



Community Solutions of Central Oregon

Basic Mediation Training *Module 1* Conflict and the Role of the Mediator

A PERSPECTIVE ON CONFLICT

Wherever people live and work together, there will be conflict. Indeed, conflict is an inevitable part of being alive! Unfortunately, most of us have inherited our society's negative attitudes about conflict. Who hasn't felt guilt or shame, at times, for being involved in a conflict? Somehow, we've picked up the message that one "shouldn't do conflict."

At Community Solutions, we believe that conflict just *IS*. It is our *response* to conflict that can have negative or positive results. Negative attitudes about conflict may prevail because conflict is often uncomfortable.

On the other hand, when conflict is perceived in a positive light, we can see that it provides an opportunity to learn and grow. In fact, very little personal growth or social change would take place were it not for the force of conflict in our lives. Indeed, it may be that the discomfort caused by conflict is a lot of what motivates us to work toward resolution. Some people call this "creative tension."

The Chinese pictogram for "crisis" best sums up the dual nature of conflict. It consists of two parts; the symbols for "danger", originally pictured as a man on the edge of a precipice, and "opportunity", a reminder that in every crisis lies an opportunity for growth and positive change.



Mediation offers people a chance to experience the positive opportunity in conflict. Through meeting and talking through a conflict, parties can achieve enhanced relationships and solutions to problems that improve the quality of their lives. The optimistic, reassuring and neutral attitude mediators hold provides a powerful model for disputing parties, giving them a new, hopeful way of regarding conflict.

MYTHS AND REALITIES OF CONFLICT

MYTH	REALITY
Conflict is bad	<i>Conflict is a natural part of life</i>
Conflict is always a contest	<i>All conflicts can be approached with “win-win” in mind</i>
There is one right way to handle conflict	<i>There are potential uses and limitations to all conflict styles</i>

THE TWO ELEMENTS IN ANY CONFLICT

In any conflict, there are always two elements present:

1. the substantive issue(s) to be discussed and
2. the relationship between the parties

In a conflict, there is always a delicate balance between these two elements. Mediating a conflict in which there is a strong investment in the relationships—such as in a family—will always require more skill than a conflict where the parties will never see each other again. *Most of our daily conflicts involve both elements.* In cases such as buying a used car or bargaining at a flea market, the relationship isn't the priority. In these cases, you are likely never to see the other party again so you are less concerned about protecting the relationship. These are popular examples used in negotiation classes but they are not true to life because we rarely negotiate this way.

Think of the conflicts you have in your daily life. They are usually with people at home or at work. At home, you have a high emotional investment in the relationships. At work, your relationships are ones in which you depend on others to get things done. You cannot walk away easily from relationships at work. To resolve any conflict at home or work or anywhere else where you see others on a regular basis, you must develop the skills to resolve the issues by meeting your underlying needs or interests while also meeting the interests/needs of the other party *and* maintaining or even improving the relationship. Very few people are born with these skills naturally. Most of us work to acquire them. Those skilled at crafting win-win agreements understand this concept and have developed and refined their skill.

Fisher and Ury ¹ talk about being:

“Soft on the people and hard on the issues.”

How do we develop the skill of being firm about what is needed for ourselves, while being courteous, respectful and understanding of the other person?

According to Fisher and Ury, in the problem-solving approach to conflict, the parties approach the conflict as problem-solvers. Their goal is a wise outcome reached amicably and efficiently. They explore interests and avoid having a bottom line. They develop multiple options to choose from – and decide later. They reason and are open to reason. They yield to principle, not pressure. They proceed independent of whether trust is present or not. Agreement may be one of the goals but it is a wise agreement based on a gradual consensus as each party shares with, and educates the other. Ideally, both parties walk away from the relationship feeling good about the agreement [no residual negative feelings] and satisfied with their relationship with the other party. This strategy is most effective where long term alliances are involved such as in a marriage, a joint business venture or anytime a relationship is important.

¹ Fisher, Roger & Ury, William: *Getting to Yes*, Penguin Books, 1995

FIVE CONFLICT MANAGEMENT STYLES

I. DIRECTORS place emphasis on the task at hand. They are willing to risk a relationship to get their needs met.

Behavior: Gives directions, confidently takes charge, confronts problems head-on.

