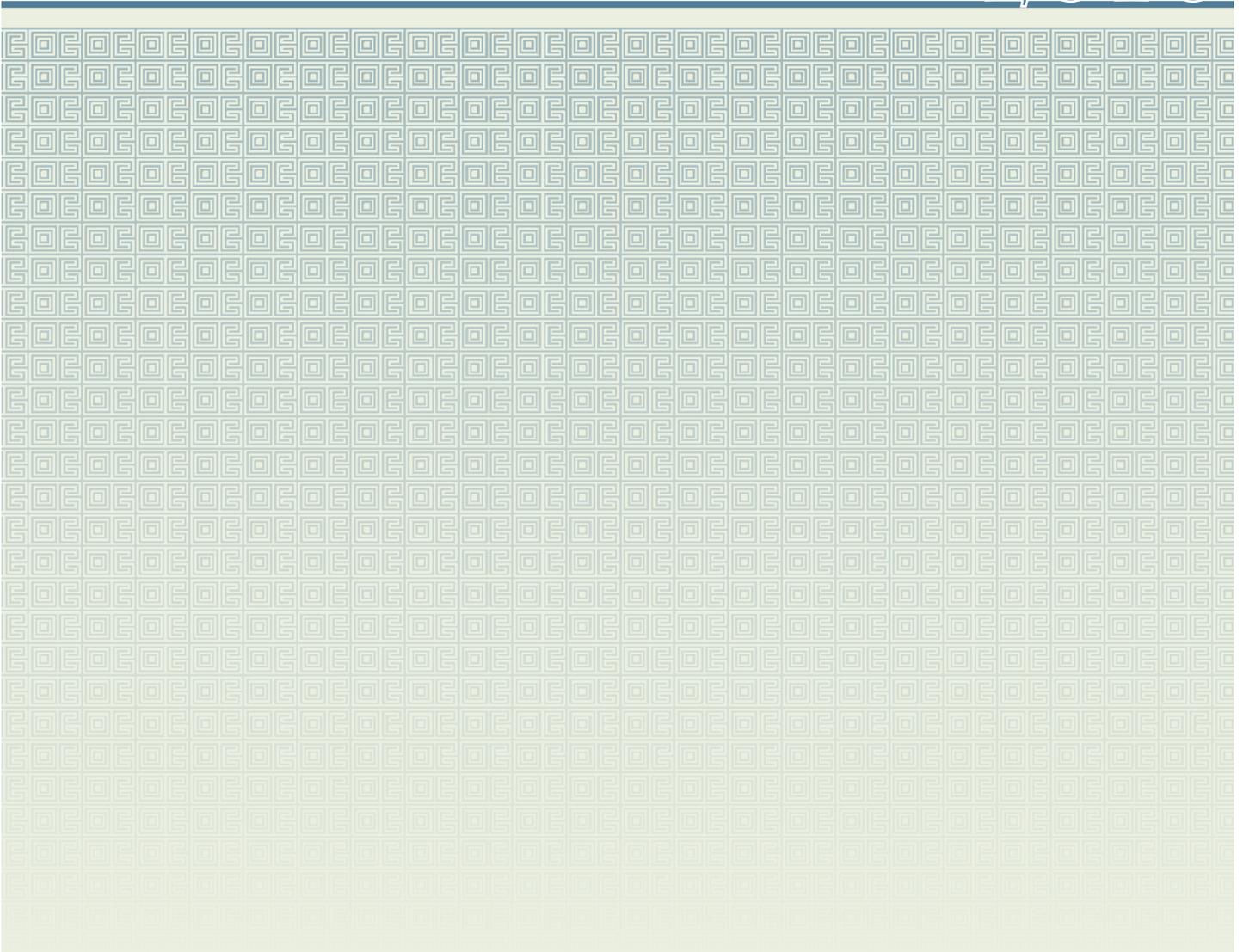




THE SUPREME COURT *of* OHIO

# BASIC MEDIATION TRAINING

# 2016





# THE SUPREME COURT *of* OHIO

BASIC MEDIATION TRAINING

Manual

2016



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## Basic Mediation Training Manual

### TABLE OF CONTENTS

	<b>Page</b>
<b>I. Overview</b>	
• Course Description	1
• Faculty Credentials	3
<b>II. Training Presentation</b>	
• Introduction to Conflict	5
• Introduction to Mediation	19
• Interests vs. Positions	15
• Communication Skills	19
• Five Stage Model of Mediation	27
• Co-mediation	37
• Emotional Dynamics in Mediation	39
• Core Concerns	41
• Special Mediation Technique	43
• Special Mediation Situations	49
• Power Dynamics in Mediation	53
<b>III. Resources/Handouts</b>	
• Vocabulary of Feeling Words	57
• Agreement to Mediate Sample Forms	59
• Elements of a Mediation Introduction	61
• Sample Mediation Introduction	63
• Sample Opening Statement – Court Annexed	65
• Guidelines for Interpreters in Mediation	67
• Website References	69
• Financial Issues in Domestic Relations Mediation	71
<b>IV. Exercises</b>	
• Find Someone Who	75
• Understanding Conflict	77
• Five Possible Responses to Conflict	81
• Spaghettio's	83
• Interests	85
• Active Listening	87
• Reframing	89
• The Story	91

## TABLE OF CONTENTS – Continued

<b>V.</b>	<b>Role Plays</b>	
	• Taken to Cleaners	93
	• “For Whom the Dog Barks”	95
	• “That’s MY SCUBA Gear!”	97
	• “Amy & Jeremy	99



## The Uniform Mediation Act Manual

### TABLE OF CONTENTS

	<b>Page</b>
<b>I.</b> The Uniform Mediation Act – An Overview	3
<b>II.</b> The Uniform Mediation Act – Privilege versus Confidentiality	45
<b>III.</b> Ohio’s Uniform Mediation Act: A Reader’s Guide and Sample Language	47
<b>IV.</b> Public Records and the Uniform Mediation Act	61
<b>V.</b> Ohio Revised Code Chapter 2710. Uniform Mediation Act	63
<b>VI.</b> Ohio Revised Code Section 3109.052. Mediation of Differences as to Allocation of Parental Rights and Responsibilities.	71
<b>VII.</b> Supreme Court of Ohio Rules of Superintendence for the Courts of Ohio Rule16: Mediation	75
<b>VIII.</b> Model Standards of Conduct for Mediators	93



## Overview

- Course Description
- Faculty Credentials





## **Basic Mediation and Uniform Mediation Act Training COURSE DESCRIPTION**

Participants will be introduced to concepts that underpin the practice of mediation: conflict theory, communication skills, interest based negotiation and mediator styles and qualifications. Participants will learn the basic stages of mediation, co-mediation and effective ways to address common mediation challenges: emotional dynamics, difficult personalities, impasse, ethical dilemmas and impartiality.

This training is highly interactive and fosters participation through group discussion and involvement in small group mediation simulations and exercises. Mediation simulations and exercises are drawn from a variety of court mediation practices, giving participants familiarity with the different settings in which courts use mediation.

The Uniform Mediation Act (UMA) was adopted in Ohio on October 29, 2005. This training aims to familiarize participants of the Act's provisions, including the scope of the Act. Participants will discuss specific privileges and exceptions to those privileges with a comparison to confidentiality, in addition to the role of party and non-party participants and the rights of clients.





## **Basic Mediation Training FACULTY CREDENTIALS**

### **Cathleen E. Kuhl**

Former Director, Hamilton County Municipal Court Mediation Service  
ckuhl@cinci.rr.com

**Cathleen E. Kuhl** has worked full time in the dispute resolution field for more than 30 years. During that time, she has provided direct mediation, facilitation, and arbitration services to courts, schools, government agencies, and community agencies, as well as private groups and individuals. From 1982 to 2012, Kuhl worked for the Hamilton County Municipal Court's Private Complaint Mediation Service as a mediator and program administrator.

In addition to providing direct services, Kuhl provides mediation training. For example, she serves as faculty for the Supreme Court of Ohio's mediation training programs and serves as co-faculty for the University of Cincinnati's Law School mediation course.

Kuhl has spearheaded the development of new mediation projects and facilitated working task forces in a variety of arenas, including mediation networks on the state and local level and professionals working to address issues of domestic violence and stalking victims. Kuhl has provided pro bono dispute resolution to the Better Business Bureau since 1988 and the Cincinnati Equal Employment Opportunity office from 1996 to 2005. Other volunteer activities include serving as a past board member of the Women's City Club and Santa Maria Community Services.

Kuhl holds a Bachelor of Science degree in psychology from Wright State University and has completed two years of graduate work in Antioch University's Master of Arts in Conflict Resolution program. In addition to formal academic training, she has more than 250 hours of mediation and conflict-resolution training at seminars, including the Program on Negotiation at Harvard University.

Kuhl is a founding and current member of the Mediation Council of Greater Cincinnati and a long-time member of the ABA's Section on Dispute Resolution of the Ohio Mediation Association. In 2012, the Ohio Mediation Association awarded Kuhl the "Better World Award," an annual recognition given to a mediator who made outstanding contributions to the field of alternative dispute resolution.

**Terrence T. Wheeler, Esq.**

Artz & Dewhirst

Co-director of the Center for Dispute Resolution  
and the Mediation & Dispute Resolution Certificate Program  
Capital University Law School, Columbus

**Terrence T. Wheeler** is a lawyer with the law firm of Artz & Dewhirst in Columbus, Ohio. He is also a co-director of the Center for Dispute Resolution and the Mediation & Dispute Resolution Certificate Program, which are both located at Capital University Law School, where he is also an adjunct professor teaching negotiation and mediation courses. Mr. Wheeler has been active in the dispute resolution at the local, state, national and international levels, working with schools, universities, communities, courts, government agencies, and private and non-profit organizations. Mr. Wheeler is a former president of the Board of Directors for the Association for Conflict Resolution, which is an international membership organization with offices in Washington, D.C. He is a 1982 (B.A. Journalism) and 1985 (Law) graduate of The Ohio State University.

## Training Presentation

- Introduction to Conflict
- Introduction to Mediation
- Interests vs. Positions
- Communication Skills
- Six Stage Model
- Co-mediation
- Emotional Dynamics in Mediation
- Core Concerns
- Special Mediation Techniques
- Special Mediation Situations
- Power Dynamics in Mediation



## Introduction to Conflict

- Discussion of Conflict
- Conflict Theories
- Conflict Styles Exercise

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## What is Conflict?

A struggle in which two or more interdependent people experience strong emotion resulting from a real or perceived difference in needs.

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## Conflict characteristics

- It involves others
- It involves feelings
- It can involve values
- Communication is imperfect
- Goals are uncertain
- People often have a strong desire to settle conflict

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### Why is Conflict Not Resolved?

- Goals are not established
- Need to punish
- Need to "stand on principle"
- Situation feels hopeless
- Value of reaching settlement not fully explored

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### Consequences of Mishandled Conflict

- Bitterness, hostility, distrust, or anger
- Destruction of relationships
- Destruction of self-esteem
- Disruption of normal communication and support
- Destructive actions, physical violence

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### Consequences of Properly Handled Conflict

- Clears the air
- Allows for positive change
- Promotes growth of relationships and develops new alliances
- Settlement of substantive issues
- Expands collaboration

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## Good News about Conflict

- It's natural, socially normative
- It can be an important factor in personal or relationship growth
- All relationships have it
- Resolution works best at early stage of conflict
- Mediation works because parties play a role in the development of solutions, which leads to long lasting agreements and improved relationships

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## Introduction to Mediation

- Definition of Mediation
- Mediator Role & Qualifications
  - Mediator Styles
- The Mediation Process

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## Definition of Mediation

Mediation is a process in which an acceptable and impartial third party (the mediator) assists disputing parties in voluntarily reaching a mutually agreeable settlement of their issues, without making decisions for the parties about the settlement.

The mediator does this by helping parties communicate their issues, helping parties determine the issues to be resolved, allowing the parties to generate proposals for resolution and helping parties negotiate a mutually agreeable settlement based upon the parties' proposals.

