



# Community Solutions of Central Oregon

## **MODULE 3 Overview**

### ***Stages of Mediation***

Module 3 contains a ton of information on the Stages of Mediation. While it is important for you to read this module, it will be covered in greater depth during the practicum. For this exercise, we will give you some real-life examples of what happens in each of these six steps.

#### 1. Opening the Mediation

The opening statement sets the stage for the rest of the mediation. Most parties don't want to be at mediation, so they enter the room with an attitude and a great deal of skepticism. The opening statement will put the parties at ease and give them hope. The parties will also realize that this is a serious process.

#### 2. Information Sharing

Most parties have never discussed their issues with anyone but themselves, and obviously, that hasn't gone worked out too well. Having a neutral in the room who is listening and not judging allows each party to tell their side of the story uninterrupted for the first time. This is where your restating and paraphrasing skills will come into play.

#### 3. Understanding Underlying Needs/Interests

You will hear statements like "I refuse...", "I will not...", "I'll never..." These are position statements. The parties are making these statements because they have needs that aren't being met. Your job is to delve into those positions and draw out their needs and interests. This is where you use your questioning skills. This is one of the most difficult stages of the mediation.

#### 4. Generating and Evaluating Options

Have the parties come up with their own solutions? Sometimes you'll brainstorm the problem, but don't assume that everyone knows what brainstorming is or how to do it. Your job is to keep the parties on track and not let them backslide. You

accomplish this by focusing on their mutual principals and not letting them return to their positions.

#### 5. Reaching Resolution/Writing the Agreement

Once the parties have agreed upon the solution, write up agreement using their words, no legalese. Once you have determined who, what, when and where, remember to ask the parties if they feel they can comply with the agreement. Some folks will sign anything just to get out of the room, so if you get the feeling that there could be a compliance issue, don't be afraid to tell the parties about your concerns. Once the parties are out of the room it's very unlikely that you will ever get them back.

#### 6. Closing the Mediation

Here is where you acknowledge the parties for their hard work. It is important to say that the mediation is over because it gives the parties closure.

The Module Videos will give you better understanding of how each stage transitions from one to the other.

## **Overview of the Stages in the Mediation Process**

### **Stage 1 – Opening the Mediation**

- Create a positive environment; establish structure; agree on communication guidelines.
- Build trust in the mediator and in the process.
- Offer hope & optimism; normalize conflict.

### **Stage 2 – Information Sharing**

- Help participants describe what happened; what brought them to mediation, tell their “story”, briefly at first, and then in more detail.
- Mediator assists participants by using active listening: restating and summarizing.
- Develop a working relationship that encourages problem solving rather than polarization over positions.
- Maintain a safe atmosphere by staying within the communication.
- Guidelines and balancing time and attention between the parties.
- Identify the issues to be discussed. Structure the succeeding discussion.

### **Stage 3 – Understanding Underlying Needs/Interests**

- Help participants move off their initial positions; search for underlying needs.
- Facilitate communication so each participant understands what is important to the other and why.

### **Stage 4 – Generating and Evaluating Options**

- Maximize options, invent possible solutions without judging or deciding.
- Work together on problem solving.
- Agree on principles, not positions.
- Evaluate alternatives: do they meet the needs of the parties?

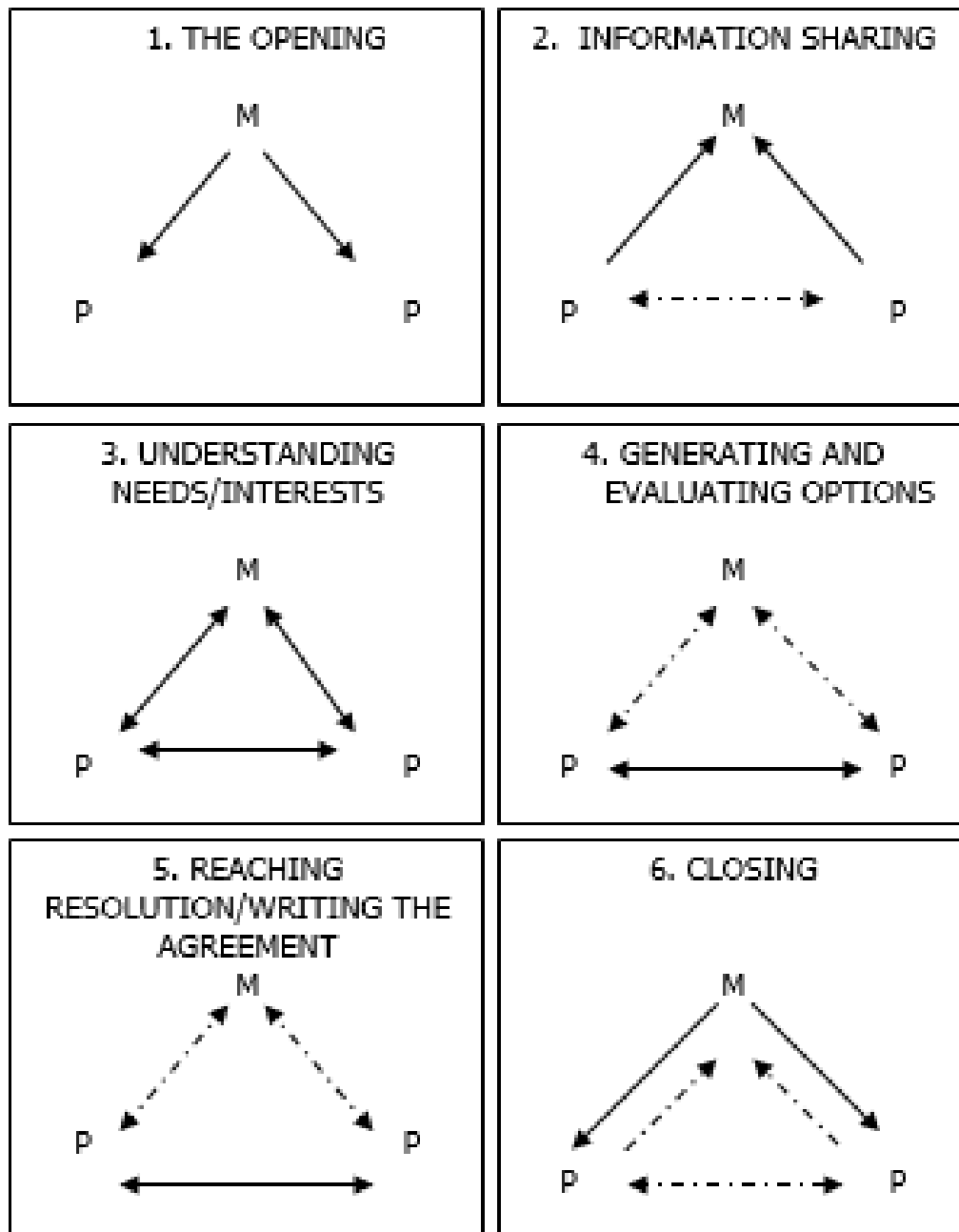
### **Stage 5 – Reaching Resolution/Writing the Agreement**

- Select the option that best meets the needs of both parties.
- Write up the Agreement using clear, precise language and the words of the parties.
- Address post mediation concerns such as enforcement, monitoring, future dispute resolution, etc.
- Write, read and sign agreement.
- Ask if there is anything else to say before you bring closure.

### **Stage 6 – Closing the Mediation**

- Ensure all participants are “complete.”
- Acknowledge the participants and their achievement.
- Formally close the mediation.

### Flow of communication in mediation



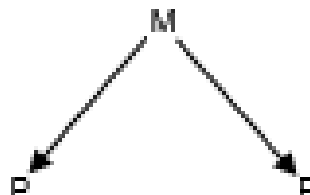
### **Moving through the mediation process**

- These are functions that need to be fulfilled. Don't expect a linear process!
- Transition activities are tools to determine if participants are ready to move on.
- If you experience resistance during a transition, consider spending more time in a previous stage.

<b>Stage 1: The Opening</b>	<ul style="list-style-type: none"> <li>▪ Build trust and offer hope</li> <li>▪ Establish guidelines</li> </ul>
<b>Transition: Invite one participant to begin, then confirm with the other that its alright with them to go first.</b>	
<b>Stage 2: Information Sharing</b>	<ul style="list-style-type: none"> <li>▪ Let participants tell what happened</li> <li>▪ Restate and summarize</li> <li>▪ Ask clarifying questions</li> <li>▪ Divide time and attention given to participants</li> <li>▪ Identify issues and create an agenda</li> </ul>
<b>Transition: Ask if there is anything else they would like you to understand?</b>	
<b>Stage 3: Understanding Needs/Interests</b>	<ul style="list-style-type: none"> <li>▪ Help participants share strong emotions</li> <li>▪ Help participants speak to one another</li> <li>▪ Help participants discover and focus on needs of the other rather than solutions</li> <li>▪ Refine the agenda in terms of needs/interests</li> </ul>
<b>Transition: Again, ask if there is anything else they would like you to understand? Be sure to point out common ground and summarize progress. Also, begin building an agreement based on needs.</b>	
<b>Stage 4: Generating and Evaluating Options</b>	<ul style="list-style-type: none"> <li>▪ Explore several options using a needs-based agenda</li> <li>▪ Expand possibilities and do not judge</li> <li>▪ Move participants out of the past and into the future</li> </ul>
<b>Transition: Begin to evaluate options based on needs, while noting shared concerns and points of agreement.</b>	
<b>Stage 5: Reaching Resolution/Writing the Agreement</b>	<ul style="list-style-type: none"> <li>▪ Balance needs</li> <li>▪ Tie issues together</li> <li>▪ Be specific and comprehensive</li> <li>▪ Write agreement in the participants' words</li> </ul>
<b>Transition: Offer the agreement to each participant for review; answer questions, make corrections, and ask each person if they fully understand the complete agreement.</b>	
<b>Stage 6: Closing the Mediation</b>	<ul style="list-style-type: none"> <li>▪ Acknowledge participants' hard work</li> <li>▪ Thank everyone for their participation in good faith</li> <li>▪ Congratulate them on their accomplishment</li> </ul>

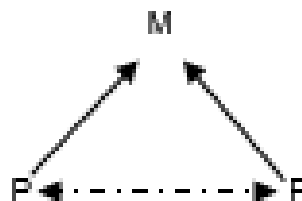
## Stage 1: The Opening

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Create a positive environment	Welcome and introductions	Become comfortable with room and surroundings
Establish structure	Establish credibility of mediator and process	Develop awareness of the process
Build trust in the mediator and the process	Explain mediator role and impartiality	Develop awareness of mediator role
Increase awareness of resolving the dispute through this mediation process	Purpose of the session, procedure to be followed (describe process)	Get answers to preliminary questions about the process  Understand what participation is required
Normalize Conflict	Acknowledge the risk in participating in the process, express positive expectations.	
Set procedural guidelines	Establish guidelines and obtain agreement from participants to follow them	Agree to participate and abide by the guidelines.
Give hope to the participants.	Gain commitment to begin the process.	Get answers to any outstanding questions regarding process



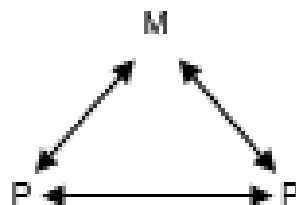
## Stage 2: Information Sharing

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Participants share what happened as fully as needed to identify all the potential issues to be discussed	Set the stage for participants to share their views	Express concerns and feelings fully, without intimidation or challenge
Establish safe atmosphere by holding the communication guidelines in place	Active listening (re-stating) to help participants know they have been heard. Manage interruptions appropriately	Describe their perceptions of the cause of the conflict and of the other participant
Develop a working relationship that encourages problem solving	Ask questions to help participants share fully, surface assumptions, suspicions, clarify issues, feelings and expectations	Discuss their assumptions, expectations and needs
Ensure you have heard each participant and understand their viewpoint accurately	Summarize participants' concerns in neutral language	Listen to the other participant's viewpoint



### Stage 3: Understanding Underlying Needs/Interests

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Clarify Issues	Reframe Issues in neutral language	Discuss their perceptions of the Issues and their underlying needs
Identify underlying needs	Help the participants discover and focus on needs	Identify own needs Understand the needs of the other participant
Help participants understand what is important to the other participant and why	Facilitate communication so each participant can hear the other participant's concerns and validate them	Share feelings, resentments and assumptions
Separate positions (solutions) from needs.	Separate positions (solutions) from needs.	Stand In the other Participants' shoes
Reach agreement on the issues to be addressed	Focus the agenda and develop agreement on the reframed Issues to be addressed in the Mediation	Understand the agenda and reframed Issues





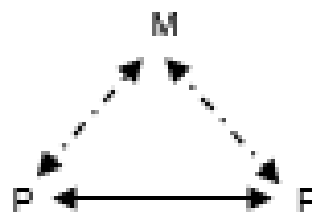
### Stage 4: Generating and Evaluating Options

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Maximize options, inventing without deciding	Move participants out of the past and into the future	Leave story-telling behind and focus on resolution
Begin to work together on problem solving	Facilitate brainstorming, protecting the process by keeping the options open	Participate fully in brainstorming options
Agree on principles, not positions	Develop criteria to evaluate options Acknowledge ideas and options suggested by participants. Note shared concerns and points of agreement	Agree on principles to be used  Stay open
Begin evaluation of alternatives – what needs would each alternative serve?	Assist in evaluating based on principles & focusing on needs not positions	Agree on alternatives that would meet the needs of both participants
	Avoid making suggestions & adding own ideas	Participate in evaluation of alternatives



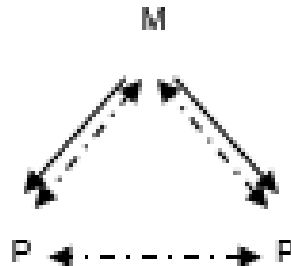
### Stage 5: Reaching Resolution/Writing the Agreement

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Choose a solution based on needs of both parties	Make sure all the issues are addressed. Make sure both participants participate in the formation of the final agreement.	Discuss strengths and weaknesses of possible resolutions
Review Implications and practical steps of implementing the agreement	Anticipate and discuss possible problems with the resolutions (act as reality check)	Modify the agreement to accommodate practical realities
Write and sign agreement	Write agreement in their language, read aloud and sign the agreement (if any)	Be willing to agree to workable solutions that meet both participants' needs and conform to reality



## Stage 6: Closing

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Mark the ending of the mediation	Formally close the mediation	
Affirm the participants and the work they did.	Acknowledge all participants, individually or collectively, and the work they have accomplished (or if no agreement, the time and energy they put in).	Receive the acknowledgment
Give dignity to the process and the participants.	Thank all participants. Shake hands as appropriate.	



## **The Mediation Process**

### **1. Opening**

Explain process and role of the mediator; explain guidelines; sign consent forms. Begin building trust in the mediator and the process.

### **2. Information Sharing**

"Please give us a 3-5-minute overview of what brings you to mediation." Briefly restate and reflect feelings. Repeat with another participant.

*"Would you like to add \_\_\_\_\_?"*

*"Respond to what you heard."*

*"I'm curious about \_\_\_\_\_."*

*"Tell me more about this."*

*"\_\_\_\_\_, is there anything more you would like me or \_\_\_\_\_ to know or understand?"*

*"You both agree that \_\_\_\_\_." "It sounds like you were feeling \_\_\_\_\_"*

Help define issues and create an agenda. Do this by structuring the discussion and defining issues to be discussed.

*"Do either of you need to talk more about \_\_\_\_\_?"*

*"Are you willing to talk about (or listen to) \_\_\_\_\_ talk about \_\_\_\_\_?"*

*"Would it be helpful to have a conversation about \_\_\_\_\_?"*

### **3. Understanding Underlying Needs/Interests**

Identify underlying needs.