Favorite Phrases: “Do it my way.” “Here’s a good idea.” “Listen to me.”

II. COLLABORATORS place emphasis on the task *and* the relationship. They are willing to take time to find resolutions that meet everyone’s needs.

Behavior: Problem-solves, is assertive about own needs while considerate of the needs of others, seeks satisfaction for self and others.

Favorite Phrase: “Let’s find a solution that works for both of us.”

III. COMPROMISERS want to “fix” the problem. In a compromise, everyone gets *some* of their needs met; no one gets *all* their needs met.

Behavior: Looks for a quick fix; bargains, offers the perfect solution.

Favorite Phrase: “Let’s split the difference.” “I’ll do this if you do that.”

IV. ACCOMODATORS are willing to give up getting what they want for the sake of preserving the relationship.

Behavior: People-pleasing, smoothes things over, sacrifices own needs and desires

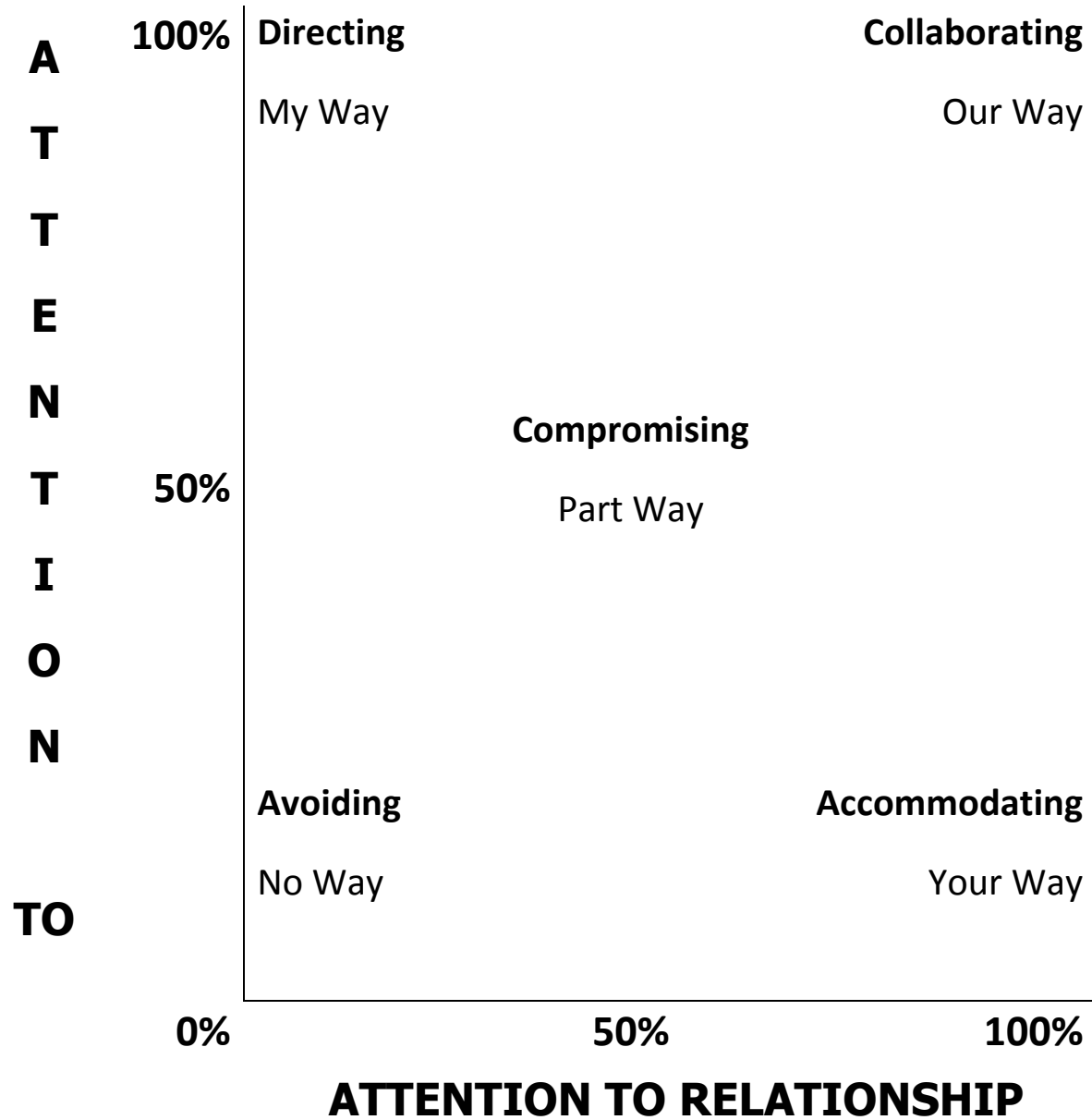
Favorite Phrases: “I’m sorry.” “You’re probably right.”

