations of Mediator Training

- Much is common sense
- Learn skills and approaches
- No prescribed or ‘right’ way
- Mediation is one type of ADR
- Training does not transform you into a mediator
- Mediators are neutral, not neutered
Roles of the Mediator

- Advocate of the process
- Demonstrates empathy for the parties
- Neutral on the issues and positions
- Poses positives and negatives
Conceptual Goals of Mediation

- Process of assisted negotiations
- Involves mutual obligations
- Conflict management vs. resolution
Course Objectives

- Understand definition of mediation
- Understand negotiation
- Understand mediation as ‘assisted negotiation’
Course Objectives (Con’t)

- Understand role of mediator
- Understand mediation as type of ADR
- Acquire knowledge and skills to apply ADR to disputes
- Practice ADR skills in simulated settings
Facilitated Procedures

- Mediation
- Mini Trials
- Arbitration
- Early Neutral Evaluation
- Negotiation

- Least Invasive
- Most Control
- Most Invasive
- Least Control
Mediation

- Gives parties more control
- Process less formal than adjudication
Litigation vs. Mediation

- Litigation -- relationship between judge and parties.

- Mediation -- relationship between the parties.
Benefits of Mediation

- Satisfaction
- Range of Options
- Effect on Relationships
Mediation Settlements

- More satisfied
- More creative solutions
- Feel better toward one another
- Retain more control
- Interests are better served
Guidelines for Use of Mediation

- Relationship strained but must continue
- Miscommunication is apparent, but a neutral would facilitate communication
- Third party neutral would change dynamics
Guidelines for Use of Mediation (Con’t)

☐ Parties are willing to settle or reevaluate positions

☐ Parties interested in retaining control of outcome

☐ Sufficient time to reach settlement
Traditional Negotiation Model

- Issues
- Positions
- Arguments
- Power and Compromise
- Uneven outcome
Interest-Based Model

- Minimizes the use of power in negotiation
- Bases negotiation on identifying mutually beneficial solutions
Positions vs. Interests

- Position is understanding what a party feels/believes/wants

- Interest is determining why something is important
Interest-Based Negotiations

Terms

- Issue
- Position
- Interest (Mutual and Separate)
- Options
- Standards
Interest-Based Negotiations

Assumptions

- Communication enhances relationships
- All parties receive benefits
- Each party should help the other
- Open discussion expands interests and options
- Standards replace power
- Anger is defused
Principles of Interest-Based Negotiations

☐ Focus on issues, not personalities
☐ Focus on interests, not positions
☐ Create options to satisfy both mutual and separate interests
☐ Evaluate options according to standards, not power
Interest-Based Negotiations

Steps

- Identify the problem
- Discuss all interests
- Generate options
- Select standards to evaluate options
- Evaluate options using standards
- Develop solution and capture in writing
Interest-Based Negotiations Techniques

- Brainstorming
- Consensus-Building
- Problem-Solving
- Idea Charting
Interest-Based Negotiations
Mediator’s Role

- Assisting in identifying interests
- Helping parties to investigate what is important in a particular demand
- Probing for specific information that will help analyze a demand
- Helping to determine what will be gained
Mediation

- Understand definition of mediation
- Understand mediator’s role in mediation process
- Know stages in a ‘typical’ mediation
Definitions of Mediation

- An intervention by a third party neutral designed to facilitate negotiation.

- A voluntary and confidential process in which an impartial third party assists disputants in finding a mutually acceptable solution to their dispute.
Goals of Mediation

- Vent feelings and reduce hostility
- Clear-up misunderstandings
- Facilitate clear communications
- Determine underlying interests
- Find areas of agreement
- Incorporate these into solutions devised by the parties
Creating Trust

- Listening
- Keeping confidences
- Being empathetic
- Suspending judgments
- Projecting an attitude of acceptance
Destroying Trust

- Breaching confidence
- Acting superior
- Not listening or acting inattentive
- Judging parties
- Acting uncaring
Knowledge

- Complete information on all sides
- Complete understanding of the process
Skills

- Good communication skills
- Conflict management/resolution skills
Attitudes

- Empathy
- Impartiality
- Confidence
- Patience
Steps in Mediation

Phase I: Setting the Stage

- Background about parties and dispute
- Scheduling the meeting
- Determining authority to settle
- Arranging physical space
- Discuss process with partner
Steps in Mediation
Phase II: Introductions

- Welcome and Protocol
  - Addressing the parties
  - Defining process and mediator’s role
  - Assurance of confidentiality
  - Representatives (if appropriate)
  - Use of joint and separate sessions
  - Breaks, restrooms, smoking, coffee, etc.
Steps in Mediation
Phase II: Introductions

- Welcome and Protocols (Con’t)
  - Caucuses
  - Courtesy and mutual obligation
  - Notetaking
  - Review of agreement to mediate
  - Signing of agreement to mediate
  - Questions and clarifications
Steps in Mediation
Phase II: Introductions

- Opening Statements
  - What brought you here?
  - What would you like to see happen?
Steps in Mediation
Phase II: Introductions