*"Help us understand why this is important to you." "Why do you want \_\_\_\_\_?"*

*"If this situation were fully resolved, how would things be better for you?"*

*"If you tried your option, what would that give you?"*

*"How would that meet your needs?"*

## **The Mediation Process continues...**

### **4. Generating and Evaluating Options**

Focus the issues in terms of the needs that have been expressed. Invite participants to begin generating options.

*"Is this a good time to look for solutions? Let's begin by brainstorming."*

*"How can you address this situation in a way that provides for A's need for \_\_\_\_, B's need for \_\_\_\_, and your common need for \_\_\_\_?"*

*"What are some other options for solving this problem?"*

*"If money were not an issue here, how might you resolve \_\_\_\_?"*

*"If A wants his way and B wants hers, can you imagine a third way that might work for both of you?"*

*"How would this solution affect you?"*

### **5. Reaching Resolution/Writing the Agreement**

*"Which of these options appeal to you?" "Why?" "Which needs does it meet?"*

*"Could we put X together with Y to meet both needs?"*

*"Which options meet your individual and common needs?"*

*"Is this a workable solution for both of you?"*

### **6. Closing**

*"Is there anything that you would like to say or do before we complete this process?"*

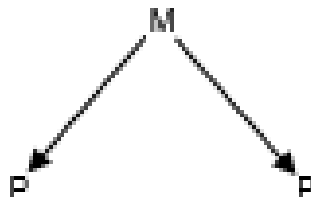
*"Congratulations on working hard to resolve this issue in your lives."*

*"Thank you for the effort and attention you have given this matter."*

## Taking a closer look at each stage of mediation

### Stage 1: The Opening

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Create a positive environment	Welcome and introductions	Become comfortable with room and surroundings
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Give hope to the participants.	Gain commitment to begin the process.	Get answers to any outstanding questions regarding process



## **Opening the Mediation**

There are three parts to this first and very important mediation stage.

**First**, is the preparation of the room and of yourself for the mediation session.

**Second**, is the first contact you have with the participants – the way you greet the participants in the waiting room, how “present” you are with them and how you bring them into the mediation room and how you invite them to be seated. This is their first contact with you and their first impression will be crucial.

**Third**, is the actual, formal way you open the mediation, explain the process of mediation, cover housekeeping issues, invite the use of communication guidelines and finally transition into having the participants speak about what has brought them to mediation.

The Opening has great power and will set the tone for the rest of the mediation. The importance of managing the Opening properly cannot be overemphasized. Unskilled or new mediators will frequently skip or greatly shorten this stage. The Opening is where you give dignity and graciousness to the process.

As there is so much to remember in the Opening, we will cover it in two different sessions. For the first three days of this training we want you to focus on just establishing rapport and explaining the mediation process and the mediator’s role. We will revisit the Opening on the last day of the training.

## **Preparing to Mediate**

### ***Giving dignity to the setting***

#### ***Privacy:***

Is the room private? Do the walls reach the ceiling? Are there any other possible intrusions that would make the process lacking in confidentiality? Will you be able to photocopy the Agreement or any other paperwork after the mediation –privately?

#### ***Seating Arrangements:***

- Mediator and participants should be able to see each other.
- Some participants feel physically threatened by the other participant. A table between the participants may promote feelings of safety. On the other hand, lack of a barrier may cause participants to feel the need to exercise more self-control.
- When participants sit across from each other, “my side versus your side” thinking is encouraged and this is not always conducive to the process; however, it also helps participants to look directly at each other.
- Mediators sitting at the head or foot of rectangular tables may be perceived as strong authorities; this may help or hinder.
- If other participants will be present in the mediation such as attorneys, union representatives, interpreters or others who are not primary participants to the dispute, seat the primary participants always closest to you.

#### ***Furniture and Supplies:***

Pay attention to the furniture and look to see what is needed. Does the table need wiping down? Are the chairs the participants will be using, equal in comfort and condition? Provide paper and pencils for each participant. Tissues and water and paper cups should also be close at hand.

#### ***Location of Amenities:***

This includes location of bathrooms, water, refreshments, smoking regulations, attention to comfort and energy-enhancing factors such as sufficient light, fresh air and temperature control.



## **Preparing Yourself**

### ***Clearing and Centering:***

You may find that it helps to take five or ten minutes just before the mediation session begins to prepare yourself. Some practices that mediators use include:

- Be alone and quiet. Focus on your breathing – breathe deeply and exhale fully.
- As you exhale, breathe out all worries and distracting thoughts so that you won't bring them with you – you'll be free to enjoy the session.
- Once you've cleared out anxieties, breathe all the warmth and energy you need.
- Remind yourself that people are always doing the best they can.

### ***Your Intentions:***

What are your intentions? You may want review your values about the role of a mediator noting such basics as:

- Recall your intention for becoming a mediator. What is it that inspired you originally and continues to motivate you?
- It's not your life or your dispute. You are here to help the participants get their best shot at reaching their own resolution – one that fits their lives, capacities and values.
- You, too, are always doing the best you can. Review your strengths and weaknesses and plan the session as well as you can and then relax.

### ***Meeting with your Co-Mediator:***

If you are co-mediating, arrange to meet at least 15 minutes before the start of the mediation to talk about preferred seating arrangements and where you both will sit. You will want to decide who is leading what parts of the Opening. You may or may not want to define your roles after the Opening.

## Greeting the Participants

In some sense, the mediation begins when the participants first see you usually in the reception room. They may be anxious at the thought of meeting the opposite participant. At some level of consciousness, they will be registering everything that goes on, and evaluating whether this is a safe place and whether the mediator is fair and neutral.

Therefore, you want to be intentional about your behavior from the very first moment you greet both participants. You have several objectives: (1) to reduce the stress level insofar as possible; (2) to appear neutral and impartial in your treatment of both participants; (3) to create a Safe Space; and (4) to establish rapport with both participants.

When you meet the participants, feel free to make small talk as appropriate. However, be careful not to chat with one participant before the other participant arrives. Make sure that you divide your attention evenly between the participants. Some participants will be trying to “get you on their side”, and will attempt to seduce your attention.

Having already selected a seating arrangement, you may guide the participants to their seats. By seating the participants, you begin to establish in the mind of each participant that you are in control of the mediation process. This allays each participant's fear that their opposite number might be able to manipulate the mediation.

It would be appropriate to discuss amenities such as parking, the location of bathrooms, and the ambience of the room. Be guided by your intention to make a *Safe Space* for both participants and to be in *Rapport*. To maximize the usefulness of the mediation, it must respect the needs and world views of both participants.

Finally, strive for an open heart, a quiet mind and no personal agenda.

## Abbreviated Opening

*For the roles plays we do on Training Days 1, 2, 3 during the Opening we will ask you to focus on just creating a Safe Place by Balancing Rapport and Control. You will do this by covering the information that needs to be addressed in the first part of the Opening. On Day 3 we will re-visit the Opening and you will then learn the rest of the material the mediator needs to address in the Opening.*

*The two main items to address in your Opening in Training Day 1,2, and 3 are:*

- i. Explaining the Mediation process and your role as mediator
  - ii. Establishing Communication Guidelines
1. **Introduce yourself** as the mediators.
  2. **Welcome and thank the participants** Inquire how they want to be addressed. Are names spelled correctly?
  3. **Mediator Role**
    - iii. Neutral, impartial, no stake in the outcome
    - iv. To assist with the communication process
    - v. Mediators are not the decision-makers
  4. **Mediation Process**
    - vi. Emphasize it is their process
    - vii. Each person will talk and describe the situation
    - viii. We all will identify the issues that need to be addressed
    - ix. We will look at what is important to each of them
    - x. They will create solutions that work for each of them.
    - xi. The agreement will be written down and formalized unless they agree otherwise.
  5. **Voluntary Process**
    - Explain that the mediation process is voluntary.
    - Acknowledge them for choosing mediation.
  6. **Communication Guidelines**
    - xii. One person speaks at a time
    - xiii. Treat the other participant with respect

**Ask for, and answer questions, then Transition into Story Telling.**

### **Sample Opening Statement:**

Thank you for choosing to mediation. My name is Jane Roe and this is my co-mediator John Doe. May I call you Mary and Kurt? Good, and you may call us Jane and John.

