AN INTRODUCTION TO MEDIATION SKILLS

OFFICE OF COMMUNITY PARTNERSHIPS
University of Alaska Anchorage

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INTRODUCTION TO THE WORKSHOP
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INTRODUCTION TO THE WORKSHOP

PURPOSE

To introduce and practice mediation skills for resolving a conflict among two or more disputants.

OBJECTIVES

Participants will learn:

- The different types of dispute resolution and where mediation and interest-based negotiation fit in the dispute resolution continuum.
- The roles, qualities and skills of an effective mediator.
- When to use mediation skills as a dispute resolution strategy.
- A multi-step process for negotiating a work-related conflict situation.
OUTLINE

Introduction to the Workshop
  • Welcome and Introductions
  • Workshop Overview

Alternative Dispute Resolution
  • Dispute Resolution Continuum
  • Definition of Terms
  • Comparison of Mediation and Interest-based Negotiation
  • Why Use Mediation Skills
  • Qualities of an Effective Negotiation
  • When to Use Interest-based Negotiation

Steps in the Negotiation Process
  • Brief Overview of the Steps
  • Demonstration Exercise
    ✓ Steps 1-2: Ground Rules & Reflective Listening Skills
    ✓ Step 3: Framing & Reframing Skills
    ✓ Steps 4-6: Moving from Positions to Interests w/Final Agreement

Negotiation Role Plays
  • Introduction to the Role Plays
  • Steps 1-3 and Debriefing
  • Step 4 and Debriefing
  • Steps 5 and 6 and Debriefing
  • Additional Role Plays

Closing
PROGRAM FACILITATORS

Glenn Cravez has practiced law in Alaska since 1981. He has mediated since 1990, and has chaired the Alaska Bar Association’s alternative dispute resolution section since its inception in 1990. Family, commercial, employment, and insurance disputes are Glenn’s main focus in mediation. Glenn has mediated over 900 cases. He also arbitrates commercial, and insurance disputes. When he isn’t serving as a neutral, Glenn’s current practice includes commercial litigation and transactions, simple wills, and probate.

Jane Oakley is the Training Coordinator for Resource Solutions, a program of the Office of Community Partnerships at the University of Alaska Anchorage. She has twenty-five years experience working as a curriculum design specialist, a trainer and consultant with agencies and organizations in the public, private and nonprofit sectors. She conducts workshops on facilitation, strategic planning, teambuilding, interpersonal communication, conflict management, successful meetings and collaborative problem solving for Resource Solutions and coordinates other training and consulting projects.
Introduction to the Workshop
ALTERNATIVE DISPUTE RESOLUTION
## Dispute Resolution Continuum

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<tr>
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<th>Third Party Assistance</th>
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<tr>
<td>Conciliation</td>
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**More Control of Outcome**: Inormal  
**Less Control of Outcome**: Formal
DEFINITION OF TERMS

Alternate Dispute Resolution (ADR)
“The generic name given to a variety of techniques for resolving dispute outside of the courtroom.” (Sekuler, 1990; Cravez, 2001)

Arbitration
“A private, voluntary process where a neutral third party ...hears a dispute and renders a decision for the parties.” (American Bar Association, 1994, p. 5)

“The closest parallel to an actual trial. The parties present evidence at a hearing presided over by an arbitrator or panel. The proceeding is generally less formal than a court proceeding, but the arbitrator, like a judge, makes a decision which is generally binding e.g. the parties sign a contract to be bound. The decision may be an award alone or it may include an opinion that explains the arbitrator's reasoning.” (Sekuler, 1990)

Collaborative Problem Solving
“Parties work together to define problems and generate options and objective criteria to reach decisions by consensus. A third party may provide facilitation for the group.” (Policy Consensus Initiative, 1997)

Compromise
“Compromise involves a resolution of differences in which each side makes concessions or agrees to settle for something in the middle.” (Policy Consensus Initiative, 1997)

Consensus
“All people who have a stake in an issue or conflict work together toward common understanding and agreement that satisfies all their interests. Consensus is not compromise. “ (Policy Consensus Initiative, 1997)

“Consensus is reaching a decision that all members of the group can support to some extent. Consensus means to consent, not necessarily agree.” (Lawson, 1980)

Mediation
“Mediation is a structured process in which the mediator guides the disputants through a discussion of their mutual problems and concerns, organizes the parties’ presentations of alternatives for resolving the problem, and aids the parties in arriving at a resolution of their dispute.” (Mitchell and Dewhirst, 1990)

“Mediation is a process in which the parties to a dispute, with or without their lawyers, meet with a neutral third party who helps them explore issues, develop options, consider alternatives, and reach a consensual settlement. Mediation can be either voluntary or court ordered. The mediator is not a decision-maker, so the process is binding only if the parties reach an enforceable agreement.” (American Law Institute, 1993)
What is Mediation?

“An impartial third party assists disputing parties in reaching a mutually acceptable agreement. The mediator guides the parties in developing their own resolution of the issues and does not impose a decision upon them.” (Policy Consensus Initiative, 1997)

*Interest-based Negotiation*

“Disputing parties engage in discussions to explore their interests and needs in an effort to reach agreement.” (Policy Consensus Initiative, 1997)

*Positional Negotiation*

A bargaining relationship in which the parties use either hard line bargaining (trade-offs, splitting the difference) or power to impose an agreement.
MEDIATION SKILLS

WHY USE MEDIATION SKILLS?