V. AVOIDERS disengage from the conflict, often sacrificing their needs *and* the relationship.

Behavior: Withdraws, ignores, denies, refuses to deal with difficult issues

Favorite Phrases: “Let’s talk about this later.” “Forget it.” “It doesn’t matter to me.”

THE FIVE STYLES OF CONFLICT RESOLUTION



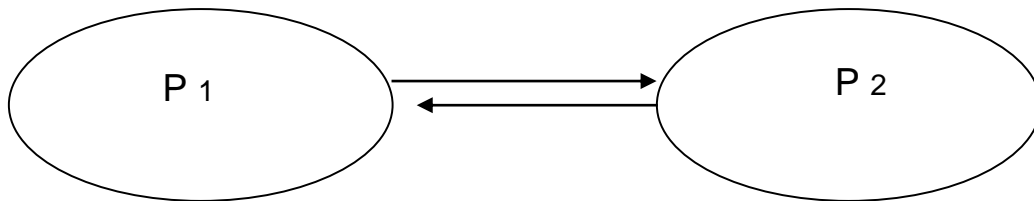
CONFLICT RESOLUTION ALTERNATIVES

Differences between:

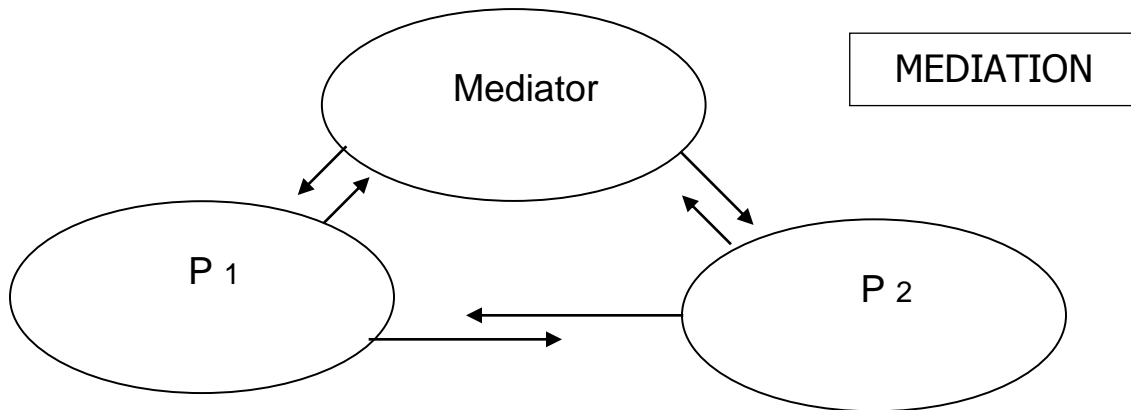
NEGOTIATION, MEDIATION AND ARBITRATION

P=PARTY

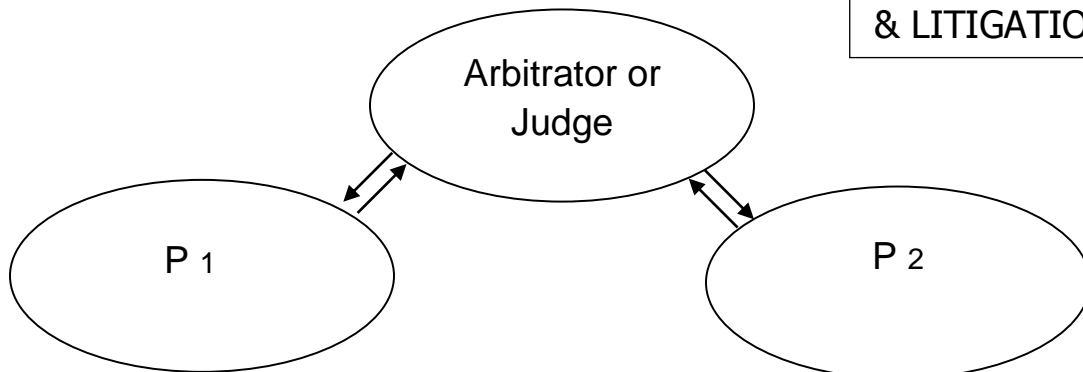
NEGOTIATION



MEDIATION



ARBITRATION & LITIGATION



DISPUTE RESOLUTION CONTINUUM

	LITIGATION	ARBITRATION	MEDIATION	NEGOTIATION
Who are the decision makers?	Judge and/or jury	Arbitrator	Parties	Parties
How are they selected?	Court/lawyers	Parties	May be imposed or the parties choose	Parties
About the process:	<p>Required</p> <p>Formal</p> <p>Rigidly enforced procedures & rules of evidence</p> <p>Public process</p>	<p>May be required</p> <p>Generally, formal</p> <p>Negotiated by the parties</p> <p>Private Process sometimes a public record</p>	<p>May be required by previous contractual agreement, generally voluntary</p> <p>Informal</p> <p>Flexible, structured process agreed upon by parties; third party mediator, protects process</p> <p>Private Process</p>	<p>Somewhat voluntary</p> <p>Informal</p> <p>Unstructured, no facilitator</p> <p>Private Process</p>

Result	Binding decision by Judge or Jury	Binding decision by Arbitrator	Mediator does not give advice or render an opinion. Voluntary agreement, binding as contract	Voluntary agreement by parties. Binding as contract
Orientation	Win/lose or lose/lose	Win/lose	Win/win	Win/win or win/lose
Possible Problems	Time Cost Emotional toll	Time Cost Emotional Toll	Time Unequal power	Time Unequal power

NEGOTIATION THEORY