As mediators, we are here to assist the two of you as you to talk to each other so that you can uncover common ground, and determine the solutions which work for both of you. *(Pause and make eye contact with both participants)* In mediating cases like yours in the past, we have had a lot of success, so we are optimistic that you will reach an agreement.

John and I are *not* here to decide who is right or to make any recommendations on how to resolve your issues. However, we *are* here to help you to come up with an agreement which works for both of you.

Your participation here is entirely voluntary so if you feel the process is not working for you, please let us know what we could do to make it more useful. Ultimately you are free to leave at any time.

I want to give you a sense of what the process will look like. Each person will talk and describe the situation from their viewpoint. Then we will be able to identify the issues that need to be addressed. Once we know what your needs are around each of those issues, you will be able to create solutions that work for both of you. Typically, we write out an agreement that describes those solutions. Will that work for both of you?

We have found in the past that following certain discussion guidelines make for more effective communication and we would like to share those with you.

One of the goals today is for each of you to hear and to be heard and understood. To do that, it is important to be able to listen without interrupting. We have given you each a notepad so that you can make notes on any important points that you want to bring up. Everyone will have as much time to speak as they need. Would it be helpful for you to have a guideline of not interrupting while the other person is speaking? *(Usually "yes". If so, restate their agreement.)* So, you are both comfortable agreeing to not interrupt while the other is speaking?

Another guideline we have found useful, is to treat each other with respect. That means not doing or saying things that would push the other's buttons. I know that is hard to do sometimes when you have strong feelings about something, but is it something you are willing to try? *(Usually "yes". if so, restate their agreement.)* So, you are also both agreeing to treat each other respectfully.

Good. Both guidelines will go a long way to helping you to understand each other better.

Do either of you have any questions? No? Great.

You are both going to have plenty of time to speak. I am going to start by inviting each of you in turn to give us a 3-5-minute summary of what brought you here today from your perspective.

Pick one participant to begin and check in with the other person that is OK with them. Always give a reason why you have chosen the first person.

Examples of some reasons:

"We always start with the person who first contacted us so Mary, would it be alright if John begins?"

or

"I always start with the person on my right, so Mary, would it be alright if John begins?"

(You can only use this one if you have let the participants select their seats/up have not told them where to sit when they first came into the room.)

or

"John, it seems that you would like to start by sharing with us what happened, so Mary, would it be alright if John begins?"

(You use this when one party can hardly contain themselves and seems to really need to speak first.)

or

"Who would like to start?"

## **ROLE PLAY**

### ***Opening a Mediation***

#### **Objective:**

Open the mediation - balance rapport and control to create a safe place.  
To give all participants the opportunity to be the mediator and deliver the Opening.

**Instructions:** Move into a group of three. Decide who is A, B and C. Wait for instructions from the trainer.

- There will be three rounds. The mediator in each round will lead participants to their seats and open the mediation. The other participants only need to know who they are as they listen to the Opening. For example, during Round 1, one person will be designated the mediator, one the landlord and one the tenant.
- Stop immediately after the mediator asks the participants to share their perspectives.
- Indicate to the trainer that you are finished and de-brief following the guidelines below. Do not change rounds until asked to by the trainer.

**Round 1 Scenario:** A landlord/tenant dispute.

**De-Brief** when finished following the guidelines below.

**Round 2 Scenario:** A father and his teenage daughter

**De-Brief** when finished following the guidelines below.

**Round 3 Scenario:** A supervisor/employee dispute.

**De-Brief** when finished following the guidelines below.

## **DEBRIEF**

*Mediator:* Get feedback from the participants as to how they felt about what you did. Did you achieve your objective of developing rapport and maintaining control to establish a safe place for the participants to work out their differences?

Ask - What was effective? What could I have done differently?

*Participants:* Be honest in your feedback. Give the mediator two positives and one thing to consider for next time. Be specific!

## **Summary of Stage 1: The Opening**

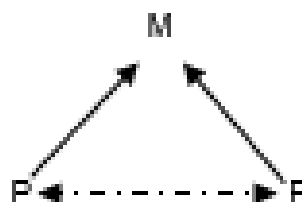
*Key learning points for me from the material and exercises in this stage are:*

*For my own personal growth as a mediator, during this stage I need to pay attention to:*

## Taking a closer look at each stage of mediation

### Stage 2: Information Sharing

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Participants share what happened as fully as needed to identify all the potential issues to be discussed	Set the stage for participants to share their views	Express concerns and feelings fully, without intimidation or challenge
Establish safe atmosphere by holding the communication guidelines in place	Active listening (re-stating) to help participants know they have been heard. Manage interruptions appropriately	Describe their perceptions of the cause of the conflict and of the other participant
Develop a working relationship that encourages problem solving	Ask questions to help participants share fully, surface assumptions, suspicions, clarify issues, feelings and expectations	Discuss their assumptions, expectations and needs
Ensure you have heard each participant and understand their viewpoint accurately	Summarize participants' concerns in neutral language	Listen to the other participant's viewpoint





## Information Sharing Objectives

- Build trust and cooperation needed for work later in the mediation session.
- Allow participants to "vent" enough so that they can move on to problem solving.
- Identify what is important to each participant—help them to share their perspectives and to be heard.
- Identify the Issues or Agenda items that need to be addressed if agreement is to be reached.

## Participants Share their Perspectives

*Whichever participant volunteers to start first:*

Ask the person to explain their perspectives briefly.

DO NOT ASK FOR DETAILS AT FIRST. Get a brief "snapshot" of the dispute.

Ask clarifying questions to help them tell their "story" and to let them know you've heard and understood them.

You want to gather enough information about the situation to put yourself "in the ballpark." Don't concern yourself with getting every factual detail or understanding every nuance at this stage.

Once you have a "bird's eye view" of the conflict, it's time to summarize. How do you know when it's time to summarize? One way of checking is to ask the **magic question**: "Is there something you want us or me to understand that you think we haven't yet understood?"

Now summarize after the participant has finished. Make sure you do so in a way that makes it clear that you are not agreeing with the participant. Watch your tendency to give your opinion. Summarizing is not about giving your opinion – it is to make sure you understood them correctly and for them and the other participant to have reflected back what has been said in a neutral way by a third participant. In brief, clear statements say something like: "I've heard you say you are concerned about three things: (1, 2, 3, ...)."

Check with the person: "Is that an accurate summary of your perspective??"

***When the first person is complete, turn to the second participant and repeat the process with them.***

**Try to identify for yourself:**

What specific observable information about the situation has each participant seen or heard? What specifically concerns each of the participants?

How has each participant been affected by the situation?

What are their reactions and feelings?

Do the participants have important attitudes and values that they want us to understand?

Do the participants have assumptions, beliefs, or suspicions about each other?

What does each participant need to feel better about this situation?

**Note Taking**

Take brief notes focusing on the main issues, but maintain eye contact with the participants.

Never take notes when a participant is very emotional. Put down your pen and pencil. When someone is very emotional they often feel out of control; so, note-taking may feel threatening.

Note similarities so you can mention them in summary and at other points during the mediation session.

**Monitor yourself.**

Watch what happens inside of you when each participant speaks. Do you feel drawn to one speaker over the other? Are you making judgments about the other participant? You probably will, and it is quite OK if this happens to you. Just notice it. This is part of your job as a mediator – to manage your non-neutral feelings. However, it is not OK to reveal your opinions or judgments.

**Helping participants share their point of view**  
***Great Questions That Work!***

Would you say a little more about . . . ?

Could you shed some light on . . . ?

Could you tell me a little more about yourself?

What will this mean to you?

What impact did that have on you?

How do you react when that happens?

What are you experiencing right now?

What was that experience like for you? How did it affect you?

I understand that you feel . . .

You're saying . . . Is that correct?

Can you explain to \_\_\_\_\_ what you heard him/her say (paraphrase)?

Has a situation like this happened to you before?

What do you need to feel better about this situation?

Did you hear or understand anything new? Is that new information to you? (after hearing and summarizing concerns of both participants)

What's at the heart of the matter for you?

Is there something you want this person to understand that you feel s/he doesn't understand?

## Structuring the discussion of issues

Issues are the agenda items to be discussed. They are overt and are the official reason the participants are in mediation. Unlike needs, issues are openly and readily discussed. It is the mediator's job to identify what the issues are during Stage 2 – Story Telling – and then get agreement on those at the beginning of Stage 3. Issues are usually addressed in the final agreement.

One of the chief contributions of a mediator is the fashioning of a guide map that allows the participants to pick their way through each element of their dispute in a planned, rational way. Because we are human beings, we are limited in our ability to talk about more than one thing at a time.

While no structure can guarantee agreement, and the variety of ways to structure discussion is considerable, one overriding principle should direct and inform the mediator's choice, namely, the principle of momentum. The overwhelming experience of mediators, whether in labor relations, interpersonal disputes, or international affairs, is that agreement begets agreement. To obtain a quick consensus, you may have to start with seemingly insignificant or easy issues or broad, general principles, but early agreements demonstrate to participants that movement and consensus are possible. Every agreement, moreover, represents a deposit in a growing investment account. The sum of the deposits may soon convince participants that the failure to settle involves prohibitive losses, thereby creating a pressure for final resolution that can be irresistible.

These are some possibilities for structuring the discussion of issues:

- *Discuss the “easy” issues first.*

Sometimes you can roughly assess which issues may be resolved with relative ease. Although this assessment is tentative and open to change with new information, you must start somewhere. So, start with an issue you think can be resolved quickly. This is the clearest application of the principle of momentum and is especially appropriate for beginning mediators.

- *Divide the issues by category and begin discussion with the category that can be resolved most rapidly.*

Issues can sometimes be categorized as substantive, procedural, or relationship issues. Some mediators like to discuss substantive categories first, such as money owed, because they are quantifiable and traditionally bargainable. Again, the reason for the preference is the promise of fast – or at least faster – resolution of these kinds of issues. On the other hand, the substantive issues may not be easily addressed until the relationship issues, such as mutual respect, are talked about.

- *Identify abstract principles of conduct to which participants can agree, then apply those principles to elements of dispute.*

Here, the mediator helps the participants to acknowledge there are some basic principles of conduct to which they can agree, not the least of which is a requirement to find some way to resolve their dispute. Thus, for example, neighbors whose children are fighting can agree that moving out of the neighborhood is not a viable possibility for either; hence, they must work out some way to prevent future fights. The principle identified by the mediator might be, "Parents must be responsible for the conduct of their young children." While the participants might point out correctly that agreement on principles does not resolve practical problems, the mediator is more needed in finding some common ground on which to build agreement, and the way to do that is by demonstrating to participants that they share certain values.

- *Identify issues per the time constraints attached to them. Deal first with the most urgent.*

If a dispute contains an immediate deadline that is a problem for one or both participants, the pressure created by time constraints may generate relatively quick settlement. Such an issue, then, may be an effective starting point.

- *Establish a chronological sequence of events; then deal with issues in that order.*

This approach embraces both correct and reverse chronological order, and normally the mediator should begin at whichever end of the continuum promises more rapid agreement.

- *Determine the causal relation of various issues in the dispute and go after the prime or first cause.*

This represents an apparent departure from the principle of momentum. Sometimes, however, the original causes for a flowering, expanding dispute are relatively minor and if they can be settled early, participants may be willing to deal with those issues that emerged subsequently in the heat of controversy.

- *Discuss the "hardest" issue first.*

This represents total abandonment of the principle of momentum, but the approach may be justified. It reflects preference for disposing of the most troublesome issue in a dispute on the theory that, thereafter, all other issues will fall into place smoothly.

- *Let the participants choose which issue to begin with.*

This reinforces the mediator's role of empowering the participants to make choices throughout the process. It models, the mediator's confidence in the participants as the ultimate decision makers.

The list of approaches suggests the artfulness of mediation. There is no sure structure of different types of cases, no rigid formula that will succeed even within a single dispute. The mediator must be flexible, constantly moving, adjusting, and probing to find an opening for settlement. But each agreement, no matter its intrinsic worth, is valuable, especially during the early stages of a session, because the building of some sort of mutual trust and confidence between the participants is an essential component of successful mediation.

*Adapted from An Introduction to Mediation: A Manual for Beginning Mediators, Stulberg and Keating, Chapter VII, Conflict Management Resources, Inc. (1983)*

## **Information Sharing in review:**

### **Lead In**

Ask each participant in turn: "Please describe BRIEFLY the events that led to our meeting here today."

Briefly summarize the ***content*** and ***feelings*** expressed by each participant.

### **During This Stage**

Help the participants give their perspective. (Use the words, perspective or viewpoint rather than "your story" or "your side".)

Balance the participants' time, attention and legitimacy through the time you spend with each of them, through your body language and using your eye contact.

Ask clarifying questions to help define and focus the issues.

- Paraphrase the content

- Reflect their feelings

- Define the Issues in brief neutral, language - one or two words.

### **Transition to Next Stage**

Which of these Issues would you like to start with?

## **Summary of Stage 2: Information Sharing**

*Key learning points for me from the material and exercises in this stage are:*

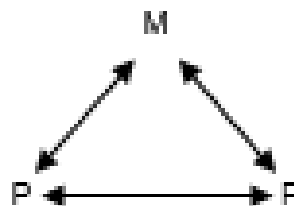
*For my own personal growth as a mediator, during this stage I need to pay attention to:*



### Taking a closer look at each stage of mediation

#### Stage 3: Understanding Underlying Needs/Interests

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Clarify issues	Reframe issues in neutral language	Discuss their perceptions of the issues and their underlying needs
Identify underlying needs	Help the participants discover and focus on needs	Identify own needs Understand the needs of the other participant
Help participants understand what is important to the other participant and why	Facilitate communication so each participant can hear the other participant's concerns and validate them	Share feelings, resentments and assumptions
Separate positions (solutions) from needs.	Separate positions (solutions) from needs.	Stand in the other Participants' shoes
Reach agreement on the issues to be addressed	Focus the agenda and develop agreement on the reframed issues to be addressed in the Mediation	Understand the agenda and reframed issues



## Distinguishing between Issues, Needs, and Positions

Before moving further let us distinguish between three different concepts.

1. **Issues or Agenda Items**
2. **Underlying Needs/Interests**
3. **Positions and Solutions**

**Issues** are the agenda items to be discussed. They are overt and are the official reason the participants are in mediation. Unlike needs, issues are openly and readily discussed. It is the mediator's job to identify what the issues are during Stage 1 – Story Telling – and then get agreement on those at the beginning of Stage 2. Issues are usually addressed in the final agreement.

*“Are we in agreement that these are the issues you need to discuss?”* List the issues and get agreement on them. This is called “setting the agenda.”

**Needs/Interests** lie under the surface and participants are not always aware of them - until they are identified - and are less likely to verbalize them initially in a mediation. Needs come out during conversation – as the participant “talks it out.” The mediator plays a very important role by identifying the underlying needs and helping the participants recognize them. This is key to enabling participants to move off their positions and to create new solutions that meet those needs. The mediator does this by asking open ended questions such as “Help me to understand why.....” The most powerful needs are often basic human ones such as safety, financial sufficiency, respect, and so on.

Although the final Agreement may meet the participants' underlying needs, the needs are not usually mentioned in the Agreement. For example, we rarely say in an Agreement, “for Mrs. Jones to feel safe, Mr. Griffin agrees to ....” We just say: “Mr. Griffin agrees to ...”

**Solutions** are outcomes. “You need to clean up this dirty room” is a proposed solution. However, it is not offered in a way that is likely to draw the other participant into agreement. Used in this context, “dirty” is a highly emotionally charged word. When a solution is offered very forcefully – often at the beginning of a conflictual conversation or negotiation – it is called a position.