*The mediator is in charge of the process, not the outcome.*

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## UMA (ORC 2710.01) Definition of Mediation

Any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

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## Merits of Mediation

Mediation generally produces or promotes:

- Economical decisions which cost everyone less time and money
- Rapid and timely settlement of disputes
- Agreements that parties are more likely to keep
- Agreements that are better than a simple compromise or win/lose outcome
- Private and confidential resolution

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## Role of the Mediator

### MANAGES THE PROCESS

- Keeper of ground rules
- Allows parties to decide
- Helps parties decide on agreement terms
- Maintains impartiality

### FACILITATES COMMUNICATION

- Asks questions
- Listens actively
- Identifies interests
- Focuses on future
- Reframes messages neutrally

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## Characteristics of a Good Mediator

- Strong communication skills
- Knowledge of mediation
- Low need for having things turn out your way
- Patient
- Able to direct, when needed
- Substantive knowledge
- Ability to empathize
- Comfortable with conflict, high emotions
- Ability to maintain impartiality

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## Mediator Qualifications

### ORC 3109.05.02

By local Rule, a court can establish provisions for mediator qualifications and standards

### Ohio Supreme Court Rule 16

Establishes qualifications and training for Domestic Relations and Juvenile Court mediators

### ORC 2710.08 (UMA)

A mediator shall be impartial and shall disclose qualifications upon request, but no special qualifications are required

### AAA/ABA/ACR Model Standards of Conduct for Mediators

#### Standard IV. Competence

[http://www.abanet.org/dispute/documents/model\\_standards\\_conduct\\_april2007.pdf](http://www.abanet.org/dispute/documents/model_standards_conduct_april2007.pdf)

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## Leonard Riskin's Mediator Orientation

"Understanding Mediator's Orientations, Strategies and Techniques: A Grid for the Perplexed"  
*Harvard Negotiation Law Review*, Spring 1996 Vol. 1:7

### Facilitative-Evaluative Continuum

#### Evaluative/Directive

- Mediator assumes parties want and need direction regarding settlement possibilities
- Mediator is qualified to give such direction by virtue of experience, training and objectivity
- Mediator directs parties toward something or away from it

#### Facilitative/Elicitive

- Mediator assume parties are intelligent and able to work with each other; parties are best able to understand their situation and will create better solutions than their attorneys or the mediator
- Mediator' role is to enhance and clarify communication between the parties
- Mediator draws out information, perspective or influence from the parties

### Problem Definition Continuum

#### Narrow Problem Definition

- Mediator assumes parties have come to solve a technical problem, often defined in advance through positions/pleadings
- Mediator assumes that if one side gains, the other side will lose
- Positions are emphasized over interests.

#### Broad Problem Definition

- Mediator assumes parties will benefit if mediation goes beyond narrowly defined legal issues
- Important interests underlie positions; mediator should work to identify and help parties meet interests

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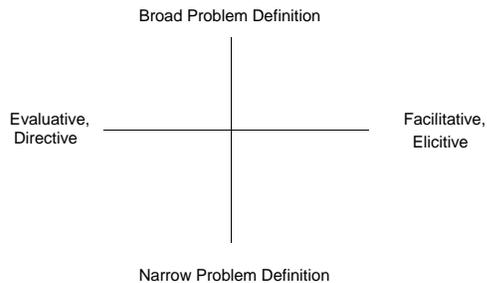
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## L. Riskin's Mediator Orientation Grid



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### Transformative Mediation Orientation

- Focus is on relationship building
- Conflict is seen as an opportunity to transform people from fearful, defensive, self-centered beings to confident, responsive beings—who become self-sufficient problem-solvers for the future
- Mediator gives control of process to parties and allows for expression of emotions
- Mediator seeks to get each party to appreciate other's viewpoint
- Mediator avoids judging parties' views and decisions, including fairness
- Mediator seeks to generate mutual respect

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### Problem-solving Mediation Orientation

- Focus is on solving the problem and settlement
- Conflict is seen as a clash of interests or needs
- Mediator looks for ways to satisfy both parties' interests or needs
- Mediator looks for collaborative ways to "expand the pie"
- Mediator looks for "value creating" trades

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### Narrative Mediation Orientation

- Reality is constructed from conversations people have with each other; mediator helps parties construct a new narrative
- New narrative re-frames the parties' perspective about the conflict, so they can solve it collaboratively
- Mediator helps parties change the context of the dispute to a new context, in which new choices are possible
- Conflict is normal, expected and reflects culturally created perceptions of unmet needs

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## The Mediation Process\*

\* aka, "The Model", "The Stages", "The Phases"

1. Pre-mediation
2. Introduction
3. Parties Explain the Dispute
4. Identifying & Clarifying Issues
5. Generating & Selecting Solutions
6. Concluding Mediation

↑  
*Separate  
Meetings,  
"Caucus"*  
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## *Just Mediate: "Taken to the Cleaners"*

This is a dispute between Terry Barrett, a customer of Spotless Dry Cleaners, and Pat Granger, owner of Spotless Dry Cleaners. Terry Barrett contacted the Utopia Better Business Bureau (Utopia BBB) who offered to provide mediation to the parties.

The Utopia BBB mediation intake staff contacted both parties who have agreed to participate in mediation. If parties reach agreement in mediation, the customer must agree to take no further action in court if the agreement is kept and the company knows that the complaint against the business will be closed as "Resolved", which does not negatively impact the company's rating posted on the Utopia BBB's website.

You are the volunteer mediator who was assigned by the Utopia BBB to this case. Utopia BBB's mediation file indicates that: 1.) the dispute involves a stain on a designer suit that Terry Barrett says was caused by Spotless Dry Cleaners, and 2.) if parties do not reach agreement in mediation, Terry Barrett intends to pursue the matter in court.

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**Interest-based  
vs.  
Positional Bargaining**

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**INTERESTS = NEEDS**

THREE KINDS OF INTERESTS:  
SUBSTANTIVE -- Objectives which need to be satisfied  
PROCEDURAL -- Is the process satisfying?  
PSYCHOLOGICAL --Emotional needs which must be met

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**POSITIONS = SPECIFIC SOLUTIONS**

BEHIND EVERY POSITION, THERE'S AN INTEREST

Secret Formula for Turning Positions into Interests:  
*Ask "Why?"*

You may discover BATNA.....

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## What's a BATNA?

- B**est  
**A**lternative  
**T**o a  
**N**egotiated  
**A**greement
- CONCEPT : MY RECOURSE FOR SOLVING THIS IS BETTER THAN NEGOTIATING
  - BATNA'S ARE OFTEN STATED AS POSITIONS
  - FIND OUT HOW BATNA MEETS IDENTIFIED NEEDS:  
BATNA = NEED  
BATNA ≠ NEED  
BATNA IS VAGUE or FALSE

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## *Dealing with Substantive Needs in Mediation*

- Generate a number of possible ways to meet the substantive need
- Review criteria or standards that may influence the outcome
- Look at possible points of agreement that might be acceptable to both sides
- If no agreement, what is each party's BATNA? Is there a good one for each side?
- Look at ways outside of the mediation to meet the need

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## Dealing with Procedural Needs in Mediation

- Identify the piece of the process that went awry between the parties, show how mediation meets that process need
- Ask if a modification of the mediation process would meet the need, see if the other party is agreeable to that
- Find out if there are other avenues for meeting the procedural need outside of mediation
- Ask the other party about meeting that need

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***Dealing with Emotional Needs  
in Mediation***

**Don't:**

- Ignore emotions
- Tell parties to stop having emotions or that they shouldn't feel that way
- Try to figure out the specific reasons why a particular emotional need is unmet

**Do:**

- Take the initiative to acknowledge the emotion
- Focus on understanding, not blaming
- Ask if meeting that emotional need is something that could be realized through mediation or a negotiated agreement
- Ask the other party about meeting the emotional need
- Use "Core Concerns" to Stimulate Positive Emotions

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## Communication Skills for Mediators

Communication Model,  
Active Listening, Questions,  
Paraphrasing, Summary,  
Reframing

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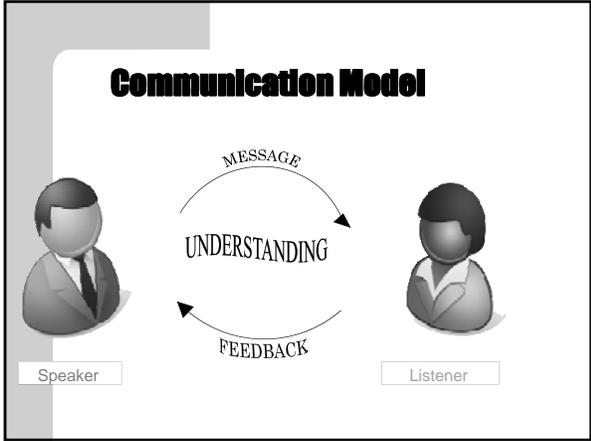
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### Just Listen ✓

There are two things you can't do at once  
when one of them is listening.

<http://www.youtube.com/watch?v=0q6gOPXecgc>

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### Definition of Active Listening

***A reflective response  
which provides a mirror  
to the speaker.***

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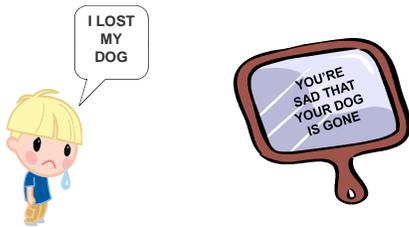
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### Active Listening Mirrors Content & Feelings



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### Active Listening Technique

It's a two-part process:

- 1.) Listening for feelings and content, then
- 2.) Responding to feelings and content by reflecting both to the speaker

This is repeated throughout the conversation

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<p><b>Content</b></p> <ul style="list-style-type: none"> <li>• Facts, information about what has occurred</li> <li>• Who, where, what, why, how</li> </ul>	<p><b>Feelings</b></p> <ul style="list-style-type: none"> <li>• Emotional impact of situation on speaker</li> <li>• Body language is often a cue</li> </ul>
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**“Canned” Active Listening Response**

“You seem \_\_\_\_\_  
(feeling)  
because \_\_\_\_\_.”  
(content)

*Directions: Add feelings & content*




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**Active Listening Tips**

- It is non-judgmental; to listen is not to judge
- Says what you think the speaker is saying (not what you think about what the speaker is saying)
- Is a concise reflection, not “blow-by-blow”
- Reflects more than the spoken words; includes feelings and picks up on body language

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### Open Ended Question

A question that seeks an unspecified answer from the listener; worded in such a way to allow the listener to respond in any number of ways.

- Examples: "How are you?"  
"Can you tell me what happened?"  
"Why were you afraid?"  
"How did that make you feel?"

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### Close Ended Questions

A question that seeks a specific answer from the listener; worded in such a way to allow listener to respond in a limited way, often "yes" or "no".

- Examples: "Did you suffer a broken leg?"  
"Are you angry?"  
"How many time did this occur?"  
"Who saw this?"

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### Paraphrase

State what the speaker has said using different words to convey the same message

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### Attention Response

“Uh-huh”  
“Yes, go on”  
“Oh, yeah?”  
“My, my”  
“Tsk, Tsk”  
“Right....”  
“Hmmm”

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### Body Language, Non-Verbals

- Eye Contact
- Facial Expression
- Position of Body
- Head Nodding
- Tone of Voice
- Nervous Mannerisms

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### Summary

A brief, concise statement that captures the essence of what the speaker has communicated.

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## Framing and Reframing

**Question:**  
How many mediators does it take to hang a picture?

**Answer:**  
None. Mediators don't hang pictures, they just reframe them



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## Framing

**The manner in which a conflict situation, an issue or an interest is conceptualized or defined**

<http://www.fastcompany.com/1657515/a-theory-called-a-fundamental-attribution-error>

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## Reframing

The process of changing how a person conceptualizes his or another's:

- Attitudes
- Behaviors
- Issues
- Interests

Or, the process of changing how the structure of a situation is defined

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**Reframing Procedures:  
Change the Syntax**

- Paraphrase
- Summarize
- Order (put issues into a logical sequence)
- Expand (guess about & elaborate on the unspoken content)
- Fractionate (break issues into smaller, more manageable sub-issues)

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**Reframing Procedures:  
Change the Meaning**

- Focus away from positions & define the problem in terms of interests
- State interests in terms that are mutually acceptable
- Identify positive value in a perceived negative attitude, emotion or behavior
- Identify commonalities
- Frame it in a way that separates the behavior and the effect from the person
- Frame it so that people will accept it as a common problem or issue
- Identify the differences between the intent and the impact of the behavior

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**Reframing Procedures:  
Change the Meaning & the Syntax**

- Generalize (state issues in broader terms)
- Frame non-judgmentally (remove emotions or value-laden language)
- State “you” messages as “I” messages
- Remove all inflammatory language from the information

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## Framing or Reframing Positions and Interests

- Ask the party presenting the position, "Why is this important to you?" "What interest does the position satisfy?"
- Develop a hypothesis about but the underlying interests that the position satisfies. Test your hypothesis with a question—"Are you asking for X because you are concerned about (interest)?"
- State the interests that are satisfied by a position and ask for verification from that the interests identified are correct
- Ask for more detail on why a position is important and what impact it has on the party.
- Break interests into substantive, procedural and psychological components and explore each part in more depth.
- Frame the issue in terms of mutual interests—"So, we are looking for a solution that meets "X": need for you (one side) and "Y" need for the you (other side)."
- Consider framing interests in more general terms to promote more flexibility in bargaining.

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## Six Stage Model of Mediation

1. Pre-mediation
2. Introduction
3. Parties Explain the Dispute
4. Identifying & Clarifying Issues
5. Generating & Selecting Solutions
6. Concluding Mediation

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## Stage One: Pre-mediation

### Before Mediation: Case Development & Preparation

- These activities occur in the days or weeks prior to the mediation to prepare the parties, nonparty participants and the mediator for mediation.
- Sometimes the mediator performs case development, sometimes another person does.

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## Case Development Activities

- Review of records, documents
- Provide Agreement to Mediate
- Screening (for safety concerns, appropriateness for mediation, needs of participants, conflicts of interest)
- Pre-mediation interview with parties, attorneys, nonparty participants
- Determining who will be participating in mediation (share with sides)
- Determining mediation location
- Scheduling mediation date and time
- Sending notice of mediation date, time, location
- Communication by phone, e-mail, text?
- Reminder calls to parties 2-3 days prior to mediation date

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## Pre-mediation Interview

- Talk to attorneys and parties, separately or via conference call
- Describe the general mediation process, answer questions
- Ask about any special needs for participation
- Ask attorneys and parties for their "take" on the dispute
- Ask what resolution might look like
- Find out who will be participating in mediation (in person? by phone?), ask for names, share with each side
- Disclose anything that would impact mediator's impartiality
- Ask if comfortable in same room, investigate safety. Note: if domestic abuse identified, follow domestic abuse protocols
- Discuss Agreement to Mediate, Confidentiality Agreement
- Give approximate time frame for mediation, confirm date
- Go over mediation location, parking

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## Stage One: Pre-mediation

### Day of Mediation: Room & Mediator Preparation

#### Prepare the Room

- Pens, paper, forms
- Flip chart
- Calendar
- Tissues
- Calculator
- Arrange seating
- Arrange equipment (AV, speakerphone)

#### Prepare the Mediator

- Review names of participants
- Brief overview of case documents/notes
- Make list of mental notes, 6<sup>th</sup> sense items
- Get centered, breathe, clear your mind

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## Stage Two: Introduction

### Beginning the Mediation Session

- Introduce Self and All Present
- Give Approximate Time Frame for Mediation
- Explain Purpose of Mediation, Review the Process
- Explain Role of Mediator, Parties, Attorneys, Nonparty Participants
- Explain Mediation Privilege & Confidentiality
- Sign Agreement to Mediate (Confidentiality Agreement)
- Establish Ground Rules for Mediation

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### Stage Three: Parties Explain the Dispute

*Mark, if you'd like to begin, please tell me about this situation from your perspective.*

*James, I will want to hear from you, also; but, while Mark is talking, please just listen without interjecting questions or comments. You will have your turn to talk.*



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### Stage Three: Parties Explain the Dispute

- Begin by asking each party to take turns telling you about the dispute from his or her perspective.
- Ask each party to listen to what the other is saying without interrupting--even though it may differ from the listener's own perspective.
- The mediator should actively listen as each party speaks.
- This stage is often referred to as the "Storytelling Stage". Give each party time to tell the story.

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### Stage Four: Identifying & Clarifying Issues

- Once the parties have explained the dispute, the mediator assists the parties in identifying and clarifying all present and underlying issues
- The goal of this stage is to create a list of issues that will be addressed during the mediation session.
- Issues should be "distilled" to a few words; for example, "communication", "future contact", "money in escrow", "weekend visitation", "needed repairs", "financial settlement figure"

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## Stage Four: How to Identify & Clarify



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## Stage Four: What to Identify

### Identify the Story

- Incident(s)
- Perceptions
- Areas of Agreement
- "Facts"

### Identify Emotions

- Emotional impact on each party
- Current feelings

### Identify Relationships

- Past
- Present
- Future

### Identify Interests

- Substantive
- Procedural
- Psychological

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## Stage Three & Four: Mediator's Role

- Keep control of the session
- Include each person
- Ask necessary questions
- Listen for Interests and Issues
- Watch for moments of understanding or reconciliation
- Summarize their interests and concerns
- Refrain from finding solutions yet

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## Stage Four: Creating the Issue List

- When it seems like all issues have been identified and no new issues are being raised by parties, the Mediator creates an issue list.
- The Mediator asks parties if the list is complete. If there are others, the Mediator identifies them and adds them to the list.
- Once the parties agree that the issue list is complete, the Mediator asks parties to decide which issues they want to address.
- Once the issue list has been revised, the Mediator asks parties to confirm that the list contains all the issues parties want to address in mediation.

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## Tips for Creating the Issue List

- Wait until each party has had a chance to talk and respond before listing (identifying) issues. If both agree on an issue, that one can be listed (identified) sooner.
- Find a way to address "hot button" issues; look at the underlying interest and reframe as an interest.
- Use positive or neutral language when listing (identifying) an issue.
- State issues succinctly; use 1-3 words, i.e., "communication", "need for sleep", "remaining work", "future contact", "pickup/dropoff kids"
- Make sure both parties' issues are listed, as well as shared issues.

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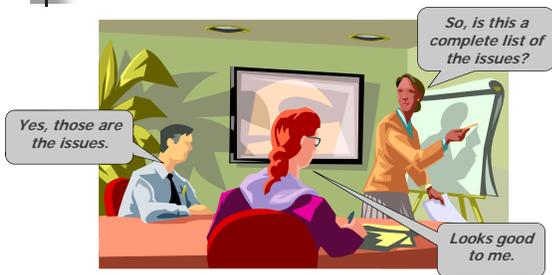
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## Stage Four: Issues are Identified & Clarified



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## Mediation Role Play: "For Whom the Dog Barks"

### *General Background Information*

This is a dispute between two neighbors Bill/Betty Bradshaw (age 52, assembly line worker) and Ron/Rhonda Peterson (age 25, college student). Bill contacted the Utopia County Mediation Center (a non-profit community mediation center) because Ron's dog barks and disturbs him, especially when Bill is trying to sleep.

The Utopia County Mediation Center staff has contacted both parties who have agreed to this voluntary mediation and have signed the Center's 'Agreement to Mediate' form prior to today's mediation. If parties do not reach agreement in mediation, parties are free to pursue other legal remedies.

Although both parties were advised that each could bring someone with them to mediation, they said they would not bring anyone with them.

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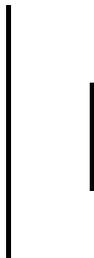
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## What is this?



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## Now what is it?

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## Stage Five: Generating and Selecting Solutions

- Ask parties for suggestions about solutions
- Parties may build on other's suggestion
- Manage parties' critiques, analyses of suggestions, e.g., "Sounds like you have questions about how that might work, let's keep going and we'll come back to that."
- Reframe suggestions neutrally
- Refer to Issue List to make sure each issue is addressed

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## Tips for Option Generating

*Conflict Zen Blog, Tammy Lenski, LLC*

- Invite them to generate more options before starting to weigh any of them. It might sound like this: "Before you start weighing options, I'd like to make sure you've done a thorough job exploring what else might work. What other options might work, even crazy ones?"
- Invite them to discuss what options they rejected before they met with you. It might sound like this, "In my experience, sometimes options that were rejected before you got to mediation/coaching might have elements in them that could be useful. Have there been any options you've already considered and rejected? What about them didn't work?"
- Reframe the way they're naming the problem they're generating options for: try "flipping" the frame.

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## Stage Four: Evaluating Solutions

- Ask for parties' feedback about suggested solutions
- Refine based on mutual input
- Ask for clarification, get specific
- Ask questions to test for workability
- Ask "What if?" questions
- Reality check: will this work?

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## Reality Testing Agreements

- Is it specific? Is it workable? Try some "What If's"
- Columbo technique: "Help me understand....."
- More mistrust = more details
- Got communication?
- Third parties, shadow negotiators

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## Stage Five: Selecting the Solution

- Summarize agreement terms, stating what agreement has been achieved
- Clarify vague agreement terms
- Confirm parties commitment to the agreement
- Decide on agreement format
- Discuss recourse if agreement isn't maintained

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### Stage Five: Mediator's Role in Writing Agreement Terms

- Have attorneys, not the mediator, draft the language of a settlement agreement.
- If attorney is not involved, as often is the case with family mediation, mediators will use a "Memorandum of Understanding" document.
- Some programs create boilerplate "fill-in-the blank" forms for mediators to use.
- Mediator (in above two points) acts only as scrivener, writing down the language agreed upon by the parties.

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### Stage Six: Concluding Mediation

- Memorialize the agreement on paper, e.g., Memorandum of Understanding
- If the final format of the agreement is not created in the mediation, e.g., settlement agreement to be drafted by attorneys, create "schedule" for that to occur and include in that in MOU/summary
- Complete and distribute appropriate paperwork
- Thank all present for their participation; congratulate parties who reach resolution
- Be clear that mediation is over; escort parties out of room, don't engage in lengthy discussions with either side afterward
- Complete mediator's records
- Reflect and self-evaluate

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### Stage Six: Concluding Mediation when No Settlement

- Look at what issues have been resolved and what issues remain. Summarize partial agreements.
- Would a future mediation session be useful?
- Consider:
  - The passage of time
  - Discussion with or approval from other constituents
  - Consultation with outside experts
  - Obtaining/exchanging missing information
  - Telephone or email follow-up
  - Other ADR processes

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**CO-MEDIATION**

Two mediators  
working as a team



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**Co-mediation Tips**

- Meet with co-mediator before beginning case to:
  - Discuss strengths/weaknesses, likes/dislikes
  - Work out signals
- Meet with co-mediator after to talk about what worked & what didn't
- Share mediating responsibilities



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**Co-mediation Tips**

- If you have a thought or question, voice it
- Separate parties if you need to discuss strategy w/co-mediator
- Keep co-mediation team together during caucus



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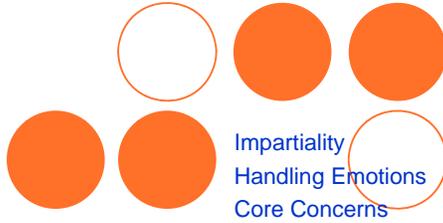
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## Emotional Dynamics in Mediation



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## Impartiality

- How do you affect the participants in mediation?
- How do the participants in mediation affect you?