It is important to have at least a cursory understanding of negotiation theory as negotiation underlies all mediations. Mediators are called in to facilitate when a negotiation process between two or more parties has broken down; the parties are in high conflict and can no longer communicate effectively with each other.

Stages in a negotiation are like that in a mediation. A skilled win-win negotiator will proceed through the following six stages:

- ✓ Stage 1: Laying the Groundwork, Setting the Tone
- ✓ Stage 2: Exploring the Other Party's Needs and Sharing their Own
- ✓ Stage 3: Inventing Possible Solutions for Mutual Gain
- ✓ Stage 4: Reaching Agreement
- ✓ Stage 5: Reviewing and Recapping the Agreement
- ✓ Stage 6: Implementation and Modifying the Agreement as appropriate.

The most quoted and accepted model of negotiation was developed in the early 1980's based on extensive research. Roger Fisher and William Ury from the Harvard Negotiation Project presented the model in their book, **Getting to Yes** (Fisher, Roger and Ury, William; Getting to Yes, Penguin Books, 1995). This is still a very popular, easy-to-read paperback. The model covers negotiation scenarios from families to international situations.

Four Basic Principles for Negotiating are outlined by Fisher and Ury in their book. They are

- ✓ Principle 1: Separate the Person from the Problem
- ✓ Principle 2: Focus on Interests and Needs - Not Positions
- ✓ Principle 3: Invent Options for Mutual Gain
- ✓ Principle 4: Insist on Objective Criteria

BATNA is also a concept developed by Fisher and Ury. BATNA stands for Best Alternative to A Negotiated Agreement. In other words – what will you do if you cannot reach agreement with this person and you must walk away. An example, might be to go to court; another might be to do nothing; another might be to retaliate.

BATNA is a crucial concept for two reasons.