**A Position** is a possible solution but it is the only one that the proposer can see at that moment in time. Positions are usually presented as demands. It is as if the person has blinders on at that moment. Positional stands offer only the possibility of a win/lose outcome or of a compromise of both positions. “You’ll pay me the \$275 and not a penny less” is a position. Need-based communication allows the participants to work together to solve the problem in a way that meets the most important needs of each.

The mediator's job is to translate positions into neutral, potential solutions and to identify the underlying needs by asking open-ended questions. e.g. "Can you tell me why that is so important to you?"

By identifying underlying needs, the mediator helps to move the participants from arguing over positions (their hardened solutions) to mutual problem-solving in a way that meets the underlying needs of both participants. There are many ways to satisfy needs. Positions are very narrow and entrenched possible solutions. Issues are neutral.

### Examples:

*"You've got to fix the broken window. I can't have this sort of vandalism in this neighborhood."*

<b>Issue to be discussed:</b>	Broken window
<b>Position (entrenched solution):</b>	You've got to fix it.
<b>Underlying Need:</b>	Safety

By the end of Stage 2, the participants should realize that they both have legitimate concerns and will have identified some of their needs – some of them common needs. They are now ready to go deeper and to draw out the underlying needs.

### Reflective Listening

#### *For feelings, needs, and issues to discuss*

Our aim as mediators is to empower the participants by helping them clarify their feelings and needs, and assisting them to organize the discussion into bite-sized issues. We do this when we reflect to them feelings, needs and issues they have expressed. Some mediators have found it useful to organize their notes by making a grid for each participant with room for each of these pieces, plus space for other details.



### Needs and Positions (Solutions)

Can you tell a statement of a 'position' from what may be an underlying 'need?' In the following list, indicate which you think is which by circling the "P" or "N" next to each statement.

P	N	1.	I demand an apology
P	N	2.	I need to pay for my kids' college education.
P	N	3.	I don't want to compromise my values and integrity.
P	N	4.	I want the window open.
P	N	5.	My self-esteem is at stake here.
P	N	6.	I want that promotion
P	N	7.	The road must be built through this wetland!
P	N	8.	I want my hard work and loyalty acknowledged
P	N	9.	I need a good recommendation
P	N	10.	I'm concerned about maintaining good morale among all the employees.
P	N	11.	You must shut down your entire (water polluting) plant operation immediately.

### **From Position to Need**

When both participants hold onto their positions and the 'positions' are mutually exclusive, it's hard to find win-win solutions that will satisfy both participants. By identifying the underlying needs participants may be able to drop their initial solution (position) and may be more able to think of new solutions that meets everyone's needs. So, before we can start generating options we need to get below the surface to discover the needs of both parties. That is why this stage is so important.

In the following short stories, write two/three needs which might underlie the positions taken.

**Jane wants the window open. Mike wants it closed.**

Jane's possible needs:

Mike's possible needs:

**Every year, the road on the steep mountain slope is washed out from flooding. Every year the National Park Service repairs it. The Service wants to move the road to another location. The public objects and demands that it stay where it is.**

National Park Service's needs:

Members of the public's needs:

**Bob wants his agency to pay for him to attend an important conference in his specialty area even though the conference is in India. John, his boss, won't consider paying for it, even though there is plenty of money in his budget for training.**

Bob's needs:

John's needs:

**Now that you've thought of some needs behind the positions taken by our characters in the above stories, can you think of some solutions that would meet those needs that are different from the positions they took?**

1. Jane and Mike and the window -- some other option:
  
2. NPS and the public and the road -- other solutions:
  
3. Bob and John and the India conference – new ideas:

For more information on this concept, read [Getting to Yes](#) by William Ury, Roger Fisher & Bruce Patton. ©1991, *Confluence Northwest*

## **Reframing: Listening for the Unmet Needs**

Read each of the statements below. Respond by guessing at some possible needs and inquiring if your perceptions are accurate. In your response, you are removing any toxic language and reframing complaints & judgments into expressions of unmet needs.

Examples: That's not what happened. He's a Liar.

*Possible Needs: being heard, being valued, integrity.*

*Inquire: Are you wanting to make sure your perspective is understood?*

I hate the way she is constantly putting me down.

*Possible Needs: respect, recognition, belonging.*

*Inquire: So, you're feeling really annoyed because you want more respect.*

1. It's not fair! Every time we are given a work assignment, I must do the lion's share of the work.

2. He never asks me my opinion.

3. Her desk looks like a pig pen. No wonder she can't find anything.

4. They treat me like a little kid, like I don't know anything.

5. She totally took advantage of me. She should just pay me the money.

6. She's so bossy! I wish she'd listen to what I must say for a change.

## Understanding Underlying Needs/Interests in review

### Lead in:

- Structure the discussion for the participants by summarizing (or drawing out from the participants) the main issue areas to be discussed. For example:
  - *“Are we in agreement that these are the issues you want to discuss?”* List the issues and get agreement on them. This is called “setting the agenda.”
- Identify substantive, procedural and relationship issues.
- Help the participants choose one issue and begin to discuss it.

### During this stage:

- Encourage the participants to begin to speak directly to each other.
- Help participants to share feelings, resentments, assumptions and needs.
- Use active listening skills to draw out the underlying needs of each participant.
- Separate issues, needs and solutions (often presented as positions).
- Help the participants focus on one issue at a time. “Let’s deal only with the broken window for a few minutes.”
- Validate and highlight new information, positive intentions, desires to change and points of de-escalation.
- Reframe issues in neutral language and in terms of needs.
- Help each participant to understand and acknowledge the key needs of the other participant through:
  - Role reversal. *“So, if you were in Joe’s situation, how might you.....?”*
  - Ask each participant what he/she sees as the concerns of the other. *“So now that Joe has shared where he is coming from, what do you see as his main concerns....?”*
  - Clarify for each participant the feelings of the other. *“So, I’ve heard Joe describe how this has impacted him. He felt (is feeling) really annoyed and disappointed.”*



### **Summary of Stage 3: Understanding Underlying Needs/Interests**

*Key learning points for me from the material and exercises in this stage are:*

*For my own personal growth as a mediator, during this stage I need to pay attention to:*

### Taking a closer look at each stage of mediation

#### Stage 4: Generating and Evaluating Options

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Maximize options, inventing without deciding	Move participants out of the past and into the future	Leave story-telling behind and focus on resolution
Begin to work together on problem solving	Facilitate brainstorming, protecting the process by keeping the options open	Participate fully in brainstorming options
Agree on principles, not positions	Develop criteria to evaluate options Acknowledge ideas and options suggested by participants. Note shared concerns and points of agreement	Agree on principles to be used  Stay open
Begin evaluation of alternatives – what needs would each alternative serve?	Assist in evaluating based on principles & focusing on needs not positions	Agree on alternatives that would meet the needs of both participants
	Avoid making suggestions & adding own ideas	Participate in evaluation of alternatives



## **Generating and evaluating options**

It is the mediator's responsibility to help the participants agree on a procedure that separates the two steps of creative thinking. The first step is *generating ideas or possible solutions*. The second step is the *evaluating those options or possible solutions*. The mediator's job is to separate these two steps, to go beyond the first solution that both participants like and to maintain an atmosphere of possibilities. The mediator needs to help the participants stay focused on the issue at hand, stop them from judging possibilities until the appropriate time, keep the participants focused on needs and keep the participant's future-oriented.

### **Generating options**

By the time the participants reach this stage in negotiations, they will have listened to each other's concerns and, with the help of the mediator, will have begun to identify and understand their own and the other participants' issues and needs. The mediator will have helped the participants move from entrenchment in their positions to a problem-solving mode.

Because the participants have begun to identify needs, they will not be stuck with positional bargaining as the only process for generating options. The participants will now have an awareness of the need for alternative solution options. However, there are several obstacles to generating new options.

People are not used to inventing. When we are in a problem-solving mode, our critical judgment seems to be at its sharpest. We automatically find the problems and weaknesses with every idea we have. Judgment must be suspended so new ideas can be invented and developed. Fantasy and wild ideas should be encouraged. An idea for an unrealistic solution may prompt an idea for a new practical option that no one had yet considered.