- Venting
  - Get feelings out into the open
  - Review issues, needs, and proposed outcome
  - Break
Steps in Mediation
Phase III: Separate Sessions

- Identify problem
  - Explore concerns, options, view of ‘reality’

- Problem-solving
  - Identify options
  - Consider consequences
Steps in Mediation
Phase IV: Subsequent Separate Sessions

☐ Bargaining and Negotiations
  ■ Further exploration of options
  ■ Conduct reality tests
  ■ Establish principles and/or standards
Steps in Mediation
Phase V: Closure & Agreement

☐ Conclude with a joint session
☐ Discuss terms of settlement
☐ Prepare written agreement
☐ Sign written agreement
Mediator’s Activity Level

- Begins at high level to impart information, introduce the process
- Drops markedly to focus on listening and learning
- Increases in options and closure stages
How Mediators Do It

- Gather information
- Demonstrate empathy
- Persuade
- Invent supposals and possible compromises
- Reduce tension
1. Gather Information

- Have parties explain issues
- Ask questions to get more detail or to double-check
2. Demonstrate Empathy

- Be willing to listen, even to material that is not relevant
- Indicate understanding of each party’s point of view
- Indicate your empathy as part of information gathering
3. Persuade

- Start at low intensity and build slowly
- Demonstrate understanding of dispute
- Consider which issue to approach first
- Start with a small issue
3. Persuade (Con’t)

- Be cautious in identifying issues
- Emphasize need for action
- Be willing to create confrontation
- End with a key ‘major’ item
4. Invent Supposals & Compromises

☐ Deal with items on which you are expert

☐ Tie into concepts mentioned by parties

☐ Develop interrelated proposals

☐ Build gradually from one point to the next

☐ Do not guarantee agreement

☐ Never say ‘never’
5. Reduce Tension

- Relieve the pressure as needed
- Tell a joke or story
- Threaten to tell a joke
- Discuss topic of mutual interest
- Maintain professional manner
Steps in Mediation
Phase III: Separate Sessions

☐ Identify problem
  ■ Explore concerns, options, view of ‘reality’

☐ Problem-solving
  ■ Identify options
  ■ Consider consequences
Steps in Mediation
Phase IV: Subsequent Separate Sessions

☐ Bargaining and Negotiations
  ■ Further exploration of options
  ■ Conduct reality tests
  ■ Establish principles and/or standards
Steps in Mediation
Phase V: Closure & Agreement

- Conclude with a joint session
- Discuss terms of settlement
- Prepare written agreement
- Sign written agreement
Mediator’s Activity Level

- Begins at high level to impart information, introduce the process
- Drops markedly to focus on listening and learning
- Increases in options and closure stages
How Mediators Do It

- Gather information
- Demonstrate empathy
- Persuade
- Invent supposals and possible compromises
- Reduce tension
1. Gather Information

- Have parties explain issues
- Ask questions to get more detail or to double-check
2. Demonstrate Empathy

- Be willing to listen, even to material that is not relevant
- Indicate understanding of each party’s point of view
- Indicate your empathy as part of information gathering
3. Persuade

☐ Start at low intensity and build slowly

☐ Demonstrate understanding of dispute

☐ Consider which issue to approach first

☐ Start with a small issue
3. Persuade (Con’t)

- Be cautious in identifying issues
- Emphasize need for action
- Be willing to create confrontation
- End with a key ‘major’ item
4. Invent Supposals & Compromises

- Deal with items on which you are expert
- Tie into concepts mentioned by parties
- Develop interrelated proposals
- Build gradually from one point to the next
- Do not guarantee agreement
- Never say ‘never’
Mediation Wrap-Up

- Definition of mediation

- Mediator’s role in mediation process

- Stages in ‘typical’ mediation
Tools of Mediation
Objectives

☐ Understand concepts of communication
☐ Apply communication skills
☐ Demonstrate active listening skills
☐ Understand ways to expand problem-solving
☐ Understand development of mutually acceptable solutions
Communication

- Process of keeping people informed
- Transfer of knowledge
- Expression of opinion or emotion
- Process to change behavior or motivate
- Transmission of instruction or requests
- Become aware of self and others
- Establish relationships
Communications Barriers

- Not considering the other’s frame of reference
- Negative feelings toward the receiver
- Inability to express thoughts
- Hidden agendas
- Negative feelings toward sender
- Poor listening
Communications Barriers (Con’t)

- Preoccupation
- Defensiveness
- Faulty assumptions
- Low self-concept
- Selective screening
- Stereotyping
- Poor physical condition
Communications Barriers (Con’t)

- Differences in social or economic status
- Lack of interest
- Lack of trust
Barriers within the Message

- Pseudo questions
- Blocking responses
- Differences between verbal and nonverbal message
- Information overload
Barriers in the Environment

- Noise
- Temperature
- Humidity
- Poor acoustics
- Uncomfortable seating
- Distractions
- Time limitations
Route to Agreement

- Show them that you understand
  - Acknowledge strong feelings
  - Rephrase concerns in your language
  - Let them tell you background
Route to Agreement (Con’t)

- Get yourself a hearing
  - Explain your own feelings
  - Refer to their points and ask to explore them
  - Make points firmly, but politely
Route to Agreement (Con’t)

□ Work toward a joint solution
   ■ Seek ideas
   ■ Build on their ideas
   ■ Offer your ideas, but don’t impose them
   ■ Help parties to construct a solution
Opening Session

Objectives

- Set up a mediation session
- Introduce the mediation process to parties
- Conducting a joint information session
Introducing the Mediation Process

☐ Tone

☐ Space

☐ Pace
Preliminary Matters

- Initial Contacts
  - By phone
  - Per chance meetings
Preliminary Matters (Con’t)

- Physical Space
  - Meeting table
  - Caucus or breakout rooms
Preliminary Matters (Con’t)

- Reviewing the File
- Authority
- Co-Mediation
The Introduction

- Stand up as they enter
- Use last names
- Direct parties to their seats
Mediation Orientation

- What is mediation?
- Role of mediator
- Mediator disclosures
- Confidentiality
- Role of attorneys and/or representatives
- Joint and private sessions
Mediation Orientation (Con’t)

☐ Courtesy
☐ Notetaking
☐ Agreement to mediate
☐ Questions
Sharing Information

☐ How to Start

- Explain the purpose
- Let them tell their stories
Sharing Information (Con’t)

- Conveying Interest and Building Trust
  - Physical components
  - Verbal components
Sharing Information (Con’t)

- Arguing
  - Allow time to vent
Sharing Information (Con’t)

☐ When to Break
  ■ Cues for breaking
Sharing Information (Con’t)

- Issues to be Resolved
  - Ask each party about issues
  - Develop list
Sharing Information (Con’t)

- Ending the Joint Session
  - Summarize session
  - Give overview of separate sessions
  - Give order of separate sessions
  - Remind them that you will keep confidential the content of the separate session unless they grant permission to share that information
Opening Session
Wrap-Up

- Set-up a mediation session
- Introduce mediation process to the parties
- Conducting a joint information session
Separate & Subsequent Sessions Objective

☐ Know all the phases of a mediation conference
Goals of Separate Meetings

- Elicit information
- Test positions
- Build momentum toward an agreement
Why Separate Sessions?

- Maintain confidentiality
- Divert hostility
- Filter out negatives
- Explore settlement possibilities
- Stroke parties
- Refocus parties
- Overcome impasse
Overcoming Reluctance in Holding Separate Sessions

- Meeting with each side privately
- Building expectation for private session and explaining their part in the process
- Gaining parties’ trust
First Separate Session

- Start slowly
- Establish appropriate tone
- Build relationship
- Empathize
First Separate Session (Con’t)

- Ask questions
- Test positions
- Maintain confidentiality
- Make assignments
- Closing
Second Separate Session

- Be conscious of time
- Listen to their agenda
- Resist deciding who is right or wrong
- Emphasize the opportunity to elaborate
- Increase your involvement
- Help parties see other viewpoints
- Focus on interests
- Develop options
Subsequent Separate Sessions

☐ Commend progress
☐ Use shuttle diplomacy
☐ Be positive
☐ Prioritize
Subsequent Separate Sessions (Con’t)

- Serve as agent of reality
- BATNA and WATNA
- Build on areas of agreement
- Express frustrations or chastise
- Offer supposals
- Refrain from delivering formal offers
Common Reasons for Failure

- Lack of understanding
- Failure of adequate preparation
- Failure of effective communication
- Emotionalism
- Extrinsic factors
- Different perceptions
- Different information
Common Reasons for Failure (Con’t)

- Different assessments of information
- Different attitudes toward risks
- Different attitudes toward settlement
- No zone of agreement
- Constituency pressures
- Stakes not suited to compromise
Overcoming an Impasse

- Bring pressure on the parties
- Create subcommittees
- Conduct supplementary private meetings
- Hold ‘off the record’ meetings
- Temporarily break-off negotiations
Final Meeting

- If no agreement
  - discuss areas covered
- If partial agreement
  - review areas of agreement
- If full agreement
  - make sure terms are clear
Writing the Agreement

- State parties, dispute, and voluntary agreement reached through mediation
- Use simple, clear language
- Write agreement in third person
- Write promises in paragraphs
- Provide space for parties to sign
- Date agreement
Co-Mediation
Objectives

☐ Understand procedures for co-mediation
Co-Mediation Guidelines

☐ Choose partner with similar vision
☐ Work out communications
☐ Give leadership roles to co-mediators
☐ Use seating arrangement to maximize success
☐ Assign specific tasks
☐ Use opening statement to set tone
Co-Mediation Guidelines (Con’t)

- Adopt non-competition principle
- Consult co-mediator on important decisions
- Maintain a unified focus
- Use diversity of mediation team to advantage
Co-Mediation Guidelines (Con’t)

- Have fall-back or ‘fail-safe’ plan
- Be flexible
- Support your co-mediator
- Debrief after each co-mediation