- (1) It enables us to measure any proposed solution against our best alternative (BATNA). This way we do not settle for anything too quickly. Sometimes we discover that walking away is better than staying in the negotiation. e.g. when we get a better deal elsewhere.
- (2) The person with the strongest BATNA in a negotiation will be the one who has the most leverage or negotiation power. For this reason, it is a good idea to analyze your BATNA before you go into a negotiation and analyze the BATNA of the other party. This analysis and planning will make a significant difference to your strategy and what you might settle for.

THE ROLES OF A MEDIATOR

During the mediation, a mediator plays several different roles including:

Maintaining Hope. Parties often enter mediation feeling hopeless and skeptical that they can resolve their problems. A mediator's assurance that conflict *and* resolution are natural conditions, and that the parties have within themselves the resources and abilities to resolve their differences, will begin to give the parties confidence in themselves and the process and hope that they can resolve their conflict.

Creating Safety. The mediator endeavors to create a safe space where the participants may feel comfortable enough to explore their problems and express their needs in a hitherto novel manner. This requires the mediator to validate the emotions of the participants and to appear neutral to the needs and values which they express.

Empowering participants. The mediators support each party in making decisions at each stage of the process. This client self-determination is the most important part of the process.

Opening Communication Channels. When parties are not talking to each other, the mediator intervenes to reestablish communication. Sometimes the parties are talking but they are not understanding each other. They might be unaware of certain facts possessed by the other. They might also have differing perceptions of the meaning of the situation. Here the mediator can act as a transmitter as well as a translator of information.

Facilitating a Negotiation. The mediator facilitates the mediation process by structuring the discussions around an agenda of topics that the participants have agreed to, establishing the needs or underlying interests of both parties around each topic, and then helping them explore a variety of options that fulfill those needs. S/he does this by concentrated listening, being attentive to body language and the energy in the room, reflecting and paraphrasing back both emotions and content, reframing, encouraging, supporting and "holding the container" for the clients and the mediation process.

Acting as agent of reality. The mediator is interested in the durability of any negotiated agreement, and will explore with each party if they realistically can fulfill the terms of the proposed agreement. This is best achieved by asking both open and probing questions.

Getting Out of Our Own Way. The mediator's job is also to monitor their own reactions and judgments about the clients and ourselves. We need to remember that we are all part of humans struggling to do the very best that we know how to do at that moment in time. There may be times in the mediation when we are not needed. If so, we should stop talking and let the clients continue until it would be helpful for us to facilitate again.

CO-MEDIATING

Benefits

To the parties:

- Two mediators can pay more attention to the parties. Two mediators can offer a balance in age, gender, lifestyle or race differences.
- Parties can observe two people (the mediators) working together successfully.

To the mediators:

- Your co-mediator can pitch in where you feel stuck.
- You can divide some of the tasks, e.g., big picture/details, emotions/facts, writing the agreement.
- You can learn from your co-mediator.
- New mediators can co-mediate with a more experienced mediator.
- You can de-brief afterward.

How To

Prepare to co-mediate with your partner:

- Divide the Opening.
- Share what mediation skill you want to focus on.
- Discuss how the two of you will address your own differences - e.g. what if a co-mediator takes the discussion to a direction different from what you wanted to do.
- Discuss sharing duties.

During the mediation meeting:

- Respect each other.
- Both participate.
- Model collaboration!

Adapted from East Metro Mediation

Multnomah County Small Claims Court Mediation Program, 09/98

THE CONCEPT OF NEUTRALITY –

Managing Your Non-Neutral Feelings

As mediators, we put ourselves in a most challenging situation. We sit between two (or more) people involved in a conflict which is often highly charged, and which they have failed to resolve themselves. Many parties arrive at mediation unfamiliar with the process, and unconvinced that it will be useful to them. We need to find a way to assure both parties simultaneously that we are impartial and neutral. We do not favor one party over the other, nor do we advocate for any result. We advocate for the *process* of mediation.