Searching for the one answer to the problem will also severely inhibit creative thinking. Fixing on one possible solution too early in the process will limit possibilities and short circuit a wiser decision making process.

Another factor that limits creative thinking is the assumption that a negotiation or a conflictual situation is a "fixed sum game" in which one participant must win while the other loses. This win-lose approach is further encouraged by the tendency for each participant to focus on a solution that meets her/his own immediate needs. Emotional involvement in the dispute prevents people from looking for options that meet the other participant's needs as well as their own. *Yet solutions that meet the other participant's needs are also the ones that will be easiest to sell to the other participant.*

Therefore, focusing on needs is important. Looking at needs, rather than positions, helps the participants “expand the pie.” Solutions can be devised that allow all participants to satisfy their needs.

The mediator can help the participants look at options that “dovetail” the differing needs of the participants. The differences that appear to have caused the dispute may provide the basis for the best solution. This point is exemplified by the “Orange Story.”

A mother overheard her two children fighting over an orange. Both were trying to claim the only orange left in the fruit bowl. Tired of listening to the bickering, she marched into the kitchen, sliced the orange in half and gave one half to each child. Thinking that she had solved the problem, she returned to the other room expecting to continue reading in peace and quiet. Much to her surprise, the children immediately began bickering again. When she returned to the kitchen very exasperated, she demanded to know why they were unhappy—they both had an orange to eat. Her son told her that he wanted the orange peel of the whole orange to make the family’s favorite orange candy. Her daughter complained that half an orange would not satisfy her hunger. Now that the mother knew what each child really needed, she could create a better option. The strategy of compromise—slicing the orange in half—was not the best solution. Armed with this new information, she peeled both orange halves, gave the peel to her son and the fruit to her daughter. Both her children’s needs were fully satisfied.

The mediator should also check out the participants’ assumptions about available resources. Are they limiting the options because of a perceived lack of resources, lack of information, or the need for involvement of other people?

One way of creating additional options is to help the participants play out different scenarios. *What would happen if . . . ?*

## **Evaluating options**

A mediator can encourage the participants to agree on objective criteria against which to measure the options. These criteria may be as simple as the list of needs that have already been identified, or a very complex set of scientific data, depending on the dispute. Some common criteria include that the solution must be legal, it must be enforceable, it must meet a certain time frame, or it must meet certain cost guidelines.

It is usually very difficult to get the participants to agree on these criteria before they generate options. Yet if they wait until they have brainstormed the options, they may only agree to criteria that will lead toward acceptance of certain options. Identification and acknowledgment of the other participant's needs help prevent this problem because the list of needs provides some basic criteria or evaluation that the participants have already accepted.

Throughout the evaluation process, the mediator's task is to continually bring the discussion back to measuring the options against the needs or other agreed upon criteria. The mediator should frame each issue as a mutual search for objective criteria. This will focus attention on those solutions likely to satisfy the most important concerns of each participant.

While options are being evaluated, the mediator should check with the participants to find out how that option would satisfy their needs or how it would affect them. The mediator must help the less verbal or expressive participant to ask the necessary questions and keep the process from becoming adversarial. It is important that the mediator does not allow the participants to substitute pressure for principle in evaluating the options. If a collaborative approach is maintained by the participants, they are much more likely to reach a satisfactory agreement.

### **Transition to generating options**

Summarize the issue in terms of the needs that have been expressed.

*"Before we start looking for solutions, let's just review what you each have said you need from an agreement. Julie needs reassurance that John is safe and John needs the freedom to make spontaneous plans with his friends. Is this correct? If we can find solutions that meet both of your needs, would we be moving in the right direction? Okay, so let's do some brainstorming. What are some possible options that might meet John's needs for spontaneous socializing and meet Julie's need to know John is okay?"*

### **Discussing options: Brainstorming**

- Facilitate brainstorming options, using the following guidelines:
- Mediator records all ideas
- Defer evaluation until after brainstorming is finished
- Any idea is acceptable; wild and crazy ideas can lead to new, workable ideas
- "Piggy-backing" one idea on another is welcome
- Ask "What else?" (not "Is there anything else?")
- If necessary, remind participants to look for options that meet both participants' needs
- Stay future-oriented

### **Transition to evaluating options**

When brainstorming has wound down, invite participants to evaluate options.

*“Let’s begin to look at these options, and see which ones meet both John’s and Julie’s needs.”*

Play the role of Reality Check if necessary

*“Let’s see if this idea will meet your need to ....”*

*“Is this realistic? Is it doable?”*

*“Does this option depend on the participation of someone who is not present here?”*

*“Do you need any more information before deciding on this option? If so, how could you get that information?”*

*“If you were to adopt this idea, how would it affect each of you?”*

Throughout the stage of generating and evaluating options, most of the talk should be between the participants. The mediator’s role is to ensure that the focus stays on finding solutions that meet the needs of each participant. If the tone becomes adversarial, the mediator should bring the focus back to the search for options that work for everyone. By maintaining a collaborative spirit, the participants are most likely to achieve resolution that is long lasting and mutually satisfying.

## **Summary of Stage 4: Generating and Evaluating Options**

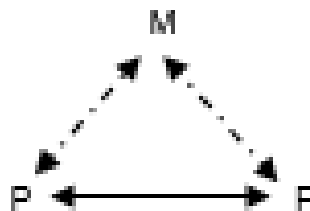
*Key learning points for me from the material and exercises in this stage are:*

*For my own personal growth as a mediator, during this stage I need to pay attention to:*

### Taking a closer look at each stage of mediation

#### Stage 5: Reaching Resolution/Writing the Agreement

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Choose a solution based on needs of both parties	Make sure all the issues are addressed. Make sure both participants participate in the formation of the final agreement.	Discuss strengths and weaknesses of possible resolutions
Review Implications and practical steps of implementing the agreement	Anticipate and discuss possible problems with the resolutions (act as reality check)	Modify the agreement to accommodate practical realities
Write and sign agreement	Write agreement in their language, read aloud and sign the agreement (if any)	Be willing to agree to workable solutions that meet both participants' needs and conform to reality





## Writing an agreement

The previous stage of evaluating possible solutions that have been generated will result in the selection of either one of the solutions or the creation of a combination of them. In helping the participants come to an agreement, the mediator necessarily functions as an “agent of reality” checking on the viability of the demands and agreements.

1. Insure that there is a shared understanding of what is being communicated. Make sure that the participants are agreeing to the same things in the same words.
2. Compare the reality being created by the participants’ language with your own grasp of the situation (this is done silently). Are the specifics of the case, and especially the agreement, compatible with your understanding of the case? In a non-threatening manner and point-by-point, convey any reservations.

Example: Tommy and Bonita agree to stay away from each other as their solution to a long-standing feud between them.

Tommy and Bonita need to be reminded that they have classes together and belong to the same sports club. “Staying away” may not be a viable solution. Asking them if they think they can accomplish “distance” is probably the best strategy.

3. Use the caucus, or private meeting, to investigate feasibility of specifics. (This is also a strategy for helping one or both participants to save face.)

Example: Boyfriend/Girlfriend dispute – the young man agrees to end the relationship.

In caucus, it is pointed out to the young man that his behavior does not indicate an intent to end the relationship. Help him reason through alternatives.

Example: Money dispute – after a long session, an individual agrees to make financial restitution.

In caucus, the mediator can help the individual assess his resources and the reality of this solution.

4. General “okay, okay” agreement may indicate that the participants do not intend to follow through. Have the participants specifically identify what they will do, while continually checking to see whether these specific agreements can be met.

5. Review time frames – excessively long time frames may lead to an unrealistic agreement. One or both participants may change their minds. Also, try to ensure that enough time is being allowed for the arrangements specified.

6. Compare the outcomes with the underlying needs determined earlier. Check for consistency among the original requests, the process dynamics and specifics of the agreement.

7. Check to see if the specifics of the agreement violate any laws as you understand the law. (Usually, the basic concern is not legality, but legitimacy.)