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## Guidelines for Maintaining Impartiality

- Allow parties to talk while you actively listen.
- Avoid interrupting parties when they are speaking.
- Use neutral and non-judgmental language, body language, tone of voice, facial expressions.
- When you have a real or perceived conflict of interest; disclose such prior to mediating and step aside as mediator if appropriate.
- Assess yourself for bias; step aside if you are unable to mediate impartially.
- Offer suggestions for resolution only when you have exhausted parties' ability to generate solutions.
- Keep your opinions out of the mediation process. Do not offer your opinion about the matter in dispute or give your opinion when asked; suggest using experts for technical or legal opinions.
- If a party says to you that you are taking the other's side or are not being impartial; offer to have another mediator handle the dispute.
- Remind parties that they are the decision-makers in this process: they define the issues, they offer solutions, they decide whether or not to reach settlement.
- Remember: a mediator is *neutral about the outcome of mediation*, but is an active *advocate for the process*.

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Handling Emotions In Mediation

- **Allow people to talk about their feelings**  
Recognize the difference between useful expression of emotions and the destructive polarization of the parties
- **Listen for emotions and feelings....period**  
You can't do two things at once when one of them is listening.
- **Acknowledge and validate feelings**  
Tell people what you hear them saying, not what you think about what they're saying
- **Address people's emotional needs at the appropriate level of depth**  
Deep enough to address the real concerns people have, not so deep as to require people to work through fundamental life issues beyond their practical abilities

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Handling Emotions In Mediation

- **Use Caucus**  
An appropriate level or type of intervention for one person or one stage of a resolution may be wrong for another
- **Forgiveness and Apology**  
An apology is effective only if it is genuine and unconditional; it is better to offer a narrow but genuine and unconditional apology than a broad but conditional one. A genuine apology moves the giver closer to emotional resolution regardless of the response of the recipient.

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Mediation Role Play: "That's My SCUBA Gear!"  
General Background Information

This is a dispute between Drew Norris and Chris Green, who are "ex's"—they lived together until about a year ago. Drew filed a complaint against Chris in Utopia County Small Claims Court alleging that Chris took \$3000.00 worth of SCUBA equipment from Drew when Chris moved out. Utopia County Small Claims Court has referred the case to mediation.

The Utopia County Small Claims Court staff has contacted both parties who have agreed to participate in mediation and they understand that they must sign the Court's 'Agreement to Mediate' form at mediation. If parties do not reach agreement in mediation, the case is scheduled for trial next week. If parties reach agreement in mediation, the parties can request that the court dismiss the case, based on the settlement agreement signed and submitted by the parties.

Both Chris and Drew have brought their attorneys to mediation.

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## Five Core Concerns

See Fisher, Roger and Shapiro, Daniel (2005). Beyond Reason: Using Emotions as You Negotiate NY: Penguin Group

Another Approach to Handling Emotions in Mediation

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## Core Concerns

See Fisher, Roger and Shapiro, Daniel (2005). Beyond Reason: Using Emotions as You Negotiate NY: Penguin Group

- Core concerns are human wants that are important to everyone and focus on your relationship with others.
- In every negotiation, emotions are generated by five core concerns: appreciation, affiliation, autonomy, status and role.
- If core concerns are ignored, then negative emotions are generated
- If core concerns are met, then positive emotions are generated
- Address the concern, not the emotion.
- Mediators can use core concerns as a lens to understand emotions and as a lever to stimulate positive emotions

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## Five Core Concerns

**Appreciation:**  
Understand the other's point of view, communicate our understanding, find merit in what the other thinks, feels, does

**Affiliation:**  
Treat each other as colleagues, not adversaries, build or rebuild structural or personal connections between parties

**Autonomy:**  
Parties have the freedom to make and affect decisions on important matters

**Status:**  
Recognize and acknowledge everyone's standing or status

**Role:**  
Parties have a fulfilling role as parents (and in mediation), one that enables them to make a difference

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## Five Core Concerns

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## Core Concerns: Met & Unmet

My Core Concerns Are <i>Unmet</i> When:	When This Happens, I Am Prone To:	My Core Concerns Are <i>Met</i> When	When This Happens, I Am Prone To:
I am unappreciated	React negatively, contrary to my interests	I am appreciated	Cooperate
I am treated as an adversary	"Go it alone"	I am treated as a colleague	Work together
My autonomy is impinged	Think rigidly	My freedom to decide is acknowledged	Be creative
My status is put down	Act deceptively and be seen as untrustworthy	My high status is recognized where deserved	Be trustworthy
My role is trivialized and restricted		My role is fulfilling; it includes activities that convince me that I can make a difference	

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## Core Concerns: Lens & Lever

"She cancels visitation whenever our son has an asthma attack. She thinks she's the only parent capable of taking care of him when he's sick!"

"He refuses to put the girls to bed at their usual bed time when they are with him. I've told him why a consistent bed time is important, but he says I'm too rigid with the girls and, when they are with him, he'll decide when they go to bed."

"She filed this motion to change our agreement about who pays for school tuition. When I got the filing, I called her to talk about it -- she refused to talk to me about it and told me to talk to her attorney."

"She allowed our 13-year-old daughter to sign up for a two-week school trip to Spain and did not even ask for my input. I'm not sure our daughter is ready for such a trip at her age. I have no idea where they are going, if adults are going, where she'll be staying. And guess who will be paying for the trip--me!"

"I'm tired of being the 'homework police'. When they go to his house after school, why can't he go over homework with the kids? When they take homework to his house on the weekends, they come home on Sunday and the homework is never done."

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● ● ● | **Special  
Mediation Techniques**

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● ● ● | **Allowing Parties to Talk to Each Other (...or not)** 

- ▶ It's okay to let parties converse—often, it's preferable.
- ▶ Sometimes, especially when emotions are running high, a mediator may need to set boundaries (i.e., ground rules like "talk to me, not each other) about whether and how parties talk to each other.
- ▶ Apologies are usually more effective when delivered from one party directly to the other.
- ▶ Productive talk between the parties, that which moves the process forward, is to be encouraged
- ▶ If direct communication has a negative impact on a party, a mediator should intervene.

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● ● ● | **Caucus** 

- > Caucus is a strategic technique in which the mediator meets with each party individually during the mediation process.
- > A mediator would use caucus when she feels that the benefits gained by speaking to each party individually outweigh the limitations that result when direct communication between parties is restricted.
- > A mediator may use caucus for the parties' or the mediator's benefit.

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## Why Caucus?



- > To uncover and allow discussion of an issue that a party may be reluctant or afraid to discuss in front of the other party
- > To manage and reduce tension or strong emotions that may be impeding the mediation process; or to allow party time and space to regain control
- > To allow discussion of issues that might be detrimental to the party's negotiating status if discussed in the other party's presence
- > To allow a party to retreat from an untenable position without losing face
- > To allow party to meet/confer with support person/attorney
- > To address issue of domestic abuse
- > To conduct reality testing of parties' proposals
- > To discuss with a difficult party the impact of his or her behavior on that party's ability to get what she or he wants from mediation
- > To allow the mediator to build better rapport with one or both parties
- > To allow the mediator (or co-mediators) the opportunity to break and plan strategy

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## Caucus Protocol



- > Educate parties about the technique (usually done in the introduction).
- > Make the transition to caucus:
  - Give approximate time periods for each caucus
  - Review confidentiality of caucus
  - Decide which party will go first
- > Always caucus with each party/side (Co-mediators should stay together)
- > Use parallel questioning and investigation of issues
- > Ask party what issue/topic/proposal should be dealt with when parties reconvene; determine who (party or mediator) should raise issue/topic/proposal
- > Always ask at end of each caucus session what can be shared (or, more specifically, what cannot be shared) with other party when parties reconvene.
- > Reconvene mediation session
  - Re-establish ground rules
  - Recap where we are in the process
  - Remind parties of where we're headed

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## Caucus Hazards



- > Separating parties impedes communication and understanding between the parties.
- > Separating parties give the mediator a much greater level of influence over the parties, creating the opportunity for the mediator to manipulate the parties or the outcome, or creating the perception of manipulation in one or both parties.
- > Mediators may be faced with an in an ethical dilemma if parties reveal information in a confidential caucus session that the mediator feels needs to be brought out in joint session.

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## Cost/Benefit Analysis



- ▶ Help parties evaluate pros and cons of proposals
- ▶ Talk about BATNA; what's the alternative and what will that cost?
- ▶ Prioritize interests and needs: which are most important?
- ▶ Can all needs and interests be met by mediation? Is it necessary for all to be met?

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## Flip Charts & Graphics



- ▶ Keeps track of identified issues/concerns/needs
- ▶ Listing is a way of validation
- ▶ More transparent than mediator notes
- ▶ Visual reminder of commonalities
- ▶ Graphics can be used as powerful reframes or metaphors

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## A Moment of Silence



- ▶ To allow parties chance to regain composure
- ▶ When mediator needs to collect thoughts
- ▶ Mediator can simply be silent and let silence happen
- ▶ Let parties know what you are doing for a more direct intervention

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● ● ● **Referrals to Other Agencies** 

- › Requires knowledge of local resources
- › Investigate parties' own resources
- › Relate the referral to the solution of an identified issue or need
- › Provide information about the agency or service
- › Suggest, don't push it

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● ● ● **Scheduling Another Session** 

- › When resolution depends on information not available
- › When parties too emotionally charged or exhausted
- › To include another person in next session
- › To get buy-in from "shadow negotiators"
- › To allow for a test period to see if agreements are workable

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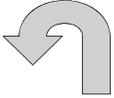
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● ● ● **Starting Over** 

- › Refresh purpose of mediation
- › Redefine or clarify interests/needs
- › Redefine or clarify proposals

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## Use of Experts



- ▶ When parties reach stalemate about an issue
- ▶ When parties need more information in order to make decision, often a legal or technical issue
- ▶ Parties may each seek own expert or may agree to use same expert

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## SPECIAL MEDIATION SITUATIONS

- Parties Inappropriate for Mediation
- Highly Emotional Parties
- Uncooperative Parties
- Aggressive Behavior/Threats
- Accusations of Abuse
- Parties under Influence of Drugs/Alcohol
- Impasse
- Nonparty Participants
- Interpreters

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## Parties Inappropriate for Mediation

Mediators, though not therapists, may need to assess:

- does the party understand process?
- is party grounded in reality?
- can party participate competently?
- can party maintain an agreement

Separate the parties to:

- talk with the other about his concerns about proceeding
- talk with "impaired" party about how he is feeling, is situation is stressful, does he wish referral for assistance
- determine whether or not to continue mediation

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## Aggressive Behavior/Threats

- Use preventive measures by attending to parties' emotions and body language
- Separate the parties
- Proceed only if both feel safe; continue with caucus instead of joint session
- Remind parties that certain threats cannot be kept confidential
- Have parties leave separately
- Do not intervene in a physical altercation—get help!

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**[ Highly Emotional Parties ]**

- Mediation will not be productive when a party is experiencing strong emotion
- One cannot be logical, i.e. negotiate, when one is emotional
- Mediator must validate/acknowledge emotions—remember Core Concerns
- Caucus often helpful; sometimes consider scheduling another session

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**[ Uncooperative Parties ]**

- Highlight any conciliatory behavior
- Find out what's going on:
  - emotions unaddressed?
  - process not meeting needs?
  - self-disclosure issues?
- Use Moment of Silence, Caucus
- Revisit parties' original commitment to mediate

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**[ Accusations of Abuse ]**

- Take seriously and approach with great care; safety is paramount
- Use caucus
- Retain impartiality
- Refer for services
- Get special training (Supreme Court's DAI training)

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**[ Parties under Influence of Drugs/Alcohol ]**

- Use your discretion to decide whether mediation should proceed; if no, reschedule
- Reset for a time that will increase likelihood of sobriety

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**[ Impasse ]**

- Ways to Avoid Impasse:**
- Actively listen and respond
  - Clearly define issues and interests
  - Defuse parties' need to rectify stories
  - Focus on the future
  - Point out areas of agreement
  - Work on simpler issues first
- Ways to Break Impasse:**
- Start over, redefine issues
  - Caucus
  - Use Outside Experts
  - Defer, go to another issue
  - Suggest ending mediation
  - Remind parties that settlement does not equate to admitting culpability

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**[ Nonparty Participants ]**

- UMA allows party to have NP
- During Intro (Stage 1), explain role of NP in mediation, i.e., NP is there to support party, not to make decisions
- If possible, point out to party the pros/cons of including NP prior to mediation
- Use court-appointed interpreters for language translation
- Let party decide when/how NP will participate
- Caucus to address obstructive NP
- Be mindful of "shadow negotiators"

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## Guidelines for Interpreters in Mediation

- A mediator should give the interpreter the opportunity to introduce himself or herself to the party before the start of mediation. This allows both the interpreter and party to make sure that they understand each other's spoken language.
- In the introduction stage of mediation, the mediator should introduce the interpreter to all persons in the mediation. The mediator should explain that the role of the interpreter is to give a neutral translation of what is being said; the interpreter does not participate in any other way in the mediation session. The mediator should explain that the interpreter is also bound by confidentiality and ask the interpreter to confirm that what he or she hears and sees will remain confidential.
- During the mediation session, the mediator should address comments and questions to the party, not the interpreter, even though this may at first seem awkward. One language interpreter has suggested that the mediator think of the interpreter as "a machine" whose job it is to interpret language.
- The mediator should make sure that only one person speaks at a time and ask each person who speaks to allow the interpreter time to interpret after each statement. This includes dialogue between the mediator and an English-speaking person.
- If a mediator uses caucus, the interpreter will likely not stay in the room with the person for whom he/she is interpreting unless the mediator is also in the room. Interpreters avoid being alone with any party to prevent any concerns about improper communication.
- An interpreter needs to take notes. Depending on the note-taking style, the notes may or may not contain information particular to the mediation. The mediator should explain to the parties that the notes, in most cases, cannot be used as evidence against them. The interpreter's notes are generally protected from legal procedures, as they are part of the interpretation.
- An interpreter must take breaks; this is to minimize fatigue and maintain accuracy. After approximately 30-45 minutes of consecutive interpretation, the mediator should allow the interpreter to take a break. If there is a team of interpreters, they can switch places every 30-45 minutes, giving one interpreter a break with no disruption in the interpreting.

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## Mediation Role Play: "Amy and Jeremy" *General Background Information for Mediator*

This dispute involves Jeremy Franklin (a 24-year-old lab technician) and Amy Dalton (a 22-year-old stay-at-home mother); Jeremy and Amy are parents of two children: Caitlin, age 5 and Kyle, age 1 ½.

Jeremy filed a petition for visitation in Utopia County Juvenile Court because Amy has denied him visitation. At this point, paternity has been established for both children, but there are no other orders in court concerning the children.

Utopia County Juvenile Court offers most parents filing for visitation the opportunity to mediate and provides a mediator for the parties. Jeremy and Amy have agreed to mediation; their first court hearing will be in four weeks. At that court hearing, Jeremy and Amy can submit any visitation plan agreed to in mediation to the Court for consideration and approval. If there is no agreement reached in mediation, the court will proceed with a hearing to decide the matter of visitation.

Amy has brought her mother with her to mediation; Jeremy has brought his fiancée, Daphne.

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• • • | **Power Dynamics  
in Mediation**

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• • • | **Power**

**The means of changing  
people's behavior  
regardless of their will**

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• • • | **Influence**

**The ability to change  
attitudes and behaviors  
through persuasion**

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••• | **Power Sources**

**POSITION POWER**

- This power is inherent in the authority of your position.
- You have position power when you have the ability to manage people or command resources by virtue of your position.
- Example: judge, CEO

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••• | **Power Sources**

**TASK POWER**

- This power derives from a task or a particular job that you do
- You have position power when you have the ability to block/delay others from doing a task
- Example: clerk who takes court filings

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••• | **Power Sources**

**PERSONAL POWER**

- This power comes from your personal character attributes such as passion, inspiration strength of character, personal vision of the future
- Personal power is further enhanced by interpersonal skills such as ability to communicate well and be persuasive.
- Example: Mother Theresa, Nelson Mandela

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••• | **Power Sources**

**KNOWLEDGE POWER**

- This power is derived from expertise, education or intellect
- You have knowledge power when you have specialized training or if you know a special skill or group of skills
- Example: expert witness

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••• | **Power Sources**

**RELATIONSHIP POWER**

- This power is derived from association with others through family relationship, friendship, personal understanding, or reciprocity (someone you owe or who owes you a favor)
- Example: Radar O'Reilly

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••• | **Sources of Mediator's Power**

Position Power: Formal Authority

- Law, regulation of common practice
- Institutional mandate

Task Power: Manager of the Process

- Mediator is in charge of the mediation process
- Sets ground rules, calls for caucus, carries proposals, sets boundaries for issues
- Mediator moves parties from positions to interests
- Mediator can terminate mediation

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● ● ● Sources of Mediator's Power

Knowledge Power: Expertise/Information

- Mediator's *process* expertise
- Mediator's *substance* expertise
- Mediator's ability to offer suggestions

Personal Power: Communication Skills

- Mediator has ability to communicate clearly and help others to communicate
- Mediator reframes issues

Relationship Power: Impartiality

- Ironically, the lack of a relationship is what brings power to the mediator

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● ● ● Mediator's Exercise of Power:  
Strengthen the Process

● Advocate procedures which lead to sound decisions, i.e., access to information for all parties

● Provide for procedural equity, i.e., all parties get heard, no party agrees to something not in his/her interest

● Reinforce: sharing of information/data, exploration of BATNA's, conciliatory moves

● Interfere with threats, coercion or intimidation

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## **Resources/Handouts**

- Vocabulary of Feeling Words
- Agreement to Mediate Sample Forms
- Elements of a Mediation Introduction
- Sample Mediation Introduction
- Guidelines for Interpreters in Mediation
- Website References
- Unauthorized Practice of Law

**III.**

Resources/  
Handouts



VOCABULARY OF FEELING WORDS

LEVELS OF INTENSITY	HAPPY	CARING	DEPRESSED	INADEQUATE	FEARFUL
<b>STRONG</b>	thrilled ecstatic overjoyed elated exhilarated fantastic terrific euphoric delighted marvelous	tenderness toward affection for captivated by attached to devoted to adoration loving infatuated by enamored cherish	desolate dejected hopeless alienated depressed gloomy dismal bleak in despair grim	worthless good for nothing powerless helpless inferior useless finished like a failure	terrified frightened horrified desperate panicky terror-stricken dread vulnerable paralyzed
<b>MODERATE</b>	cheerful light-hearted happy serene wonderful up aglow jovial	caring fond of regard respectful admiration concern for hold dear prized close	distressed upset downcast sorrowful demoralized discouraged miserable pessimistic awful melancholy	whipped defeated incompetent inept overwhelmed ineffective lacking deficient unable small insignificant incomplete	afraid scared fearful apprehensive jumpy shaky threatened distrustful risks alarmed awkward defensive
<b>MILD</b>	glad good contented satisfied gratified pleasant pleased fine	warm toward friendly like positive toward	unhappy down low bad blah disappointed sad glum	lacking in confidence unsure of self uncertain weak inefficient	nervous anxious unsure hesitant timid shy worried uneasy bashful embarrassed ill at ease doubtful jittery uncomfortable

VOCABULARY OF FEELING WORDS

LEVEL OF INTENSITY	CONFUSED	ANGRY	LONELY	HURT
<b>STRONG</b>	bewildered puzzled baffled perplexed trapped confounded in a dilemma befuddled full of questions	furious enraged seething outraged infuriated burned up indignant galled	isolated abandoned all alone cut off forsaken	crushed destroyed ruined degraded pained wounded devastated tortured disgraced disrespected anguished cast off
<b>MODERATE</b>	mixed-up disorganized foggy troubled adrift lost at loose ends disconcerted frustrated flustered in a bind ambivalent disturbed helpless embroiled	resentful irritated hostile annoyed upset with agitated mad aggravated offended antagonistic exasperated belligerent mean vexed spiteful vindictive	lonely alienated estranged remote alone apart from others insulated from others	belittled abused deprived criticized disparaged maligned mistreated ridiculed devalued scorned used exploited debased slammed impugned cheaped
<b>MILD</b>	uncertain unsure uncomfortable undecided	uptight disgusted miffed irked perturbed chagrined	left out excluded lonesome distant aloof	putdown neglected overlooked minimized unappreciated taken for granted

## *Agreement to Mediate Sample Forms*

**Civil (Resolution Systems Institute):**

<http://courtadr.org/files/CivAgrmtMed.pdf>

**Family/divorce (Jim Melamed):**

<http://www.mediate.com/divorce/pg1017.cfm>

**Juvenile (Mahoning County Juvenile Court):**

<http://www.supremecourt.ohio.gov/JCS/disputeResolution/resources/mediateAgreement.doc>

**Employment (Federal Executive Board):**

<http://www.dfwfeb.us/documents/AgreementToMediate.pdf>



# PRIVATE COMPLAINT MEDIATION SERVICE

## ELEMENTS OF A MEDIATION INTRODUCTION

1. Introduce yourself and determine how participants are to be addressed.
2. Explain or review purpose of mediation and what happens if settlement is/isn't reached.
3. Describe the mediation process (reference "Mediation Process Outline" below) and party's role in mediation.
4. If present, explain roles of attorneys/nonparty participants/support persons.
5. Explain impartial role of mediator, make inquiry about impartiality.
6. Explain privilege provided by UMA (ORC 2710.01-1710.10) and confidentiality, if appropriate.
7. Explain caucus.
8. Establish any ground rules for the mediation session.
9. Explain and have all sign "Agreement to Mediate", if used. Begin the mediation hearing.

## MEDIATION PROCESS OUTLINE

- I. Mediator makes introductions and gives an explanation of the process. (If "Agreement to Mediate" is used, explain and have all sign.)
- II. Mediator gives each party several opportunities to speak and explain his or her side of the dispute. Mediator asks questions to clarify what parties are relating and to identify each party's concerns and issues. Mediator summarizes identified issues.
- III. Mediator asks each party to offer suggestions for resolution of the identified issues.
- IV. Mediator asks parties to evaluate suggestions. Mediator asks questions to establish the workability and specificity of suggested solutions.
- V. Mediator summarizes mutually agreed-upon solutions and gets each party's commitment to follow the agreement. Mediator explains what can happen if the agreement is broken.
- VI. If agreement reached, mediator asks both parties to sign necessary documents (e.g., the agreement, the entry requesting dismissal). If no agreement reached, mediator explains that matter will be returned to court.