To further the aim of impartiality, we need to balance our attention between the parties. Strive to maintain an equal amount of eye contact during The Opening. Use language which is inclusive of both parties. When one party asks a question about your impartiality or objects to something you have said, you might say something like, “I can understand how both of you might be concerned about the fairness of this process, and I want to assure each of you that I will do my very best to be impartial.” Also, when one party is speaking, you might occasionally glance over at the listening party to demonstrate your impartiality - and to include them. Your body language, as you listen to each party, should not favor one party over the other.

However, neutrality does not mean that we are above the fray. One mediator trainer, Jim Melamed says, “The mediator is actively engaged with all parties and in different ways. Overall the mediator’s involvement should be balanced between the parties. Thus, rather than separation or distance, ‘neutrality’ in mediation may best be understood as a balanced and active involvement with the parties in a way that does not favor either party or any particular result.”

Additionally, the ethics of the mediation profession dictate that (a) you must divulge any potential conflict of interests; and (b) you must disclose any present or prior relationship, either personal or professional, between yourself and any party to the mediation.

The mandate for impartiality becomes even more challenging to fulfill when you meet people with highly different values than yours. Perhaps you might think that one of the parties is right and one is wrong. Your own feelings may be triggered by the conflict being discussed. Yet you know that to do an effective job, you need to manage those non-neutral feelings so that you can retain your neutral appearance. This is the most challenging and important skill for mediators to develop – to learn to manage your own biases, judgments and opinions - *and not to give advice!*

No matter how much experience we have, there are no easy answers. The first step in managing non-neutral feelings is to recognize that they have arisen. Having recognized them, you have the choice of how to respond to them. Any centering or calming technique, such as deep breathing, repeating to yourself a powerful slogan can reduce the power of the feeling. Another technique is What Fisher and Ury in their book *Getting to Yes* call “going to the balcony” – this is where you imagine yourself on a balcony

looking down on the conflict from an observer's perspective. If you have a co-mediator, you can simply say to your partner, "I'm wondering if you would like to proceed for a while."

Should you meet someone whose behavior you find difficult or whose values offend you, look inside yourself for compassion for them. John Haynes, one of the pioneers in divorce mediation, always looked for the Good or "God" in people. Perhaps you might silently speculate on the quality of life this party has led that would cause them to act in a disagreeable way.

Above all, be more committed to the participants' developing their own solutions rather than having your preferred solution prevail. Remember, it is their agreement – not yours and you should not have shared any of the solutions you are thinking about with the clients. You do not have to live with the agreement after you leave the mediation session – they do – and they will come up with better solutions that better suit them, than you will. It is in empowering the parties to solve their own conflicts that the transformational magic of mediation occurs. If we could help the parties learn something about how they can solve all their future conflicts, it would be even more valuable than simply resolving the conflict at hand.

Along these same lines, please remember that your own story about who is right and who is wrong is simply another perspective, like that of the participants. It is not The Truth. For every person, present at the table – their individual perception is their reality.

The mediator proceeds without ever knowing who is right and who is wrong. Our role is to bring people out of their past and into the future through the process of empowering the participants to create new understandings and agreements that work for them, not us.

WORKING TOWARD NEUTRALITY

Balance Attention Between Parties:

- Balance eye contact and body language
- Balance amount of time and attention devoted to each party
- Acknowledge listening party as needed
- Use co-mediator to equalize attention

Use Language that is Balanced and Impartial:

- Acknowledge the speaker without agreeing or identifying with them
- Restate each party's points without disclosing your preference for one
- Reframe: replace negatively charged words with words that are more neutral.

Mediator Must Disclose:

- Any past or present relationship with the parties
- Any conflict of interest or appearance of conflict of interest

“How to” Tips:

- Remember you are an advocate for the process, not for a party or solution.
- Recognize your own non-neutral feelings as they arise.
- Respect the parties' right to self-determination as to whether to reach an agreement.
- Recognize that the process cannot succeed if there is a perception by a party of mediator bias.
- Use your co-mediator to “take over” temporarily if you need a few minutes to manage your own feelings.
- Find compassion for an individual who is being particularly difficult or unreasonable.
- Remember it is not your agreement – it is theirs.

MODULE SUMMARY and PERSONAL REFLECTION

Key Learning Points for me from the Material and Exercises in this Module:

For my Own Personal Growth as a Mediator, I Need to Pay Attention to: