

Trainer's Guide: General Mediation Awareness

This Trainer's Guide is intended to accompany the curriculum prepared for the Employee Mediation Office of the D.C. Courts' General Mediation Skills Training. This one-day mediation course was designed to give participants an overview of conflict resolution theory and management options, as well as an introduction to the process of mediation. Because the course is an integral component of an employee mediation program, the learning objectives include the understanding of the mediation option with specific regard to workplace dispute resolution. Participants should leave this course with a new view of conflict as opportunity, an understanding of when to use mediation to resolve disputes in the workplace, and what to expect as a party to mediation.

The Guide includes a course agenda, an annotated version of the participants' handout, exercises, role-plays, and over-head slides to accompany the presentation.

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Agenda

| | |
|---------------|---|
| 9:00 – 9:15 | Course objective and introductions |
| 9:15 – 9:30 | What kinds of conflicts do you face or observe in your worklife? |
| 9:30 – 10:30 | The Nature of Conflict I. Introduction to Conflict II. Conflict as Opportunity III. Poorly Managed Conflict IV. Conflict Pushed Underground V. Diversity and Conflict VI. Conflict Management Options |
| 10:30 – 10:45 | BREAK |
| 10:45 – 11:00 | What do you think Mediation is? Mediation Video |
| 11:00 – 12:00 | Mediation I. Principles, Goals and Benefits of Mediation II. Stages in Mediation III. Stage One: Introduction IV. Stage Two: Problem Determination V. Stage Three: Problem Identification |
| 12:00 – 12:30 | Positions vs. Interests EXERCISES A & B |
| 12:30 – 1:30 | LUNCH |
| 1:30 – 2:30 | Stages in Mediation Continued I. Stage Four: Generation of Options/Alternatives II. Stage Five: Selection of Alternatives III. Stage Six: Agreement |
| 2:30 – 2:45 | BREAK |
| 2:45 – 3:45 | MEDIATION SIMULATION |
| 3:45 – 4:00 | Special or Debrief and Closing Remarks |

❖❖ Introduction ❖❖

❖ Ask participants to introduce themselves and tell why they are interested in mediation, or what their expectations are of the course.

❖ State clear goals of the course: **general** overview of conflict resolution mechanisms with a focus on the mediation alternative. Focus is on workplace disputes, but general principles of mediation can be applied in almost all cases.

❖ Before beginning lecture, ask participants to think about conflicts they face in their workplace. Write their examples on a flip chart. Tape the examples on the wall in order to bring in their experiences in further discussions.

❖ SLIDE The Nature of Conflict

highlight poor communication, perceptions, acting on limited information.

❖ SLIDE Conflict as Opportunity

focus on conflicts that come up in the workplace and how the parties involved can take the possible opportunities they offer.

ask for comments.

ask questions.

THE NATURE OF CONFLICT¹

I. INTRODUCTION

Conflict is a part of being human. Especially in a workplace setting, where many different types of people are interacting on a daily basis, there is great potential for conflict:

- Different priorities, values
- Different working styles
- Competition for new assignments or promotions
- Dependence on each other to achieve objectives
- Unexpected changes

The source of the conflict is often accompanied and exacerbated by POOR COMMUNICATION. But the root cause of conflict is always PERCEPTION – the different ways people see or think about the source of the problem.

- People are then acting on a limited or even completely wrong understanding of each other's view.
- Taking the dispute "underground" creates a situation where winning personal victories and points becomes more important than reaching an agreement.

II. CONFLICT AS OPPORTUNITY

Conflict should not always be seen as negative. It also serves as a message that perhaps things are not working well and need to be changed. Conflict, taken as a SIGNAL, can be seen as a constructive mechanism which forces people to voice their differences and address needed changes. Possibilities:

- **Unrealistic expectations**
and/or expectations of **misunderstandings**
↳ Suboptimal or **flawed conflict**
- **Unproductive energy**
People who work together in a **collaborative** manner
↳ **win-win** situation which promotes **win-win** results
↳ **teamwork**
- **Unproductive energy**
A **win-lose** situation which **drives** people apart
↳ **win-lose** situation which **drives** people apart
↳ **win-lose** situation which **drives** people apart
↳ **win-lose** situation which **drives** people apart

❖ SLIDE

Poorly Managed Conflict

Use examples given by participants to demonstrate the detrimental effects of poorly managed conflicts.

❖ SLIDE

Conflict Pushed Underground

Give specific examples of how an employee may use manipulation or sabotage to deal with a conflict.

Example: An employee who is upset that his team is changing internal procedures, may not voice his concerns directly to the other team members or to the supervisor. Instead the employee may purposefully fail to implement the new procedures correctly, in hopes that the team will be forced to revert back to the former procedures.

III. POORLY MANAGED CONFLICT

The positive results of conflict do not happen by chance. The conflict must be well managed and handled correctly. What can happen if conflict is poorly managed?

- Reduced morale and motivation
Feel misunderstood and angry
Feel that concerns are not being addressed
Feel people are taking their adversary's side
Feel unappreciated, taken advantaged of
Chronic agitation and annoyance
- Contributes to job burnout
Feel powerless
Feel like there is NOTHING one can do to solve the problem
"Why bother?" attitude
Declining job performance
- Results in lower productivity
Excessive amounts of time thinking and talking about the conflict
Distraction from work
Other staff may takes sides, get involved
- Provokes more conflict
Emotional outbursts and cutting remarks linger in people's minds
People dwell on words said in anger
Generates more ill will

IV. CONFLICT PUSHED UNDERGROUND

Especially in the workplace, people are not supposed to be emotional or express anger. When you enter into the office you are expected to be rational, logical, cool-headed and professional which of course, people are not. This expectation that people in the office should be "nice" makes it almost impossible to address conflict. Dealing with a dispute requires you to voice what is bothering you, which may not be "nice."

The taboo of anger in the workplace creates an atmosphere of CONFLICT AVOIDANCE. Instead of dealing with conflict head-on, most people use other mechanisms to get what they want:

- Manipulation
 - Sabotage
 - Insults
 - Sulking

❖ **SLIDE**
Diversity & Conflict

Because of the sensitive nature of this subject matter, stress that this section does not mean to offer any stereotypes of how different people react to conflict. Rather, the point of this material is to emphasize that people think and act differently towards conflict in various ways and for different reasons.

❖ Therefore we should not jump to conclusions about a person when they do or say something during a conflict. That person may not be acting in bad faith, but rather is acting the only way he knows how. (Reinforce the concept of different perceptions of conflict.)

❖ Try to use benign examples when describing these differences. Examples: An employee may come from a military background and feels it is important to do everything "by the book." Or perhaps an employee is from an easy-going "island" culture, and conflicts seem to "roll off her back."

IV. **DIVERSITY & CONFLICTⁱⁱ**

The various dimensions to people are often manifested in differing responses to conflict. Culture can play a role in our conflict resolution abilities and comfort level. Some variables to consider:

- *Relationships*: To what extent is disclosure of feelings and views encouraged or discouraged? How do roles of hierarchy and power influence the ability of parties to talk *directly* with one another?
- *Views on cooperation and competition*: What form would win/win, win/lose, lose/lose take in this culture?
- *Problem solving*: What are the main dimensions for problem analysis? Feelings, interests or outcomes?
- *Time*: What constitutes "too long" a time for working on a problem, as opposed to deferring to higher authority such as the courts?
- *Language and communication*: How are variations in non-verbal communication apparent within the cultural framework of this dispute? If the party says yes, does that mean the party agrees with the proposal, or does it mean, "Yes, I want to keep talking, though I don't agree with what you've said; I just don't want to offend you by saying no."
- *Impact of larger social structures*: What are the roles of religious and legal structures in understanding disputes?
- *The role of third parties*: On what basis can third parties be involved, and how will they be viewed -- as higher authority, facilitative mediator, or trustee?
- *Physical space*: What does it mean to talk across the table or without a table as a barrier or protector between the parties?

