



Community Solutions of Central Oregon

MODULE 6 Overview

Other Aspects of Mediation

One of the major tenets of mediation is the Suitability to Mediate. It happens rarely, but sometimes you just can't mediate a case because of the points raised on page 6-1. If this happens, the mediator would simply tell the parties that the case isn't suitable for mediation. If this happens in a court setting, you would schedule the case for trial.

Regarding Case Development; we will cover this in detail during the practicum.

Suitability to Mediate

With thanks to Gary Friedman, Center for Mediation in Law

Whether mediation is appropriate for the parties is a critical question during the case development process. It is also a question that needs to be kept open throughout the entire process by both the parties and the mediator.

Central to determining mediation's appropriateness is whether the parties can deal fairly with one another. Differences in the parties' openness to the process, the tendency of one party to dominate the other, inequalities in ability (or willingness) to deal with the subject matter may all prove relevant. This does not mean that mediation cannot be utilized but it does mean that we may have to act to compensate for the disadvantage.

Whether the parties can deal fairly with each other can be subdivided into these questions:

Is each party able to speak for her/himself? For example, is someone competent to make decisions for themselves? Example, someone with dementia would not be but another family member may accompany them to mediation or, if a legal representative has been appointed, represent them in mediation.

Have they been required or ordered to attend mediation? As a major tenet, in mediation is that it be voluntary, we "allow" people to be required to attend the Opening but after that the process is a voluntary one.

Is one party intimidated by the other? Example: employee/employer. To what extent? Can this be balanced out in mediation?

Are the parties able to communicate clearly with each other? Are there language or educational barriers? Can they express themselves **and** hear the other? Mediation is a great forum for increasing understanding.

Is each party able to identify his/her own sense of what is important to them as a realistic and solid base for making choices? Is each able to express and assert that sense? Is each person able to track the progress of the mediation?

Do the parties feel safe in the room with the other person? If not, this may be an indicator of physical or verbal abuse. This is one of the few times you might meet with the parties separately early in the mediation – to check this out. For example, rarely is a case suitable for mediation when there has been domestic violence. However, if a party uses the term “abuse,” this is an emotionally-laden label being applied to a wide range of behaviors. It is important to have the person describe the behavior that they label “abuse” and, if you decide to continue the mediation, to use the behavior description rather than any charged term. – such as the word “abuse.”

Case Development

Case Development is the development of a case from the time of the first contact (usually a phone call or email) until the time of the first mediation session. During this time, the case developer is assessing the appropriateness of the case for mediation, contacting the second party, educating the parties as to mediation and, assigning mediators appropriate for the case.

Sometimes another form of dispute resolution is more appropriate than mediation – particularly if the second party does not choose to come to mediation - which happens frequently. The biggest challenge is to get both parties “to the table”. A lot of time is spent behind the scenes in case development before the parties come to the table.

The Process

A staff member talks to one or both parties separately, usually over the phone. This person may or may not be one of the co-mediators. The case developer helps the parties to understand their concerns, to look at their options for resolving the dispute and to support them in coming to the first mediation session – if that is appropriate.

There are at least two parties in any case and sometimes more. We call the person who makes the first contact, the first party. The first party is the person who calls the program initially, has identified a problem, and who wants some assistance. The first party is contacted first by the mediator to find out more detailed information about the dispute. He or she spends some time with the first party to try to understand the situation before contacting the second party.

Process Options

The case developer helps the person explore their “process options.” Process options are the different approaches generated by the parties to resolve the dispute. These options may include: talking to the other person, doing nothing, filing in court, calling the police, beating each other up, etc. The case developer can explore how each option, including a mediation meeting, could work. The objective is to discover the best alternative for those involved in the dispute, not what the case developer thinks should happen.

The role of the case developer is to assist the disputants to:

- Gain clarity of their own issues, needs and options.
- Consider the other person’s issues and needs.
- Communicate effectively their needs and wants to the other party so that they can make their own choices about resolving the problem.

Purpose and Pointers for Case Development

1. To educate and inform each party about the mediation process.
2. To begin to establish a relationship with the parties and to start building trust in you and in the mediation process.
3. To explore if mediation is appropriate or whether negotiation coaching or telephone mediation would work better.
4. To obtain information regarding the dispute: what is its background, and what are the parties' perspectives?
5. To begin to identify the parties' needs, values, expectations, issues and potential positions and options explored.
6. To assess the willingness of the parties to work with one another.
7. To address resistance and barriers to participating in the mediation process.
8. To begin to shift the focus away from past grievances toward future possibilities.

MODULE 6 Summary
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: