

The Mediation Process: Step One

Mediator's Opening Statement

Goals:

- Set the stage for productive, constructive dialogue.
- Educate the parties about the negotiation/ mediation process.

Steps:

- Welcome and make introductions.
- Explain the mediator's role and authority.
- Review the mediation process.
- Define confidentiality.
- Deal with logistics.
- Answer questions and get a final commitment to begin process.

Tasks:

- Establish neutrality and impartiality.
- Explain possibility of caucus.
- Establish ground rules or agreement on standards of behavior.

The Mediation Process: Step Two

Parties' Opening Statements (Storytelling)

Goals:

- Identify the issues to be addressed.
- Understand situation and context.
- Help the parties feel “heard” (active listening).
- Help parties begin to understand and respect each other’s perceptions and needs and to reduce misunderstanding.

Steps:

- Select a party to begin.
- Ask the parties open-ended questions.
- Listen, summarize key points.
- Summarize issues.
- Ask if party wants to add anything else.
- Repeat the process with the other party.

Tasks:

- Directs communication from the party to the mediator.
- Listens attentively, modeling respectful behavior.
- Names and acknowledges feelings expressed by the parties.
- Paraphrases issues.
- Summarize long, complicated descriptions of the situation.
- Verbally “underlines” conciliatory comments made by parties.
- Enforce ground rules agreed to by parties.

The Mediation Process: Step Three

Narrowing Issues and Setting Agenda

Goals:

- Identify parties' interests.
- Help the parties express their feelings productively and have these feelings acknowledged.
- Reduce parties' adversarial mind-set and begin to shift the parties to seeing themselves as joint problem solvers.
- Shift parties from focusing on the past to being present- and future-oriented.
- Clarify the parameters or boundaries of topics for discussion.
- Create an agenda for problem solving.
- Get buy-in of the parties to the tasks ahead.
- Surface other issues that have not yet been identified.

Steps:

- Ask probing and clarifying questions.
- Reframe and confirm interests of the parties.

Tasks:

- Frame the issues as a joint list, in neutral, positive terms.
- Ask parties if there is anything else that they want to address at the meeting.
- Give a final summary of the collective issues and interests expressed.

The Mediation Process: Step Four

Exploring Options

Goals:

- Develop a full understanding of the issues and concerns (underlying interests, data, relationship, values, and structural factors related to each issue).
- Build a foundation for problem solving.
- Focus the parties on their needs and interests.

Steps:

- ✧ • Put the responsibility on the parties for developing solutions.
- Keep the parties focused on trying to meet interests rather than pressing for positions.
- Help the parties think creatively.
- Focus the parties on building a desired future.
- Keep the parties from getting “stuck”.
- Keep the parties grounded in reality and practicality.

Tasks:

- ✧ • Select and frame a single issue or a group of issues to work on.
- Identify any objective standards or constraints that must be applied.
- Review the interests that must be addressed and how each option meets those interests and standards.
- Develop a safe, creative environment.
- Brainstorm multiple options.
- Fine-tune promising options or initial draft of a proposal.
- Assess their BATNA's and gains by finding workable options.
- Select and modify options in such a way as to optimize benefits.

The Mediation Process: Step Five

Final Written Agreement

Goals:

- Work through the practical realities of the agreements and what it will take to implement them.
- Provide an opportunity for review and reflection of the agreements before final signing.
- Obtain as much closure as is needed and desired.

Tasks:

- Review agreements on individual issues.
- Combine agreements into a package.
- Develop implementation plan for agreement(s).
- Guide parties in refining agreements.
- Draft final agreement.
- Provide opportunity for outside review of agreement, if needed.
- Finalize written agreement and obtain signatures.

Dealing with Impasse

Impasse refers to a situation in which the parties fail to find a mutually satisfactory agreement for resolution of their differences. Dispute resolution efforts may reach impasse for many different reasons. Below are guidelines for handling a possible impasse.

Recognize and Accept It

Impasse is not a failure! It simply means that in this effort, using the approach that has been used among the specific parties involved an option has not been identified that meets all parties' interests better than their own outside options (their BATNA). It may mean that other methods of resolving the dispute may need to be utilized or that some essential ingredient of a good resolution was lacking. A mediator or facilitator should recognize in a very matter of fact manner that impasse seems imminent without treating it as a possible failure. Rather, it should be used to re-examine the resolution process used up to that point.

Re-examine Interests

Are there unidentified interests that parties have not disclosed clearly or that may have not been given adequate focus? Are there interests that need more exploration and a deeper understanding? Has the resolution attempt focused on the wrong ones? Have the options that have been identified in brainstorming failed to address critical interests?

Review the BATNA...and WATNA

At this point in the session, it may be productive to stop and discuss the alternatives that the parties have for the future of the situation if they do not discover a mutually agreeable solution at this time. What are the best and worst possible outcomes that may happen...basically, what's their bottom line? A clear discussion of the consequences of an impasse may motivate parties to work further, to make some concessions, to take a more sober and rational look at their situation, to be willing to negotiate about some aspects, etc. Or it may help the group to recognize that there really is a better option outside the session open to at least one of them that places them at impasse. Recognize that the BATNA and WATNA essentially sets the benchmark for an acceptable agreement in the session. If together a mutual-gain option can be found that is at least somewhat better than the BATNA of either party on their own, then the possibility of a resolution is high. If not, resolution is unlikely.

Dealing with Impasse continued...

Caucus with Individual Parties

If the session still seems at impasse, caucus with each party individually to assess whether there are hidden interests that have not been disclosed, to explore any possibility of concessions, new options, or areas of potential break through. At times parties may disclose something significant in a private session with the mediator that they have not been willing to discuss openly. Again, explore the possibility that significant interests have not received the necessary attention.

Review Accomplishment and Uncompleted Work

If, after the individual caucus, no break through has occurred, review with all parties together the accomplishments that have been made and identify possible areas of uncompleted work.

Review Options for Next Steps

Review possible ways that parties might continue to explore uncompleted work and/or other possible alternative dispute resolution methods that might be useful at this point. For example, an impasse in a mediation effort may indicate that a case will then move into a formal grievance procedure, or might be placed before an arbitrator.

Offer Future Assistance

Finally, offer your future assistance if the parties might deem it helpful to contact you at a later time to resume work or to seek your help in identifying another resource.