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What is mediation?

► Mediation is...

- ✓ A process
- ✓ for resolving disputes
- ✓ where an intermediary helps
- ✓ conflicting parties
- ✓ have a conversation
- ✓ to jointly resolve their concerns.

Process: Mediation follows an organic sequence that unfolds differently in each situation, but still has recognizable phases.

Disputes: Usually parties have specific incidents, disagreements, and concerns that have brought them to mediation, things they want changed. The mediation may also address underlying conflicts and systemic causes, if the parties want to take on that larger project.

Intermediary: Literally, “one who goes between,” by definition a mediator has some degree of impartiality and detachment from the outcome. Mediators guide the process; however, *the parties* do the work of coming up with the solutions and making the decisions.

Parties: These may be a person, a group, or a whole nation — who come as a unit to the mediation, or are represented there, and who share a common identity or interests.

Conversation: The way out of conflict is through dialogue, which means talking and listening directly to each other. Dialogue broadens the parties’ understanding of their situation, of each other, and of their desired future. This is rarely a neat or rational process!

Jointly resolve concerns: The goal is workable, durable solutions that meet the participants’ practical, emotional, and social concerns as fully as possible. Mediators work to create a cooperative atmosphere for problem-solving where the parties themselves plan how they wish to proceed, individually and collectively.

There are many kinds of conflict, and, increasingly, many kinds of mediation. This definition reflects the type of conflicts that are the focus of this book — interpersonal disputes where parties have some ongoing connection — and the principles and methods we have developed through mediating them.

SAMPLE SITUATIONS

► Tom’s Toys has not yet paid for a major re-wiring job because they claim the work was not finished properly. The electrician, Morgan, hotly denies this, saying that Tom is just inventing excuses not to pay because his business is doing poorly.

After three months, Morgan contacts a small-business mediator, hoping to deal with the matter quietly and not take it to court.

► The governing board of GoodWorks is split between its visionary founder and the new chair of the board. The group is trying to set up a mediation between the two leaders, before a consultant works with the larger board.

A useful tool

SAMPLE SITUATION

► CrossCurrent City Council is battling their private volunteer fire company over access to the company's account books and budget. The 110-year-old company, mostly men from "old-timer" families, is proud of its independence and doesn't want "new-comer" bureaucrats snooping or managing their affairs. Three firefighters meet with two council members to forge compromise legislation.

► Mending fences: Practical solutions, emotional resolutions

Mediation can work spectacularly well. People find solutions to thorny problems. They let go of their sense of grievance and mend broken relationships. In most mediations, people get some emotional relief, and walk away with a plan that resolves most of their concerns.

There are no guarantees, of course—though most mediations work out, some don't. Mediators may sense that the parties are making grudging compromises that are unlikely to last. Or the parties may quit the mediation, still feeling angry or discouraged. However, even when there's no agreement, the emotional charge of the dispute may lessen once people have had their say. And participants can at least walk away with a more informed and realistic picture of their situation, and make their next decisions from that vantage point.

► Building stronger organizations and communities

Mediation is a time-tested choice in an ever-growing array of conflict intervention methods—from formal and public litigation, to peace-building projects, to quiet backstage coaching. Mediation techniques can also amplify the success of other approaches, such as negotiation, advocacy, arbitration, meeting facilitation, or training initiatives. For instance, a politician might mediate a local water-rights issue as part of postwar peace building. Corporations often proceed with litigation until they collect enough information to submit a dispute to mediation. If a volcanic argument between two key players disrupts a planning conference, the facilitator might ask them to meet for a mediated conversation before the next day's session.

In a broader context, mediation offers people a way to take charge of their own conflicts and solutions. Mediation processes (or even just the skills) can help communities and organizations survive their conflicts and benefit from them. Mediation can strengthen working relationships and alliances. At its best, mediation strengthens democratic, collaborative efforts to meet people's needs more effectively.

What makes mediation work?

► Why it works

New mediators are often amazed to see how one or two mediation sessions can turn around long-standing conflicts. What makes mediation so effective?

It starts and ends with what the participants care about

- Mediation takes seriously the issues that people say matter most to them — relationships, fairness, emotions, justice, recognition, respect, inclusion, fixing a problem.
- People get a chance to tell each other their frustrations and hurts, to express regret, and to ask for what they need.
- Parties can bring up whatever topics concern them — they are not restricted to resolving only the official complaint.

Mediation provides structure for difficult conversations

- It's a private and supportive setting for checking out misunderstandings and suspicions, and for speaking honestly.
- Mediators explore and reframe the parties' interests in ways that help people move into problem-solving mode.
- A mediated agreement can lessen subsequent friction and misunderstandings, even if the conflict is not fully resolved.

► Mediation works best when...

- ✓ Parties realize that continuing their dispute may have costly consequences.
- ✓ They genuinely want to change the situation and need each other's cooperation to do so.
- ✓ All main stakeholders and decision-makers participate.
- ✓ The parties are (eventually) able to express the reasons for their discomfort and distress.
- ✓ The parties are capable of making plans and keeping promises.

If someone is bent on keeping a conflict going or winning outright, even the most obvious solutions are not likely to work. If everyone is ready to end a conflict, mediation can be a graceful and efficient way to do so.

1.3 SAMPLE SITUATIONS

- Henry is frail and a bit forgetful. After months of acrimony and denial, his three children, several grandchildren, plus Henry are meeting with a mediator to work out an agreement detailing who should handle Henry's money, who will find him an appropriate nursing home, and who will clean out and sell the family house. (See page 171 for an agreement they might have reached.)
- The neighbors of a movie theater have complained about loud music, parking in front of their houses, and people loitering late at night. Following a disturbing incident of vandalism, the manager asked a mediator to facilitate a meeting of the neighbors.

The mediator's role

1.4 THE SATISFACTIONS OF MEDIATING

Mediators speak about the challenges and satisfactions of mediating:

“People get discouraged... You have doubts too, but it is important to say, ‘Yes, you are getting somewhere. You are talking.’ It is a miracle to see at the end of the session how it has come together.”

“The simplicity of it is almost embarrassing. In two hours, people can solve ‘impossible’ problems and let out hostility which has sometimes built up for years. The exciting part of mediating is watching that process work again and again for different people in different situations.”

► Mediators guide but don't decide

Mediators have little or no stake in the conflict or the terms of its resolution, in the model we use. Rather than advocating for one party's benefit, they help the parties work towards an outcome that best satisfies everyone. Participants may not know the mediator at all, or they may be closely connected. What's important is that the mediator be someone all the parties trust enough to allow the intervention and to speak freely about their concerns.

Mediators are in charge of the process, and provide two essential ingredients:

- **A structure for conversation** to help people talk, listen, and think.
- **Caring, impartial attentiveness** to people, process, and concerns.

► Who can mediate?

Mediation isn't esoteric. People have been mediating for as long as people have been fighting, and most adults have picked up some mediation skills along the way. This means people from all walks of life and with all types of education can learn to be effective mediators: coaches, clergy, managers and supervisors, politicians, social workers, principals, crew leaders, parents, police, teachers, board members, therapists, teenagers, small business owners, elders, barbers — anyone who helps settle conflicts in their own corner of the world.

Some types of mediation require more knowledge and skill than most of us learn through life experience alone. Increasingly, professional mediators are expected to have a specialist background and training (labor, divorce, elder/family, employment discrimination, business litigation, education, insurance claims, just to name a few areas).

Even if you don't earn part of your living mediating disputes, there are plenty of conflicts that might benefit from your mediation skills. This book offers several levels of information to suit the needs of every mediator, whether frequent or occasional, official or informal, professional or volunteer.

The anatomy of the mediation process

► Similar elements, similar paths

Whether a mediation takes 15 minutes on a playground or involves many parties and dozens of sessions over a period of a year, the process of reaching resolution usually follows a predictable path.

1. First, people present their own views and feelings — often loudly!
2. They share and clarify information, gradually developing a clearer and broader picture of what’s going on.
3. If this has eased the emotional strain between them, they move into problem-solving, talking about what they want to change, weighing options, and making decisions.
4. Finally, they write it down, shake hands, or take other action to strengthen their commitment to follow through.

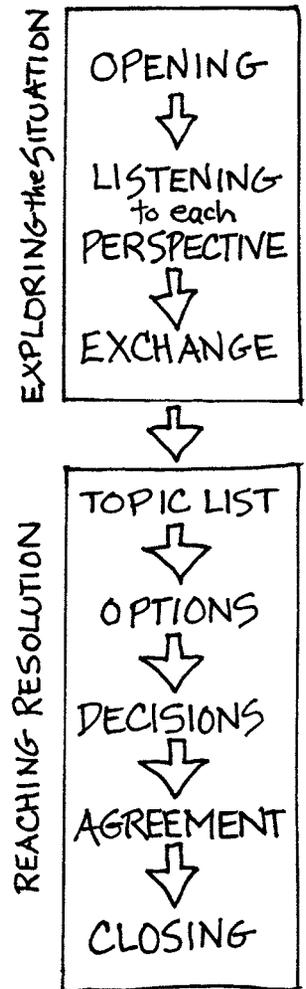
Most mediation processes contain similar elements, because, it seems, this sequence is organic — meaning it *describes* what humans actually do when they resolve conflicts collectively. It will be flavored by culture, personality, and context. It may be messy and reiterative, but these elements seem to be essential for consensual, durable resolutions.

► Structure versus “improv”

Context: The process and tools outlined in this handbook are designed for round-the-table mediations where the stakeholders speak directly to each other, and have the authority to reconcile or resolve their dispute without getting permission from others.

Following a structured process can steady both the mediator and the parties, giving a counterweight to the volatile swirl of emotions, accusations, and demands. It slows things down — asking people to take the time to listen, to think, and to learn, *before* they jump to decisions or abandon their efforts at resolution. At the same time, a structured process increases efficiency by focusing people’s collective attention, and by laying the foundation for the work of the next phase.

How structured? Mediation is always “improv” to some degree. When people open up, you cannot be sure where it will lead. It’s a responsive, adaptive process which gives participants leeway to decide what they want to discuss and how, while offering enough structure that they can have a fresh, productive conversation. If you are new to mediation, we recommend following the process laid out here until it becomes part of your repertoire and you have seen how it works in different settings. Then you will be ready to improvise more freely or restructure.



The anatomy of a session

Exploring the situation

- 1. Opening:** Mediators welcome the participants. Then they discuss the proposed purpose and process for the mediation.
- 2. Listening** to each perspective—initial “go-round”: Each participant takes a turn speaking, while everyone (including the mediators) listens without questions or comments. People may talk briefly or at length about their view of the situation, and may bring up anything they consider relevant.
- 3. The Exchange:** In open discussion, participants check out misunderstandings and fill in information gaps. They look at specific examples of behaviors and impacts. The focus is on understanding each person’s concerns in order to identify their interests and what topics need attention. Often there’s de-escalation from a self-protective, adversarial mode towards a readiness to cooperate.

This first half of the mediation digs into the past and the present. It’s both an emotional process and a learning process.

When people are ready, discussion shifts towards the future. How do they want things to be?

Reaching resolution

- 4. Topic List:** The mediator proposes a way to organize the various topics that the participants want to resolve.
- 5. Options:** For each topic in turn, the parties talk through possible options until they come up with something that passes the “gut” test, meets their interests, and is workable.
- 6. Decisions:** Parties review all their decisions, working out the details, and reality-testing to make sure this is workable and what they really want.
- 7. Agreement:** Mediators usually record these decisions in a written agreement.
- 8. Closing:** The parties approve their agreement. The mediators review what has been accomplished, tie up loose ends, and wish them well.

Process-centered mediation

Process-centered mediators focus on structuring a conversation and environment that suits the needs, context, and personalities of the participants. The mediator is not only impartial toward the parties, but also neutral toward the outcome — not suggesting, recommending, or favoring particular solutions. Instead, the mediator helps them test whether their ideas meet their interests and are workable and sustainable. Whether or not they reach agreement, if the parties have gotten clearer about the situation, and understand their own needs, options, and best next steps, that is what defines “success.”

Participants’ goals set the mediator’s compass

Our model of mediation is structured around the participants’ goals. If the mediators are hoping parties will reconcile a failing partnership but the parties just want a cease-fire and separation, the mediation is in trouble. Likewise, mediators can guide co-workers to negotiate a detailed allotment of tasks, but if the parties are feeling hurt and wanting to mend a friendship, such an agreement can disappoint, and an opportunity for heart-to-heart conversation is missed.

A particular mediation may tilt towards a relationship dialogue on the one hand, or towards a facilitated negotiation on the other, depending on what the parties are seeking:

- Do they hope to repair a relationship?
- Are they looking for a practical solution to a problem?
- Do they need a truce with their adversary that allows them to separate and move on?
- Are they seeking a quicker, less costly substitute for a lawsuit?
- Do they have to make necessary decisions despite tense relations?

And sometimes the only thing they agree on is that it’s time to talk.

In our model, it’s not the mediator’s job to get the parties to reach settlement, to promote empowerment, to solve a problem, or to foster reconciliation, although a mediation may achieve all of these. Instead, the mediator seeks to restore or catalyze the parties’ ability to cooperate in meeting each other’s reasonable needs and hopes, whatever those may be.

What do you need? How can I help you get there?

1.6 SAMPLE SITUATIONS

► Despite her ex-husband Mike’s adamant disapproval, Christine has enrolled their oldest in a private religious elementary school, and is demanding Mike pay the tuition, as he has done for preschool and kindergarten. The two cannot stand being in the same room with each other, but to avoid a costly court battle, they are trying mediation.

► Gene and Chris are students who share an apartment. That went fine until Gene got a new girlfriend, who is around most of the time. Gene contacted campus mediation because Chris owes him two months of rent and utilities. He needs the cash now! But Chris says not until the girlfriend pays her third.

Guiding principles

The guiding principles below are the reasons WHY we, the authors, choose to do this work, and serve as guidelines for HOW we mediate.

1.7 SAMPLE SITUATIONS

► **CrossCurrent**
Hospital has had trouble getting patients to pay their bills. They institute a mediation option, and mediators are eventually able to help them design a new set of payment options that are more feasible for their customers, thus resulting in fewer disputes.

► A woman charges a bunch of young teens in her neighborhood with harassment. The judge calls a mediator team to facilitate a meeting in the court building. In the first go-round, each boy speaks. "We were just having some fun." The woman then talks about her diabetes, her troubled children, the loss of her job. When she talks of the disrespect the boys showed her, she sobs. No agreement is necessary; each boy apologizes. The fun has gone out of it.

Respect

- Value each person's experience, concerns, needs, and dignity.
- Assume that each person is capable of acting cooperatively with goodwill and integrity.

It's not always easy to stay respectful when you are dealing with people who are on the attack or in victim mode, who may be lying, or who have made what seem to you to be stupid or destructive decisions.

It's their life: Self-determination

The parties are the "experts" about their situation. In mediation, they speak for themselves, think for themselves, and decide for themselves. The mediator supports people in doing this with greater clarity and thoughtfulness, but it is the participants who do the hard work of figuring out how to resolve their concerns.

Mediation helps organizations and communities to resolve problems close to the source. The people directly involved plan their futures, not needing to rely on external authorities to decide and enforce.

Dialogue: Listening and talking it out

The goal is to get the parties listening to each other, talking with each other face-to-face (rather than using the mediator as a go-between, or talking through their lawyers).

Cooperative alternatives to coercion

We seek to help build a society and culture that practices active, non-coercive ways of resolving conflicts and strengthening relationships. Mediation gives parties a way to meet their needs without fighting or caving in. It offers accessible, low-tech collaborative tools for a world that often seems overwhelmed with conflicts over resources, identity, and self-determination. In the face of our human capacity to damage ourselves and our environment in the blink of an eye, developing sophisticated approaches to cooperation is not just "nice," it is critical if we human beings are to survive on this planet.

Mediation terms

CONCERN	INTERPRETATION	POSITION	INTEREST	TOPIC
Their problems and complaints. What they want changed, fixed, or to be compensated for.	Meanings they give to the information they have: Explanations, perceived motives, generalizations, judgments, mind-reads, worries.	Their public stance about what should happen, what is right: demands, requests, principles, threats.	What really matters to this person, what motivates them. What future they want.	A subject the parties need to discuss and decide—stated so as to include all parties.
Barking dog.	Neighbor is unfriendly, inconsiderate. Violates my privacy.	Buy a muzzle. Keep the dog indoors.	I'm not well. I need my sleep. To have my home be a quiet, private place.	Dog's barking at night.
Unfair bill.	This company wants to rip me off! They think I'm not smart enough to notice.	I will not pay for work you didn't even do.	To be treated fairly. To know what something will cost so I can budget for it.	What work was done, what recompense, if any, is fair. How rest of job will be billed.
Rude treatment, exclusion from meetings.	This guy is a snake. He's undermining me in front of my boss.	You owe me an apology.	To keep my good reputation. Less stress at work.	Who attends meetings. How people speak to each other.
Tenant owes me 3 months back rent.	Tenant is a freeloader. Tenant may go bankrupt.	Pay \$1,600 this week or I'll evict you!	Fairness. To get the money, have reliable income.	Payment plan. Repair plan.

This table will give you a feel for how we use these main mediation terms. We chose the broader, more sympathetic term “concern” in place of “complaint” or “problem;” likewise, the neutral “participant” for individuals and “party” for one or more participants who are on the “same side.” Because “issue” is a loose word with various meanings, we use the more precise word “topic.”