Adapted from the New Mexico Center for Dispute Resolution

### **Three possible outcomes**

*If there is no agreement:*

- Point out progress
- Acknowledge efforts to resolve
- Review options for resolution

*If there is a partial agreement:*

- Review points of agreement
- Write agreement, if appropriate
- Identify areas of remaining differences
- Outline options for next steps
- Acknowledge efforts to resolve and use of mediation

*If there is a comprehensive agreement:*

- Review points of agreement and sign
- Outline follow-up or next steps
- Acknowledge hard work and success

## **Writing the agreement**

Legible – Simple – Doable – Complete

### Legible

- Neat.
- Clean.
- Edited.
- Participants' full names.
- Avoid abbreviations.
- Minimize pronouns.
- Clear and straightforward.

### Simple (Who, What, When, Where)

- Be specific about terms.
- Who pays? Who receives?
- Amount to be paid? Amount(s) of payment(s); if more than one.
- Date(s) for payment(s).
- If not money, what is the method of performance? Is it verifiable?
- Neutral language, use participants' own language when possible.
- Avoid legal jargon.

### Doable

- Make sure agreement includes actions that participants can carry out
- Avoid obligating 3<sup>rd</sup> participants who are not present
- Use clear, behavior-specific terms.
- Avoid vague words such as “reasonable,” “acceptable,” “fair”.

### Complete

- Are all the issues addressed?
- Consequences for failure (return to mediation, judgment, alternatives)

**Note: Read the agreement aloud slowly and stop for questions after each clause or provision. Do not assume that either participant can read it for themselves.**

## Other considerations in writing agreements

**A Word on Compromise:** In this model of mediation, compromising is not necessarily a good thing – so watch your use of this word. If, by compromise, we mean splitting the difference, this is often not the wisest outcome. It is good to compromise when your investment in the issue is low, e.g., where we will go to dinner tonight. Although many people may have a preference—most people will have a low investment in the outcome in this matter.

**Unenforceable Portions of Agreements:** It is sometimes appropriate to include elements in an Agreement which may be unenforceable. This is especially true in mediations where the section has meaning for the participants. It should be included because it sets a “tone”, reflects the good will of the participants, or helps shift the relationships.

**Exhaustion:** At this stage in the mediation, the participants will be exhausted and so will you! You will still have their bodies in the room but they will be mentally preparing to leave. You will be under a lot of pressure to finish. Nonetheless, take your time. Make sure the Agreement reflects everything that both participants want and that it is accurate.

**The Participants Choices:** It is very important that the mediator control his or her own impulse to make decisions for the participants or to choose for them. Remember it is not your Agreement—it is theirs—and they are the ones who must live with it. There will be times when participants will create Agreements that are outside your value system— and that is OK as long, as it is not against the law. Note where the dotted line is in the schematic in this stage!

**Interim Agreements:** If the mediation will be continued over several sessions, it may be appropriate to draft an interim agreement. This agreement would include next steps, participants’ responsibilities in preparing for the next mediation session, research, tasks to be completed, etc.

**Exercise: Writing Agreements**

The following Agreements have been taken from the files of Community Mediations. What is wrong with them?

1. Mr. Wilson and Sam Jones agree to telephone the building superintendent to report the leak in Miss Bell's apartment on September 1.
2. John Doe agrees to pay Sue Smith the sum of \$50. The money will be paid in two installments: the first will be on Friday, October 15; and the second installment will be on Friday, October 17.
3. Sam Sheep and Sue Smith agree not to talk to each other, not to telephone each other, not to harass each other and not to stand in front of each other's house.
4. David Pope said to Alice Green during this mediation session the amount of \$20 in full payment for the repair of a broken window in her apartment.
5. Mr. Adams agrees to return the photos of Mr. Bell's children by mail.
6. Bill Brown during this hearing, snatched a piece of paper from Rachael Jones's hands, and tore it up. Rachael Jones asked that this incident be noted.
7. Mrs. Clark will pay Mrs. Green the sum of \$100, by money order or certified check, on or before 1/2/92.
8. The party of the first part herein agrees to be respectful to the party of the second part hereafter.
9. Susie Singh agrees to lower the volume on her television between 11 PM at night and 9 am in the morning.
10. Sue Pappis agrees that her daughter, Lucy, will stop bothering Mary William's daughter, Becky.

## **Reaching Resolution/Writing the Agreement in review**

**Lead In:** Continue evaluating options

### **During this stage:**

- Help participants evaluate options against the underlying needs identified
- Help the participants choose or combine options
- Tie the issues together
- If appropriate, balance needs
- Serve as reality check—will this be workable for both?
- Help the participants be specific about who will do what, by when, and how
- Agree about what will happen if either of the participants does not follow through on the agreement
- Be sure participants having details necessary to carry out the agreement, such as phone numbers, address to mail check, etc.
- Write the agreement in their language and then:
  - Read it over together and make any corrections
  - Have each participant sign
  - Give each participant a copy of the agreement.

## **Summary of Stage 5: Reaching Resolution/Writing the Agreement**

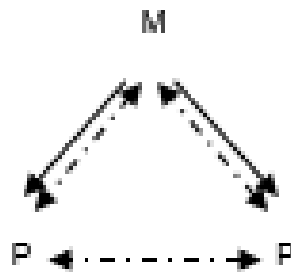
*Key learning points for me from the material and exercises in this stage are:*

*For my own personal growth as a mediator, during this stage I need to pay attention to:*

## Taking a closer look at each stage of mediation

### Stage 6: Closing

<u>Objectives</u>	<u>The Mediator's Work</u>	<u>The Participants' Work</u>
Mark the ending of the mediation	Formally close the mediation	
Affirm the participants and the work they did.	Acknowledge all participants, individually or collectively, and the work they have accomplished (or if no agreement, the time and energy they put in).	Receive the acknowledgment
Give dignity to the process and the participants.	Thank all participants. Shake hands as appropriate.	





## Closing the Mediation

Closing the Mediation is a step that is often lost in the shuffle of getting the Mediation Agreement written and copied. Remember everyone including yourself will already be thinking about what they are going to do next, once the mediation is over. They will be restless and want to get going. **Do not forget to re-read the Agreement with the participants once they have a copy in front of them!** Pause after each paragraph to give them time to think about what they are signing. Remember, it is a legal document so they are legally bound by it, once they sign it. Also, make sure all participants have a copy of any other document they may have signed such as an "Agreement to Mediate."

Although mediation is supposed to be confidential, sometimes other people such as Human Resources or the manager's boss might need to see the Agreement. You do not always know this in the beginning of the mediation as the solution sometimes dictates who else needs to see the Agreement or at least be informed of its contents. So, go over this with the participants before you close the mediation. Usually there is no problem with this step but it needs to be clear to everyone concerned.

The last and crucial step in the mediation process is to **acknowledge the participants**. This is the way you formally close the mediation. If they reach Agreement, then you want to acknowledge them for what they have accomplished. If they do not reach agreement you will thank them for their time, for staying in the process, and for coming. Find something positive to say! Formally thank them - with eye contact with each one of them - and then shake hands with each and bring the mediation to closure.

Try not to hang around after the mediation and talk to the clients on their own. This also biases your neutrality. Excuse yourself to another room as soon as you have said good-bye. If the relationship is still not good, at the end of the mediation, make sure one participant leaves before the other so they are not going out together. This would be the only exception for staying on with one participant after the mediation is complete.

Lastly, try and find time to debrief yourself and look at what you did well and what you could have done differently!

## **Closing the Mediation in review**

### **Lead In:**

Talk about closure. Ask the participants if there is anything else they want to say before you “bring the mediation to closure.”

### **During this Final Stage:**

1. Check in with participants: Is there anything they need to say or do to complete our work today?
2. Make sure they all have copies of anything they signed.
3. End on a positive note. Find something positive to say about each of them. Acknowledge the participants' hard work and the time and energy they have spent in the mediation. Congratulate them if they have reached an Agreement.
4. Thank them for coming.

## **Summary of Stage 6: Closing the Mediation**

*Key learning points for me from the material and exercises in this stage are:*

*For my own personal growth as a mediator, during this stage I need to pay attention to:*