**PRIVATE COMPLAINT MEDIATION SERVICE**  
**Sample Mediation Introduction for Small Claims Day of Trial Mediation**

1. Good morning, my name is \_\_\_\_\_ and I will be your mediator today. (This is \_\_\_\_\_ who will be co-mediating with/observing me.) How may I address you during the mediation session? -or- Would you prefer that I call you by your first or last name during the mediation session?
2. Before we begin, let me explain/review the purpose of mediation. Mediation gives you an opportunity to negotiate a mutually agreeable settlement of your dispute with the other party, instead of proceeding with a trial before the magistrate. If you reach a settlement, then I will be asking you to sign a document that summarizes your agreement and a form that requests the court to dismiss the case, based on the settlement. If, however, you are unable to reach a mutually agreeable settlement, then this matter will go forward with the court process.
3. The mediation process works like this: I will ask each of you to tell me about the dispute from your perspective. I may ask you questions to make sure that I understand what you are telling me. After I have a good understanding about the issues involved for each side, I'll ask each of you to suggest ways to resolve this matter. Using your suggestions, I will assist you in negotiating a mutually agreeable settlement. Your role as a party in the mediation is to listen to what the other side has to say, discuss and consider possible settlement options, and then decide whether or not to reach a settlement that is agreeable to both sides.
4. *If there are attorneys/nonparty participants/support persons accompanying a party, the mediator should ascertain who is present and whether or not that person will be in mediation before beginning the session. When such persons are present in mediation, explain:* Today we have in mediation (state who is present, whom he/she is with, and the relationship, e.g., John Doe, who is plaintiff's attorney or Mary Smith, who is plaintiff's wife). The role of an attorney/support person is to support or assist the party as he/she goes through the mediation process; the attorney/support person is not a decision maker. Each party is the ultimate decision maker in mediation and may take into consideration any information or advice provided by his/her attorney or support person.
5. I am an impartial mediator, not a decision maker. This means that I will not determine who is right or who is wrong, who is lying or telling the truth. I will not evaluate evidence, nor will I make decisions about how the dispute is resolved--any agreement reached is up to the parties. At this point, let me say that I have no knowledge of either of you that would affect my ability to be impartial. Do either of you have any knowledge of me or of facts that would affect my ability to be impartial?
6. There is a mediation law, called the Uniform Mediation Act, which allows each of us in mediation today to assert a privilege in court not to disclose their own mediation communications and, if you are a party, you may prevent disclosure in court of any mediation communication. There are certain exceptions to the privilege; some examples are: a written agreement signed by parties, situations involving serious crime or child/elder abuse. Please know that I will keep this mediation confidential, which means that I will not share anything about this mediation unless required or allowed by law.
7. During the mediation process, we will be working together in this room; however, there may be times when I meet with each side individually. If I meet with one side individually, I will do the same with the other. Unless I have your permission, I will not share what you say to me in an individual session with the other side. If you wish to speak individually with me (or meet privately with your attorney/support person), just let me know.
8. In order to make the mediation hearing run smoothly, I ask that you both agree to ground rules: (state any ground rules you wish to establish; typical ground rules include: 1) Direct your comments to me, not to each other and, 2) Do not interrupt when someone is speaking). Plaintiff's Name and Defendant's Name, do you understand and agree to these ground rules?
9. Any questions about the mediation process? If there are no questions, Plaintiff's Name or Defendant's Name, would you like to begin? -or- Who would like to begin?







## Private Complaint Mediation Service

# Guidelines for Interpreters in Mediation

- A mediator should give the interpreter the opportunity to introduce himself or herself to the party before the start of mediation. This allows both the interpreter and party to make sure that they understand each other's spoken language.
- In the introduction stage of mediation, the mediator should introduce the interpreter to all persons in the mediation. The mediator should explain that the role of the interpreter is to give a neutral translation of what is being said; the interpreter does not participate in any other way in the mediation session. The mediator should explain that the interpreter is also bound by confidentiality and ask the interpreter to confirm that what he or she hears and sees will remain confidential.
- During the mediation session, the mediator should address comments and questions to the party, not the interpreter, even though this may at first seem awkward. One language interpreter has suggested that the mediator think of the interpreter as "a machine" whose job it is to interpret language.
- The mediator should make sure that only one person speaks at a time and ask each person who speaks to allow the interpreter time to interpret after each statement. This includes dialogue between the mediator and an English-speaking person.
- If a mediator uses caucus, the interpreter will likely not stay in the room with the person for whom he/she is interpreting unless the mediator is also in the room. Interpreters avoid being alone with any party to prevent any concerns about improper communication.
- An interpreter needs to take notes. Depending on the note-taking style, the notes may or may not contain information particular to the mediation. The mediator should explain to the parties that the notes, in most cases, cannot be used as evidence against them. The interpreter's notes are generally protected from legal procedures, as they are part of the interpretation.
- An interpreter must take breaks; this is to minimize fatigue and maintain accuracy. After approximately 30-45 minutes of consecutive interpretation, the mediator should allow the interpreter to take a break. If there is a team of interpreters, they can switch places every 30-45 minutes, giving one interpreter a break with no disruption in the interpreting.



## ***Website References***

### **Model Standards of Conduct for Mediators:**

[http://www.americanbar.org/groups/dispute\\_resolution/policy\\_standards.html](http://www.americanbar.org/groups/dispute_resolution/policy_standards.html)

### **Ohio Revised Code §2710.01 – 2710.10 (Uniform Mediation Act)**

<http://codes.ohio.gov/orc/2710>

### **Association for Conflict Resolution**

<http://www.acrnet.org/>

### **American Bar Association Section on Dispute Resolution**

<http://www.abanet.org/dispute/home.html>

### **Ohio Mediation Association**

<http://www.mediateohio.org/>

### **Supreme Court of Ohio Dispute Resolution Section**

[http://www.supremecourt.ohio.gov/dispute\\_resolution/default.asp](http://www.supremecourt.ohio.gov/dispute_resolution/default.asp)





# Financial Issues in Domestic Relations Mediation

## Dispute Resolution Section

November 9, 2010



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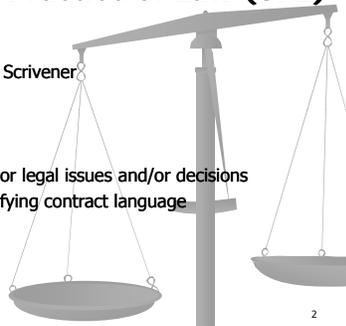
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### Special Issues

#### Unauthorized Practice of Law (UPL)

What about?

- Functioning as a Scrivener
- Filling in forms
- Education
- Giving advice
- Interpreting law or legal issues and/or decisions
- Creating or modifying contract language



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### Special Issues

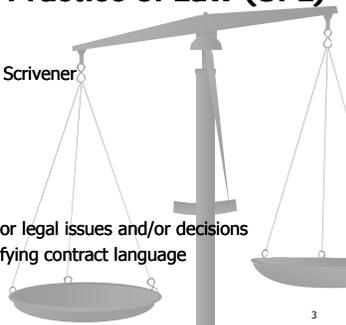
#### Unauthorized Practice of Law (UPL)

OK

- Functioning as a Scrivener
- Filling in forms
- Education

NOT OK

- Giving advice
- Interpreting law or legal issues and/or decisions
- Creating or modifying contract language



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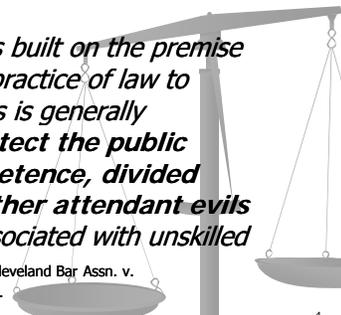
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## Gov.Bar R. VII (Rules for the Government of the Bar)

*"Gov.Bar R. VII is built on the premise that limiting the practice of law to licensed attorneys is generally necessary to protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation."*

Cleveland Bar Assn. v. CompManagement, Inc. (2004).



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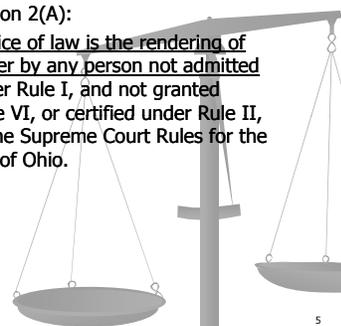
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## Unauthorized Practice of Law

- Gov. Bar Rule VII, Section 2(A):
- The unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I, and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio.



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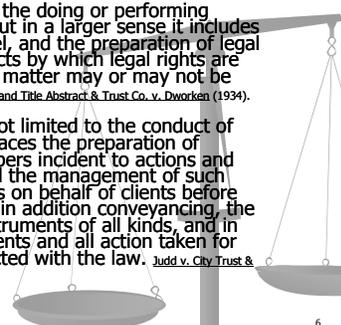
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## UPL cont.

- The practice of law is... the doing or performing services in a court ... But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court. Land Title Abstract & Trust Co. v. Dworken (1934).
- The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law. Judd v. City Trust & Sav. Bank (1937).



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**UPL cont.**

- Legal Advice and Counsel
- Preparation of Legal Instruments/Contracts
- Management of Legal Action
- All Advice and Action Taken for Clients in Matters Connected to the Law



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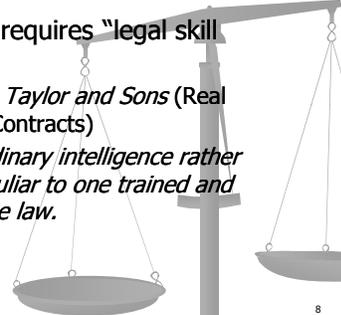
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**UPL cont.**

- Whether conduct requires “legal skill and training”
  - *Gustafson v. V.C. Taylor and Sons* (Real Estate Purchase Contracts)
  - *[Act] requires ordinary intelligence rather than the skill peculiar to one trained and experienced in the law.*



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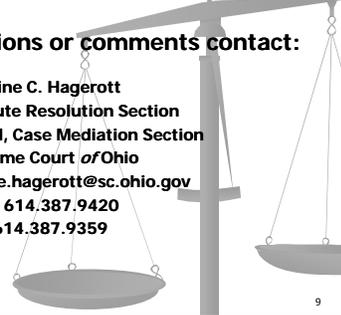
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 THE SUPREME COURT of OHIO

**If you have questions or comments contact:**

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 Phone: 614.387.9420  
 Fax: 614.387.9359



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## Dispute Resolution Section

The Dispute Resolution Section assists courts in developing and sustaining high-quality, dispute resolution programs that are accessible to all citizens; provides high-quality technical assistance and training to court mediation program staff, judges, court personnel and attorneys; and supports high-quality, appropriate research about court-connected mediation programs.

[www.supremecourtofohio.gov/dispute\\_resolution](http://www.supremecourtofohio.gov/dispute_resolution)

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## Exercises

- Find Someone Who
- Understanding Conflict
- Spaghetti's
- Interests
- Active Listening
- Reframing
- The Story



# Find Someone Who:

Ask someone in the room if he or she meets the criteria listed in any of the blocks below and, if so, have the person sign that block. Just one block per person, please!

Has attended the Olympic Games	Just returned from vacation	Drives a vehicle more than ten years old	Has more than three pets
Owens fewer than 3 TV's	Has visited the White House	Has gotten a celebrity's autograph	Can speak a language other than English
Has lived outside of the United States	Has physically intervened in a conflict	Was not born in Ohio	Enjoys playing a musical instrument
Has more than four siblings	Does not have a cell phone	Has run for an elected office	Has a Facebook page
Likes to watch "Survivor"	Has never had a speeding ticket	Has eight or more children or grandchildren (combined)	Saw the movie "Woodstock" when it first came out



# UNDERSTANDING CONFLICT:

## Personal Response to Conflict

There are several different responses to conflict, just as there are numerous levels of conflict. The purpose of this exercise is to help you determine how you typically respond to conflict.

**Instructions:** Read the description of each situation and the five possible responses after each. Circle the letter of the two responses you would most likely use in this situation.

1.) ***You and your co-worker, John, are co-leaders of a group. Together, you are supposed to share the responsibilities of planning, organizing and leading the group's activities and meetings. John has been getting very involved in other work activities and has not been fulfilling his share of the duties, leaving you with much more than your share of the duties. As a result, you haven't had time to keep up with your own work activities. Your boss notices this and talks to you about the situation. In this situation, you would: (circle two responses)***

- a. Decide to talk to John, making it clear that you are unhappy with the situation, and that he must either begin doing his job or find a replacement.
- b. Decide to talk to John, realizing that you have differing views on the situation. You suggest a compromise by which you give in some and expect him to, also.
- c. You tell your boss that you feel that John is doing a good enough job and that it's no big deal.
- d. Decide to talk to John and find out why he is not fulfilling his duties, while making it clear that it bothers you. You tell him how you feel and listen to his reasons. Together, you try to solve the problem.
- e. You approach John with your concerns and he tells you that he is really busy with other obligations. Even though you are also quite busy, you decide not to push the point so that you don't antagonize John. You adjust your schedule and continue to do most of the planning.

2.) ***You and a friend, Ricardo, go to a lecture which has very definite political overtones. Afterwards, Ricardo asks you your opinion***

***about the lecture. You tell him, and you discover that you agree on some issues, but***

***disagree quite a bit on other issues. In this situation, you would: (circle two responses)***

- f. Discuss the issues you disagree about, telling him how you feel, but listening carefully to what he says, too. You attempt to carefully work through your differences.
  - g. Discuss the issues you disagree about fairly quickly, concluding that you both have some good points and that an intermediate view is probably more accurate than either of yours is individually.
  - h. Tell him that you'd rather talk about it some other time and ask him if he'd like to go bowling.
  - i. Argue with him on the issue you disagree about to convince him of the merits of your position.
  - j. Briefly discuss the issues. As soon as you see that Ricardo is strongly committed to his views, you admit that he's probably right — that you haven't given that much thought to those issues.
- 3.) ***In the hall before a meeting, you and another person, Stacy, have a short, yet somewhat heated disagreement. It's time for the meeting to start and you both go to the meeting, each still thinking that he/she was right. After the meeting, you see Stacy coming toward you, apparently wishing to discuss the disagreement with you. As Stacy approaches, you think to yourself: (circle two responses)***
- k. "It's not nice for me to disagree with Stacy. I think I'll tell her she's probably right after all."
  - l. "Maybe if we each back down a little, we can work out a compromise, even if we still don't totally agree."
  - m. "This will be a good chance to hear what she was saying and to state my views a little more clearly. We can work this out."
  - n. "Oh, here comes Stacy. I wish we could forget about this whole thing. I'll try to look like I'm in a hurry and maybe she'll leave me alone."
  - o. "Good, here comes Stacy. Now I'll be able to show her that she was mistaken."

4.) **(Same scenario as #3) When Stacy reaches you, you would: (circle two responses)**

- p. Tell her that you have to hurry to get somewhere or to talk to someone.
- q. Try to show her that what you were saying really did make sense.
- r. Suggest a middle position in the disagreement which makes both of you give in a little bit.
- s. Admit that you were probably wrong even though you may not have been, and apologize for upsetting her.
- t. Sit down with her to discuss the disagreement and try to solve the problem.

5.) **You are taking a biology class and have weekly lab sessions. Your lab partner, Janet, and you share lab equipment, but must do separate work. Janet is clearly not being fair to you in her use of the equipment. She almost acts as if she is the only one using the equipment. In this situation, you would: (circle two responses)**

- u. Request to talk to her about the use of the lab equipment. You listen to her reasons for using it as she does, and try to work with her in solving the problem.
- v. Tell her bluntly that she is being unfair to you. You quickly conclude that her excuses aren't adequate and you insist that she take more care in allowing you fair use of the equipment.
- w. Talk to her about the situation. When she explains her position, you suggest a solution that is better than what has been going on, but still doesn't seem totally fair to you.
- x. Mention the situation to her. When she explains that she doesn't think she is being unfair, you leave it at that.

- y. Rather than risk a hassle, you try your best to work under the circumstances by planning your labs around hers, which makes a little more work for you than was intended by the instructor.

6.) **You work as a checker at a local grocery store. You alternate working Saturdays with Kim, so that you work the first and third Saturday each month and Kim works the second and fourth Saturdays. The normal procedure for determining which of you works when there is a fifth Saturday is purely random; the boss flips a coin. Today is the**

**fourth Saturday and it's time to decide who will work the fifth Saturday. Both you and Kim have something else planned for that Saturday; you are entered in a tennis tournament and Kim is planning to go to town with his girlfriend. But someone needs to work. In this situation, you would: (circle two responses)**

- A. Talk to Kim and tell him how important this tennis tournament is to you. You listen to his reasons for wanting to go to town. Together you try to work something out with the boss so neither of you has to work, though the boss may not allow that and may simply flip the coin.
- B. Avoid all this trouble and just accept the consequences of the coin flip.
- C. Try to convince Kim that he and his girlfriend can go to town anytime, but that your tennis tournament can only be played that Saturday.
- D. Ask Kim about his plans for Saturday and when he explains that he and his girlfriend have the whole day planned, you agree that they can go ahead and go to town and that you'll just wait for the next tournament.
- E. Tell Kim how important this tournament is to you, and suggest that you could work between your 7:00 a.m. match and your 2:00 p.m. match if Kim could go to town then and work the rest of the afternoon.

7.) **You are chairperson of a committee in a church group which is supposed to purchase five gallons of paint for a project your group is planning. You go to a paint store and correctly explain what colors you want. The store clerk mixes it for you and you buy the paint. The store has a no refund/no exchange policy. The day before the project begins, you decide to stir up the paint so it'll be ready; that is when you discover that the store mixed the wrong colors for you. In this situation you would: (circle two responses)**

- F. Go back to the store and explain the problem. You listen to the store's explanation of the exchange policy and explain your position to try to resolve the problem.
- G. Go back to the store and explain the situation. You acknowledge their no exchange policy and suggest that you can try to use three of the gallons, but that two of the colors simply won't work. You suggest that the store exchanges two gallons for the correct colors.

- H. Call your husband/wife, explain the situation, and ask whether he/she could take the paint back and try to get it exchanged.
  - I. Take the paint back and explain the situation. When the store clerk explains that he followed your instructions exactly, you accept the blame and reorganize your project to use the paint you bought from the store.
  - J. Take the paint back to the store and, despite their no exchange policy, explain the situation and demand that the store exchanges the paint for five gallons of the correct colors.
- 8.) Tasha is bothered by something you have done and asks to talk to you about it. How would you react to this situation? (circle two responses)**
- K. You feel like Tasha is causing unnecessary tension and hope she doesn't pursue this issue very far.
  - L. You apologize for the fact that it's bothering her and tell her you'll try to work on it so that it won't bother her anymore.
  - M. You're sorry that this bothers her, but since it does, you're glad she brought it up. You listen carefully to her and deal with her criticism.
  - N. You defend your actions and explain to Tasha that her complaints aren't warranted.
  - O. You don't really agree that Tasha has a legitimate complaint, but since it bothers her, you try to compromise so that you are both satisfied with the result.

- 9.) Think of a conflict in the last few weeks in which you were one of the conflicting parties. How did you deal with that conflict? (circle two responses)**
- P. Agreed to give in on some points if the other person gave in on some points in order to find a compromise.
  - Q. Postponed the discussion, or tried to get away from it with as little tension as possible.
  - R. Argued with the other person (or persons) to demonstrate how your position was correct.
  - S. Tried to get all the issues out and work through differences.

- T. Tried not to hurt the other person's feelings, even to the point of agreeing to do something you would really rather not do.

**10.) In general, how do you deal with conflict? (circle two responses)**

- U. Approach a conflict with the feeling that you have the right to voice your position and to hear the other person's position; you believe that somehow you'll be able to find a solution which satisfies both of you.
- V. Try to convince the other person of the merits of your position; you pursue your goals as long as you think you are right.
- W. Try to avoid unpleasantness and useless tension; try to stay away from conflict and the difficulties it often creates.
- X. Try to find a fair compromise with the other person which consists of gains and losses for both of you.
- Y. Sacrifice your own wishes to soothe other people's feelings; be considerate of others and try to make them happy.

**Instructions:** After you have circled two responses for each of these situations, turn to the chart on the next page entitled "Five Possible Responses to Conflict". At the top there is a row entitled, "Your Responses."

Now go back through your responses, circling the letters on the chart that you circled as responses. If one column has a much larger number of responses circled in it than the others, then that is likely the predominant way you deal with conflict.



## FIVE POSSIBLE RESPONSES TO CONFLICT

Your Responses	a i o q v C J N R V	d f m t u A F M S U	b g l r w E G O P X	c h n p y B H K Q W	e j k s x D I L T Y
	Competitive "The Shark"	Collaborative "The Owl"	Sharing "The Fox"	Avoiding "The Turtle"	Accommodating "The Teddy Bear"
Commitment to Personal Goals	High	High	Medium	Low	Low
Commitment to Relationships	Low	High	Medium	Low	High
Additional Comments	<p>"The Shark" forces others to accept his way. Oblivious to needs or feelings of others. Believes conflicts are settled by one person losing. The Shark wants to win and he'll fight at any cost to do so.</p> <p>While you're talking, he's thinking of his next argument to defeat you.</p>	<p>"The Owl" confronts openly and fairly. Optimistic about conflict. Committed to personal goals and to the other's goals. Begins discussions by identifying openly the wishes of both. "If we just keep working at this, we'll find a way for both of us."</p> <p>When he talks, he may come on strong, but when you talk, he's listening carefully and sympathetically.</p>	<p>"The Fox" compromises. He'll give up some goals if you give up some of yours. Similar to the Owl, but less optimistic about conflict bringing an improved relationship.</p> <p>When he's talking, he's diplomatic but persuasive. When you talk, he's trying hard to figure out some compromise.</p>	<p>"The Turtle" withdraws. Believes it is hopeless to try to resolve conflict. Avoids people and issues that may cause conflict. Feels helpless to gain his goals and refuses to cooperate with others in gaining theirs.</p> <p>He neither talks nor listens. You won't even get a chance to discuss things with him.</p>	<p>The "Teddy Bear" soothes. More than anything else, Teddy Bear wants others to accept him. Quick to accommodate others and ignore his needs because he believes asking others to meet his needs will harm the relationship.</p> <p>When he talks, everything sounds just fine. When you talk, he's listening and agreeing with everything you say.</p>



## PCMS Mediation Training

### SPAGHETTI O'S

#### Buyer

You and your spouse are traveling through Greece with your three children (ages 5, 6, & 9). You had planned this trip as a dream vacation for you and your family, but it has been a nightmare.

Because you wanted to get a true feeling for the country, you decided to travel by car. When you arrived to pick up the car, you found that the rental company had pulled a switch. Instead of the spacious American automobile that your travel agent had promised, you were presented with a small foreign car with no air conditioning and a standard gearshift. Since it was the only car available, you accepted it, figuring you could switch it later on. You have yet to find a village that has a car rental place with a bigger car for rent.

You have just finished a grueling five-hour drive through winding mountain roads. Before you started on this leg of your journey, you had stopped to get something to eat, but your children refused to eat any of the local fare, so you drove on. You figured that there would be another town soon. According to the map, the next village was forty miles away and you planned to feed your children then. The map was wrong and your kids, who have been crammed in the back seat of the car for 5 hours, are hungry, hot and tired. It is 7:20 p.m. and you have arrived in a small village grocery store.

Before you enter the store, you and your spouse discuss your previous experience with Greek vendors. So far, all the merchants have wanted to bargain with you about the price of goods and you feel you've been less than successful in your bargaining. Your spouse cautions you not to get "ripped off" this time, and to purchase enough "normal American food" for everyone.

When you enter the grocery, you scan the items and are delighted to spot several dusty cans of Spaghetti O's. You notice a stove and intend to see if you can get the proprietor to heat up five servings of Spaghetti O's for you and your family without having to pay a lot of money. Negotiate for the best possible solution and keep in mind the following:

1. You know that back home you can buy a can of Spaghetti O's for \$.50 per can--sometimes it's on special for 5/\$2.00.
2. You are down to \$5.00 cash until you can get to a bank in the next town.
3. You really want to get this food for your family.
4. Your maximum level of satisfaction would be to pay \$.65/can and would include heating the spaghetti.
5. You would hate to pay more than \$.75/can.
6. Judging by the dust on the cans, you doubt that Spaghetti O's are in great demand in this part of the world.
7. The next town is thirty miles away.

## PCMS Mediation Training

### SPAGHETTI O'S

#### Seller

You are a merchant in a very small Grecian village. You own a "mom-n-pop"-type grocery store on the outskirts of town that caters to the local population and the occasional tourist that passes through the town. You sell groceries and prepare simple meals.

Two years ago, you purchased a case of FrancoAmerican Spaghetti O's from a distributor who promised that the American tourists that stopped by your store would love them. They didn't. It has taken you the past two years to sell all but five cans of the spaghetti. You want to sell the Spaghetti O's.

It is 7:20 p.m. (you close at 7:30 p.m.) and you are busy working on your bookkeeping accounts. According to your figures, you have experienced a 60% drop in profits in the last six months.

You look up as an American tourist enters the store. S/he is interested in buying the spaghetti and asks you what your price is. You would like to get this transaction over with as soon as possible so you can go home to your family, but your experience with Americans is that they think they can bargain over any purchase. You resolve to be firm about what you sell this tourist.

Negotiate for the best possible solution and keep the following in mind:

1. You bought the cans of spaghetti for \$.80 per can.
2. Your maximum level of satisfaction would be to sell the spaghetti at \$1.75 can.
3. You want to sell this slow-moving item.
4. Every penny counts. You really want this business.
5. You would rather do without the sale than to sell the spaghetti for less than \$.80 per can.
6. You are confident that, at some point, all five cans will be sold at a price between \$.80 and \$1.75 per can.
7. The next town is thirty miles away.

## Private Complaint Mediation Service Training

### INTERESTS EXERCISE

<b>Statements Made in Mediation:</b>	<b>What is the Interest?</b>		
	Emotional	Substantive	Procedural
1.) Ever since I got hurt on the job, they have been trying to fire me. I can't believe a word they say, they don't care about anything but money.			
2.) I don't want to go to court. I'm sure I'd lose because the other side has a big-buck, high-powered attorney and I don't.			
3.) I have never met this person before she damaged my property. I believe that this was an accident-- I just want her to pay my \$700 repair bill.			
4.) Nothing against this mediation thing, but I really want a judge to decide so he'll have to pay the price. Maybe he'll learn something and he'll quit ripping off other people.			
5.) She knows I couldn't live without her. I'd go nuts if she left me.			
6.) She's been calling me at all hours of the day and night. She's even called me at work. Why can't she just talk to me when we exchange the kids?			
7.) I can't believe she did this. We were best friends and now she refuses to talk to me. Some friend she turned out to be!			
8.) We worked out an agreement where he is supposed to give me \$250 each month. Every month, he's late. I have to phone him and talk to his wife because he's never home. It's a hassle!			
9.) I know I got out of hand at Pat's party. I apologize. I'm willing to pay for whatever damages--it's just that I'm out of work right now and I don't have much cash.			
10.) I think he was drunk when he crashed into my car. My sister died in an accident where the driver was drunk. I can't think about what would have happened if my kids had been in the car when he crashed into it.			
11.) I want to finish the countertops, but I've checked everywhere and there is no more marble that will match what's already installed.			
12.) She may be the mother of his children, but as long as I'm living with him, those kids are going to have contact with me. What am I supposed to do—check into a hotel when the kids visit for the weekend?			



## Private Complaint Mediation Service Training

### ACTIVE LISTENING EXERCISE

#### Instructions for Exercise

Please read the statements on the next page made by a mediation party. After reading each statement, think about an Active Listening response that you would say to the speaker. Though each statement could elicit many different Active Listening responses, just write one response in the space provided. You will have ten minutes to complete this exercise.

*Remember:*

*An Active Listening response includes both content and feelings. Your goal is to write an active listening response that includes both.*

*An Active Listening response should reflect what you think you heard the speaker say, not what you think about what the speaker has said. Your goal is to write an active listening response that is not judgmental.*

*There is no “correct” Active Listening response—if you don’t capture it on the first try, the speaker will correct you and you can try again.*

*An Active Listening response can be worded as a statement or a question. Either lets the speaker know you are actively listening.*

<b>STATEMENTS MADE BY PARTY:</b>	<b>ACTIVE LISTENING RESPONSE:</b>
<p>#1 My next door neighbor blares his television day and night. I've asked him to keep the volume down several times, but he just ignores my pleas. I can't eat, watch television or sleep without being disturbed by his noise. I want him to do something about it now!</p>	
<p>#2 I really resent him lying about me being a bad tenant. When I moved out of that apartment, it was cleaner than the day I moved in! I paid my rent on time and I never bothered my landlord with anything, although I had to put up with loud neighbors and a stove that didn't work.</p>	
<p>#3 I know that my son, William, is using some kind of drug. He's been missing work and acts very strange. He used to be a good boy, but since he's been hanging around with his new friends, who everyone says are gang members, he's a different person. He now fights me over everything.</p>	
<p>#4 I think this is a complete waste of time! I never wanted to come here. If the police officer had just arrested her for interference with custody, I wouldn't be here. Why do I have to do this mediation when I all I want is to see my kids? Don't fathers have rights?</p>	
<p>#5 This case has been in court for almost two years. My attorney tried to contact the guy who owes my company money before we filed, but he never responded. He owes me tens of thousands of dollars by now! Now his attorney says his client is in India visiting his sick mother. I don't think he's in India, I don't think he has a sick mother and I don't think he has any intention of settling this. I think he is just stalling and his attorney is covering for him.</p>	

## REFRAMING EXERCISE

### Instructions for Exercise

Please read the statements on the next page which were made by various persons in mediation. After reading each statement, think about the response that you would make to the speaker that would reframe the statement. Though each statement provided could be reframed many different ways, just write one response in the space provided. You will have ten minutes to complete this exercise.

*Remember:*

- *You can reframe by changing the wording, the meaning or doing both.*
- *A good reframe will be one that rings true to the speaker, but will also be able to be heard by parties on the other side of the dispute.*
- *There is no “correct” reframe, if you don’t capture it on the first try, the speaker will correct you and you can try again.*
- *Reframing can be accomplished by making a statement or asking a question. Either allows you the opportunity to begin the process of changing how a party conceptualizes the situation, issue or interest.*

<b>STATEMENTS MADE IN MEDIATION:</b>	<b>REFRAME:</b>
<p>1.) Made by a party in personal injury case:</p> <p><i>Before he ran into me, this guy was driving like a maniac. We were in a school zone and I know he wasn't observing the speed limit. I don't think he meant to hit me, but if he wasn't driving so fast, the accident could have been avoided. I did wonder why he did not get cited for speeding, but then I heard he and the cop knew each other from high school. He should have to pay for his careless ways; he needs to learn a lesson.</i></p>	
<p>2.) Made by a plaintiff's attorney in a breach of contract case:</p> <p><i>I think this is a complete waste of time! This case won't survive summary judgment. We've made a good faith offer. If the other side doesn't like our offer, we'll see them in court!</i></p>	
<p>3.) Made by party in neighborhood dispute:</p> <p><i>My next door neighbor, John, has a dog that barks and howls all day and all night. I've tried to quiet the dog, but the mangy mutt practically bit my arm off! If John doesn't get rid of that dog, I will take it to the pound myself!</i></p>	
<p>4.) Made by defense attorney in a sexual harassment case caucus:</p> <p><i>I don't think we are going to be able to reach any settlement today. I don't know if you realize this or not, but the plaintiff's attorney has made a name for himself as a hired gun in these kinds of cases and he will not be satisfied with a reasonable settlement and no publicity.</i></p>	
<p>5.) Made by a party in a custody dispute:</p> <p><i>I will never let that man have sole custody of my children. He's just saying he wants custody so he doesn't have to pay child support. Would you let your children live with an alcoholic?</i></p>	

# THE STORY

Instructions: Read the following story. When you are finished, read each statement below and circle the appropriate response as follows:

- “**T**” -- if you determine that, based upon the information provided in the story, the statement is true,  
“**F**” -- if you determine that, based upon the information provided in the story, the statement is false,  
“**?**” -- if you determine that, based upon the information provided in the story, the statement is neither true nor false.

*A business man had just turned off the lights in the store when a man appeared and demanded money. The owner opened the cash register. The contents of the cash register were scooped up, and the man sped away. A member of the police force was notified promptly.*

- |   |   |   |   |
|---|---|---|---|
| T | F | ? | 1. A man appeared after the owner had turned off his store lights.  |
| T | F | ? | 2. The robber was a man.  |
| T | F | ? | 3. The man who opened the cash register was the owner.  |
| T | F | ? | 4. Someone opened the cash register.  |
| T | F | ? | 5. The robber demanded money of the owner.  |
| T | F | ? | 6. After the store lights were turned off, a man appeared.  |
| T | F | ? | 7. The robber did not demand money of the owner.  |
| T | F | ? | 8. Taking the contents of the cash register with him, the man ran out of the store.   |
| T | F | ? | 9. The story involves a series of events in which only three persons are referred to: the owner of the store, a man who demanded money, a member of the police force. |
| T | F | ? | 10. The following events were included in the story: someone demanded money, a cash register was opened, its contents were scooped up, a man dashed out of the store. |



## **V. Role Plays**

- Taken to Cleaners
- For Whom Dog Barks
- SCUBA
- Amy and Jeremy



## **Mediation Role Play: "Taken to the Cleaners"**

### *General Background Information for Mediator*

This is a dispute between Terry Barrett, a customer of Spotless Dry Cleaners, and Pat Granger, owner of Spotless Dry Cleaners. Terry Barrett contacted the Utopia Better Business Bureau (Utopia BBB) who offered to provide mediation to the parties.

The Utopia BBB mediation intake staff contacted both parties who have agreed to participate in mediation. If parties reach agreement in mediation, the customer must agree to take no further action in court if the agreement is kept and the company knows that the complaint against the business will be closed as "Resolved", which does not negatively impact the company's rating posted on the Utopia BBB's website.

You are the volunteer mediator that was assigned by the Utopia BBB to this case. Utopia BBB's mediation file indicates that: 1.) the dispute involves a stain on a designer suit that Terry Barrett says was caused by Spotless Dry Cleaners, and 2.) if parties do not reach agreement in mediation, Terry Barrett intends to pursue the matter in court.



## **Mediation Role Play: “For Whom the Dog Barks”**

### *General Background Information for Mediator*

This is a dispute between two neighbors Bill/Betty Bradshaw (age 52, assembly line worker) and Ron/Rhonda Peterson (age 25, college student). Bill contacted the Utopia County Mediation Center (a non-profit community mediation center), at the recommendation of the Utopia Police Department, because Ron's dog barks and disturbs him, especially when Bill is trying to sleep.

The Utopia County Mediation Center staff has contacted both parties who have agreed to this voluntary mediation and have signed the Center's 'Agreement to Mediate' form prior to today's mediation. If parties do not reach agreement in mediation, parties are free to pursue other legal remedies.

Although both parties were advised that each could bring someone with them to mediation, both indicated that they not bring anyone with them.



## **Mediation Role Play: "That's *My* SCUBA Gear!"**

### *General Background Information for Mediator*

This is a dispute between Drew Norris and Chris Green, who are "ex's"—they lived together until about a year ago. Drew filed a complaint against Chris in Utopia County Small Claims Court alleging that Chris took \$3000.00 worth of SCUBA equipment from Drew when Chris moved out. Utopia County Small Claims Court has referred the case to the mediation.

The Utopia County Small Claims Court staff has contacted both parties who have agreed to participate in mediation and they understand that they must sign the Court's 'Agreement to Mediate' form at mediation. If parties do not reach agreement in mediation, the case is scheduled for trial next week. If parties reach agreement in mediation, the parties can request that the court dismiss the case, based on the settlement agreement signed and submitted by the parties.

Both Chris and Drew have brought their attorneys with them to mediation.



## **Mediation Role Play: "Amy and Jeremy"**

### *General Background Information for Mediator*

This dispute involves Jeremy Franklin (a 24-year-old lab technician) and Amy Dalton (a 22-year-old "stay-at-home mother"); Jeremy and Amy are parents of two children: Caitlin, age 5 and Kyle, age 1 and 1/2.

Jeremy filed a petition for visitation in Utopia County Juvenile Court because Amy has denied him visitation. At this point, there is a paternity affidavit on file, establishing Jeremy as the father of both of Caitlin and Kyle, but there are no other orders in court concerning the children.

Utopia County Juvenile Court offers most parents filing for visitation the opportunity to mediate and provides a mediator for the parties. Jeremy and Amy have agreed to mediation; their first court hearing will be in four weeks. At that court hearing, Jeremy and Amy can submit any visitation plan agreed to in mediation to the Court for consideration and approval. If there is no agreement reached in mediation, the court will proceed with a hearing to decide the matter of visitation.

Amy has brought her mother with her to mediation; Jeremy has brought his fiancée, Daphne.







# THE SUPREME COURT *of* OHIO

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