❖ **SLIDE**
Conflict Management Options

❖ Ask participants what types of activities are included in each of these options in response to a conflict. Give hypothetical responses from each category to the conflicts listed earlier by the participants.

❖ Ask participants when would they chose to use each of the following mechanisms?

❖ Ask participants what are the benefits and drawbacks of each mechanism?

❖ Highlight that there are proper times to use all of these mechanisms. Give examples of appropriate uses.

❖ Ask participants how the ultimate solution is made when using each of these methods. Focus on the main benefit of the collaborative approach: the decision-making authority stays with the parties!

❖❖ **10 MINUTE BREAK** ❖❖

The following two pages are designed for this material.

Conflict Management Optionsⁱⁱⁱ

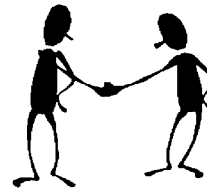
Avoidance -

Wait and See



Collaboration - Negotiation by the parties

Mediation by third party



Higher Authority -

Referral up chain of command

Litigation through the courts



Unilateral Power Play

Physical Violence strikes behind the scenes
 manipulating



| <i>Options</i> | <i>Avoidance</i> | <i>Collaboration</i> | <i>Higher Authority</i> | <i>Unilateral Power Play</i> |
|-------------------|--|---|--|---|
| Activities | Wait and see. Avoid person. Change own behavior. | Negotiation (via direct talks). Mediation (formal and informal) | Internal (chain of command). External (courts, litigation) | Political Action Strikes, civil disobedience. Physical force |
| Decision-making | By chance. | By the parties. | By third party | By force. |
| Primary focus | Isolation from the problem. | Integrative solution based on interests and other facts. | Right and wrong according to objective criteria. | Power contest. |
| Primary outcome | Unpredictable. | Win/win. | Win/lose (lose/lose). | Win/lose (lose/lose). |
| Constructive form | <ul style="list-style-type: none"> • Wait to see if passage of time will bring change. • Change own behavior to solve problems without expecting other side to change. | <p>For both negotiation and mediation:</p> <ul style="list-style-type: none"> • Individual rights are protected. • BATNAs are considered. • All parties are willing to talk with one another either in direct discussions or with assistance of a mediator. • Power imbalances are identified and adjustments are made in order to protect individuals. | <ul style="list-style-type: none"> • Due process observed. • Individual legal rights of parties are protected. • Balance of public and individual interests recognized. • Mediation loopback to control costs and/or to allow another opportunity for consensus. | <ul style="list-style-type: none"> • Political and nonviolent strategies are used as first choice, with violence as last resort. • Loopbacks to mediation are available under higher authority. |

| <i>Options</i> | <i>Avoidance</i> | <i>Collaboration</i> | <i>Higher Authority</i> | <i>Unilateral Power Play</i> |
|-----------------|---|---|--|---|
| Destructive Use | <ul style="list-style-type: none"> Denying that the problem exists. Avoiding confrontation based on lack of skill in negotiation. | <p>For both mediation and negotiation:</p> <ul style="list-style-type: none"> Individual legal rights are not protected. Other options not considered or offered. One or more parties coerced into using this process. Power imbalances operate unchecked. | <ul style="list-style-type: none"> No due process ("railroad model") Individual legal rights are not protected. No balance of public and private "good." No loopbacks. | <ul style="list-style-type: none"> Move to violence without exhausting other means. |
| When to use | <ul style="list-style-type: none"> No opportunity to talk to the other party. Passage of time might help. Delay will not hurt. Other avenues temporarily blocked. | <ul style="list-style-type: none"> Compliance of each party is important to eventual success of settlement. <i>Desire to preserve relationship after dispute is resolved.</i> Interest in protecting against emotional fallout and other side effects of higher authority resolutions. | <ul style="list-style-type: none"> Need to establish legal or administrative precedent. Policy ruling is needed. Collaboration has been rejected. | <ul style="list-style-type: none"> Activities required in all other options have failed. When perceived "unjust" laws or policies cannot be changed by other means. Dealing with evil. |

❖❖ Introduction ❖❖

Introduce the next section, by explaining that the course now switches gears to address a specific method of resolving conflicts collaboratively: MEDIATION.

❖ Ask participants what they think of when they hear "MEDIATION." What does it mean to them? Write their answers on a flip chart. Add any important missing components.

❖ SLIDE MEDIATION

Go over definition of mediation to reinforce key components of the process.

❖❖ VIDEO ❖❖

If available, show short video of a mediation (no more than 15 minutes). Choose one that highlights the mediator's introduction of the process. (Recommend the U.S. Postal Service RIDDISS program video.) Ask for comments on video.

❖ *If there is enough time, depending on the length of discussions, proceed with the next three slides:*

❖ *Goals of Mediation*

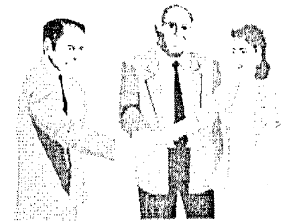
❖ *Benefits of Mediation*

❖ *Outcomes of Mediation*

❖ *If discussions are lengthy, omit these slides and continue on to the Stages of Mediation.*

MEDIATION

I. Definition:



Mediation is a process in which a **third party**, who is neutral, assists and facilitates two or more parties to communicate and to possibly reach a mutually-acceptable resolution to their dispute. Mediation is a process, not an end result. The mediator creates a framework for problem-solving, the parties are responsible for the content. *The mediator does not make decisions for parties* (as opposed to a judge). Decision-making rests in the hands of the parties.

- Mediation can be used when there is no dispute. *For example, when a consultant (mediator) helps an executive committee negotiate agreement on a strategic plan.*
- Mediation can be used as an alternative to litigation or bloodshed. *For example, when a mediator helps two parties who are suing each other, come to a resolution without going to trial.*

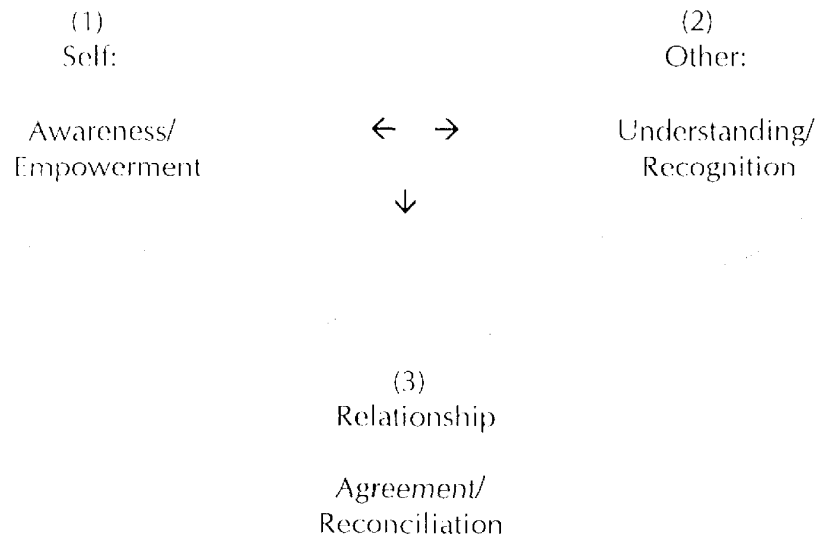
II. Goals of Mediation

- To help the disputants develop a mutually agreeable action plan (resolution).
- To reduce hostility between the disputants.
- To help each of the disputants understand their own talents, interests and options within the situation.
- To facilitate mutual recognition, so parties may better understand how each other views and values the situation.
- To give disputants tools for resolving future disagreements.

III. Benefits of Mediation

- Procedures are informal.
- Parties have more control over the process.
- There is an opportunity to be heard and to "speak one's piece."
- All concerns of the parties may be addressed.
- Opportunity to deal with underlying issues of the conflict.
- No outside force is pronouncing one side a "winner" and the other a "loser."
- Parties "own" the solution to their dispute and are committed to the agreement.
- More settlement options. Creative options are encouraged and given a more thorough exploration than is often otherwise possible.
- Relationships are preserved.

IV. Outcomes of Mediation^b



- (1) Mediator assists each party in developing an awareness of interests, facts, and other data important to this party. In caucus, this includes exploration of hot buttons or strong emotions to better understand key interests. Also, by offering respect to the party, and at times coaching on how to use the mediation process, the mediator empowers the party for problem-solving in the future.
- 2) Mediator assists each party in understanding the other side's point of view, interests, needs and feelings, and possibly in offering recognition or acknowledgment of the *validity of the other side's interests, or at least the right of the other side to have certain needs met.*
- 3) The mediator assists the parties in creating mutually-agreeable solutions, steps that could be put into an agreement. The most elementary form may be a partial agreement to collect new data and to continue talks, and the most advanced may be true reconciliation through which the parties acknowledge past wrongs, make apologies, restitution, and plans for the future, and forgive one another as they go forward to implement a mutually agreeable plan.

❖❖ Introduction ❖❖

Clarify that this section is from the perspective of the mediator – what steps the mediator follows during a mediation.

❖ SLIDE
Stages in Mediation

Show participants the flow chart of the Stages in Mediation.

❖ Note the preparation phase: this offers a good time to discuss your program’s procedures for accessing mediation services. What happens, logistically, to get the parties to the table?

❖ SLIDE
Stage I: Introduction

Ask participants how they would create a comfortable, informal atmosphere for problem-solving.

Discuss material.

❖ SLIDE
Stage II: Problem Determination

Remind participants that the focus of this stage is on information gathering.

Highlight one the most powerful tools of a mediator: summarizing a party’s statements in neutral terms.

Discuss material.

Stages in Mediation*

The following six steps give a basic outline of the structure of mediation. During a typical mediation session, the steps may not be distinguishable; the mediation will flow from one step to the next. One of the keys to successful mediation is flexibility and creativity in responding to each particular case.

STAGE I: INTRODUCTION

The mediator introduces himself/herself and introduces the parties to the mediation process.

- Greet the parties assigning them specific seats.
- Identify yourself and the parties: clarify names and refer to parties comparably and in the names they desire.
- Establish an informal relaxed atmosphere by offering water, paper and pencil, and time.
- Explain the purpose of mediation, discuss confidentiality, and ascertain parties’ willingness to participate.
- Often a document is reviewed and signed that confirms understanding about the role of the mediator and about confidentiality.
- Clarify ground rules and explain the reasons for them. (*Mutual respect, only one person speak at a time... etc.*)
- Assess the parties. Are they both ready to begin? Is either overly anxious, nervous, or upset. Are any severe emotions, drinking, drugs, health or other problems apparent? (*Perhaps it may be inappropriate for the mediation to take place at that time.*)
- Is any preliminary calming required?
- Ask if the parties have any questions before beginning.

STAGE II: PROBLEM DETERMINATION

The parties begin to discuss the issue. The focus is on gathering information.

- Request one party to begin. Ask the party who contacted the program to begin, or go alphabetically by name. Explain the reason why one party will go first.
- Ask for a brief summary of their perception of the situation.
- Remember, this is the development phase. This may be the first time the parties have discussed the situation in a problem-solving atmosphere.
- Actively listen to the speaker. Take notes if helpful. Use listening techniques such as restatement, echoing, and non-verbal responses.

Mention to participants that there is more material in their booklet, then you will cover in class. The extensive materials on Listening and Questioning is for additional background.

Depending on the length of discussions, proceed with the following two slides.

❖ **SLIDE**
Active Listening

Discuss each technique. Ask participants to give examples.

❖ **SLIDE**
The Art of Questioning

Discuss definitions of each type of questioning and discuss when it is appropriate to use each method.

❖ If there is not enough time, point out this material to participants and suggest they read it later. Proceed to **Stage III: Problem Identification.**

- Clarify party's narration by asking questions or restating.
- Maintain information flow by focusing the party's narration. Keep the mediation progressing.
- Try not to interrupt the party, do not ask too many questions.
- When the initial statement is finished, ask the party what he/she would like to see accomplished in the mediation.
- Summarize the first party's story in neutral terms. In summarizing, the mediator may defuse tensions by restating the situation by eliminating disparaging comments or descriptions.
- Check with party to see if you have understood what has been said. This aids everyone to understand.
- Thank the first party for his/her contribution. Remind both parties of ground rules, noting second party's patience, if appropriate.

Pay close attention to the behavior and body movements of both parties.

Remember the other party is waiting to speak.

If necessary, stop the party's narration and calm both parties or assure the other speaker of equal time and opportunity to speak.

- Repeat the process with the other parties, always paying close attention to the behavior of both.
- Ask questions in a neutral fashion. Make use of open and closed questions when appropriate.
- Ensure mutual understanding, but not necessarily agreement on the facts.
- After both parties' stories and your individual summaries, check with both. Are they okay? Any calming or explanation necessary?

ACTIVE LISTENING TECHNIQUES^{vi}

- 1. Encouraging:** to show interest in a neutral way and to keep the parties talking. To show them that you appreciate their position. ("I see")
- 2. Restating:** to confirm the facts by saying them in a slightly different way. ("In other words...")
- 3. Validating/Reflecting:** to let the parties know you understand their position. ("I hear the frustration in your voice...")
- 4. Summarizing:** to pull the story together and promote further discussions. ("These seem to be the main points covered....")
- 5. Clarifying:** to ask appropriate questions so everyone can have the same understanding of what issues need to be resolved. ("Could I ask a few questions to better understand the situation...?")



BACKGROUND

STOP TALKING – You can't listen while you are talking.

EMPATHIZE WITH THE OTHER PERSON – Try to put yourself in the other's place so you can see what he/she is trying to get at.

ASK QUESTIONS – When you don't understand, when you need more explanation, when you want to be liked, when you want to show that you are listening. Don't ask questions that will embarrass or show up the other person.

DON'T GIVE UP TOO SOON – Don't interrupt people; give them time to say what they have to say.

CONCENTRATE ON WHAT HE/SHE IS SAYING – Focus your attention on the words, ideas and feelings related to the subject.

LOOK AT THE OTHER PERSON – The features (mouth, eyes, hands) will all help in the communication. This will help you concentrate too. Make the other person feel you are listening.

SMILE AND VERBALLY ACKNOWLEDGE WHAT YOU ARE HEARING – but don't overdo it.

LEAVE YOUR EMOTIONS BEHIND (if possible) – Push your worries, your fears, your problems, outside the meeting room. They may keep you from listening well.

CONTROL YOUR ANGER – Try not to get angry at what the other is saying; your anger may prevent you from understanding words or meaning.

GET THE MAIN POINTS – Concentrate on the main ideas, not the examples. Stories, statistics, etc. are important but are usually not the main points. Examine them only to see if they prove, support or define the main idea.

SHARE RESPONSIBILITY FOR COMMUNICATION – One part of the responsibility rests with the speaker; you as the listener have an important part. Try to understand. If you don't, ask for clarification.

REACT TO IDEAS, NOT TO THE PERSON – Don't let your reactions to the person get in the way of interpretation of what's said. The focus may be good even if you don't like the person or the way he or she looks or speaks.

DON'T ARGUE MENTALLY – When you are trying to understand the other person, don't argue with him or her mentally as he/she is speaking. This sets up a barrier between you and the speaker.

HOW TO USE IN

Types of Questions

1. Open Questions – Encourage people to talk about the situation.

*“What happened?”
“What brought you here?”*

2. Focused Questions – Seek specific information

*“What was happening at five o’clock on Saturday?”
“What was going on when you decided to do that?”*

3. Closed Questions – Almost always ask for a “yes” or “no” response.

“Did you see him on your way home?”

4. Leading Questions – (What lawyers do!) Have the answer embedded in the question and this requires or dictates “yes” or “no” answers.

“You didn’t actually tell him what you planned, did you?”

When to ask questions:

1. When you are unable to hear or understand.
2. When you want to help a person clarify or explore further a thought or feeling he/she expressed.
3. When you need further information.
4. When a party finds it hard to continue talking, even though he/she seems to have more to say.

BACKGROUND

Guidelines for Asking Effective Questions

1. Be aware of how many questions you ask. Fewer well-phrased ones are more effective than many choppy ones.
2. Have a reason for each question you ask. Be prepared for the possibility that the party may want to know why you're asking it. The ultimate test: *Will the question I am about to ask be helpful to the party?*
3. Ask open-ended, rather than yes-no questions. These are the kind of questions that start with what, how, who, which and when. Open-ended questions give you much more information with much less effort than questions that can be answered with a simple yes or no. This also lets the parties do most of the talking.
4. Avoid "Why" questions. They can put people on the defensive.

NOT *"Why did you fight with your husband?"*
BUT RATHER *"How did you and your husband end up in a fight?"*

5. Avoid questions that already include the answers. These can convey condescension.

"You don't feel that's the right way to act, do you?"

6. Avoid asking double questions. For example,

"Did you stay at home last night or go out with friends?"

7. Avoid asking several questions, without waiting for responses in between.

"What did you do then? Did something distressing happen? What is it that upset you?"

8. Be aware of the tone of your voice when asking questions. A slightly lower pitch than your usual voice can convey more concern and intimacy. Slowing down your rate of speech and increasing the tentativeness of your voice can make the difference between constructive questioning and interrogating a party.
9. Be comfortable with silence. Silence can also be a useful tool in active listening. The use of silence is a way to give the party time and space to "get their story out." Sometimes the party may need time to think, time to organize new thoughts that their questions may have raised. Sometimes it may be the nature and magnitude of the party's situation that requires more time.

Discuss material, highlighting the points on the slide.

❖ **SLIDE**
Positions vs. Interests

Give example: Two people are on the street fighting over an orange. They ask a neutral person to help solve their problem. The neutral doesn't ask them any questions, but slices the orange in two and gives each person a half.

One person was hungry and goes home, eats the pulp and throws away the peel. The other person needed orange rind for a recipe. She goes home, throws away the pulp and grates up the peel.

Their positions were "I want the orange!" But their underlying interests were not in conflict and could have been fully met.

❖❖ **EXERCISES** ❖❖

Handout Exercise A on distinguishing between positions and interests and Exercise B on developing interest statements.

Give participants time to complete Exercise A, then go through the exercise together.

Then give participants time to complete Exercise B. Pick one of the two issues to write up on the flip chart.

❖❖ **Break for Lunch** ❖❖
STAGE III: PROBLEM IDENTIFICATION

The next step is to identify the problem, including any

underlying or fundamental issues which may affect the problem.

- Ask each party to assist in identifying the presenting problem.
- Inquire (probe) into underlying, fundamental issues which may affect the presenting problem that may be the root of the complaints.
- Define the problem by restating and summarizing party's statements.
- Conduct private sessions if necessary. (Caucuses)
Explanations should be given to both parties as to what will transpire during and after the private sessions.
- Summarize areas of agreement and disagreement.
- Assist parties in prioritizing issues and demands.

POSITIONS VS. INTERESTS^{vii}

Interests motivate people. They are the silent movers behind the hubbub of positions. Your position is something you have decided upon. Your interest is what caused you to decide.

Position: A specific term or condition being sought by a party.

I want a raise.

Interest: What a party wants or needs. An underlying objective.

*I need to provide housing for my family.
I need to send my kids to college.
I want to be recognized for my achievements.*

❖❖ Review ❖❖

After returning from lunch, put up the Slide of the Stages in Mediation flow chart. Review each of the stages already discussed, highlighting the most important points.

Ask participants if they have any questions or comments on the material covered so far.

❖ **SLIDE**
Stage IV: Generation of Options

Discuss materials, highlighting the points on the slide.

Emphasize why options should be generated by the parties and not by the mediator.

❖ **SLIDE**
Stage V: Selection of Alternatives

Discuss materials, highlighting the points on the slide.

STAGE IV: GENERATION OF OPTIONS/ALTERNATIVES

- Conduct a brainstorming session to get as many options on the table as possible.
- Inquire of each party a list of possible alternatives or options in helping to resolve the situation.
- Restate and summarize each alternative.
- Don't allow premature judgments.
- Don't allow the parties to think that solving the problem is the other person's responsibility.
- Break down problem into smaller components in order to build sub-agreements.
- Don't evaluate options one at a time; instead develop trade-offs.
- May need to transmit offers or suggestions between parties during caucuses.
- Check and recheck with each party the workability of each alternative.
- Note the unworkability of an alternative if that is the case.
- Suggest other possible alternatives in general terms if an impasse is reached.
- Encourage the parties of the probability of success by listing areas of consensus.
- Suggest a break or a second mediation if impasse is reached.
- Ask parties to "try- out" possible solutions.



STAGE V: SELECTION OF ALTERNATIVES

- Encourage parties to select alternatives or options which appear workable to both.
- Check workability.
- Assist parties in planning a course of action to implement the alternative or option.
- Note the progress parties have made.
- Rephrase alternatives or options selected in order to increase understanding.
- Partial agreement; agreement on some, if not all of the issues is a valid alternative.

❖ **SLIDE**
Stage VI: Agreement

Discuss materials, highlighting the points on the slide.

Depending on the program's philosophy, stress that agreement is only one possible outcome of mediation. Reinforce the other outcomes in mediation, as per previous slide.

❖ **SLIDE**
Writing an Agreement

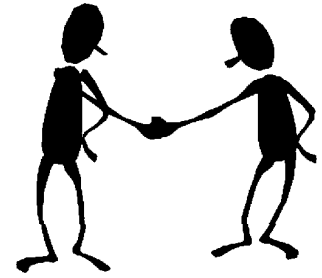
Discuss materials, highlighting the points on the slide.

❖ **MEDIATION SIMULATION**

Discuss the purpose of a role play exercise. Give participants approximately an hour to complete the simulation and then debrief.

STAGE VI: AGREEMENT

- Summarize agreement terms,
- Check viability and reality with each party. Secure their assent to what has transpired.
- Ask each if there are any other issues which need to be discussed.
- Assist parties specify terms of the resolution. Where? When? How? Who?
- Explain process of follow-up.
- Establish each party type of follow-up.
- Emphasize that agreement is theirs, not yours.
- Congratulate the parties on their reasonableness. Encourage parties on the workability of their solutions.



WRITING AN AGREEMENT

Reducing the agreement to writing is a way of memorializing what the parties decided upon during the mediation session. Some resolutions may not call for a written document. However, the exercise of putting the agreement into words, clarifies each parties intentions and perceptions of the agreement, as well as solidifying the terms for future reference.

- The agreement should cover all the issues raised by the parties.
- The agreement should state clearly what each party must do, with specifics as to when and how they must do it. Give as much detail as necessary to prevent later misunderstanding.
- Specify Recourse: Indicate what action will be taken by the parties, if one party does not live up to his/her part of the agreement.
- Make sure to work out all the details. Don't rush just because the parties have agreed to a general solution. "The devil is in the detail." And many agreements have fallen by the wayside, because details were not thought of or included in the original solution.

ENDNOTES

ⁱ Adapted from *From Conflict to Cooperation: How to Mediate a Dispute* by Dr. Beverly Potter.

ⁱⁱ Taken from *When Push Comes to Shove: A Practical Guide to Mediating Disputes*, by Karl A. Slaikeu.

ⁱⁱⁱ Id.

^{iv} Id.

^v Adapted from *Alternative Dispute Resolution: An Innovative Expansion of Justice, Mediation Training Manual*, by Prudence B. Kestner and Larry Ray.

^{vi} Taken from *Mediation Skills & Techniques* by Melinda Ostermeyer.

^{vii} Based on *Getting to Yes* by Robert Fisher and Bill Ury.