• To provide economical and rapid settlement with confidentiality, improved communications, mutually satisfactory outcomes that allow for creative solutions.

• To get parties talking in situations where there are high emotions or feelings of dislike and distrust.

• To provide an opportunity to vent strong feelings and clear the way for settlement.

• To preserve future working relationships between coworkers and clients.
QUALITIES OF AN EFFECTIVE NEGOTIATOR

An effective negotiator must demonstrate to the parties through words and behavior that he or she is:

- An expert listener
- Able to speak in clear, neutral language
- Able to defuse hostility
- Able to control his or her prejudice and bias
- Respectful towards the parties and sensitive to their strongly felt values, including gender, ethnic, and cultural differences
- Able to see issues on multiple levels
- Able to deal with complex factual materials and to analyze problems
- Able to think on his or her feet
- Able to guide the discussion without being overbearing
- Trustworthy to keep confidences
- Enforce ground rules, such as respectful language or no interruptions
- Reframe issues to neutralize inflammatory content
- Explain reflective listening techniques e.g. paraphrasing, summarizing
- Help the parties identify objective standards for measuring possible solutions
- Use power balancing to assist a less assertive party against a more assertive or aggressive disputant
- Use the caucus in which the negotiator meets individually with each side
- Use reality testing in which the negotiator challenges unrealistic expectations
- Suggest options if the participants are lacking creative alternatives

*Taken from Lovenheim, 1989 and American Law Institute, 1993*
WHEN INTEREST-BASED NEGOTIATION IS APPROPRIATE

Interest-based negotiation is appropriate when:

- A party has unrealistic expectations about how the dispute will be resolved.
- There may be opportunities to craft creative solutions that are not available any other place.
- Mistrust is high and communication is difficult.

Interest-based negotiation is appropriate *almost always*.

WHEN INTEREST-BASED NEGOTIATION IS NOT APPROPRIATE

Interest-based negotiation may not be advisable when:

- The parties are not committed to the process.
- A party is a serious substance abuser.
- A party is seriously mentally ill.
- A party is not willing to fully disclose needed information to the other party.
- A public articulation of rights and responsibilities is appropriate.
What is Mediation?
COMMUNICATION SKILLS
GROUND RULES

Guidelines are the principles which all parties in the mediation agree to adopt in order to have an effective meeting. The mediator needs to come prepared with a short list of basic ground rules. Ground rules set a standard against which everyone can measure their behavior. The mediator uses the ground rules as a guide for knowing when to intervene in the process.

- One person speaks at a time.
- Treat each other with respect.
- Listening is more important than speaking.
- Acknowledge what others are saying even when you don’t agree.
- Express differences with respect.
- Keep focused on your goals.
- No button pushing.
- Don’t react, retaliate, or escalate.
- Maintain confidentiality.
GUIDELINES FOR REFLECTIVE LISTENING

Listening is an important skill for building and maintaining effective working relationships. It is a process whereby we observe, interpret, evaluate and respond to a speaker's message. It is an active, not a passive process.

REFLECTIVE LISTENING SKILLS

The term reflective listening accurately describes the process. The listener actively responds to the speaker and reflects back acceptance, support and clarification of what is being said. Reflective listening involves the following four skills.

- **Prompting** is the skill of using simple verbal and nonverbal responses to encourage the speaker to continue talking and to communicate the attention of the listener. It is something we do naturally such as smiling, head nodding, maintaining eye contact, and saying, “Uh-huh” or “I see.”

- **Questioning** is a skill that either expands or narrows the speaker's responses. Open-ended questions are used to uncover facts and feelings and give the speaker an opportunity to expand on the subject. These questions begin with who, what, when, why and how.

  *Example:* “What jobs have you held in the past?”

  Closed-ended questions are used to clarify and can be answered with a yes or no. They are intended to limit the speaker's response.

  *Example:* “Did you read the job description?”

- **Paraphrasing** is the skill of restating what someone has said in different words in order to clarify the message and reinforce that you are listening and understand the message. If not properly used, this skill can make you sound as if you are parroting back what the other person is saying.

  *Example:* “So you think we need to revise the plan to include ....”

- **Empathy statements** are special types of paraphrasing, which communicate an understanding of both the content and feelings of the speaker's message. They let the other person know you have heard what they said and how they feel about it.

  *Example:* “Everyone has strong feelings about this issue, as Jack mentioned, but if we are patient, we should be able to work out a solution.”
BENEFITS OF REFLECTIVE LISTENING

- It demonstrates acceptance and checks understanding.
- It helps you remain calm in stressful situations and gives you time to think.
- It calms others in stressful situations and overcomes defensiveness or highly emotional behavior.
- It communicates trust and confidence in others’ ability to work through problems.
- It helps others open up and share information and feelings that can help in problem solving.
- It helps others become less afraid of negative feelings.
- It helps keep ownership of the problem with the person(s) involved in the problem.
FRAMING OR REFRAMING A PROBLEM OR ISSUE

As disputants discuss a problem or issue, each takes a different position based on their frame of reference. Each person defines or frames the issue, situation or problem with his own interests and concerns in mind. The role of the negotiator is to assist the parties in reframing the mental pictures they have about the issue so it can be solved. This requires translating the individual, positional statements into a joint, constructive statement that is free of adversarial language based on individual bias and emotions. Reframing builds on positional statements by taking them to a neutral level where both parties can agree on a definition of the problem or issue. From there the parties can work toward mutually agreeable outcomes.

In his book, *Getting Past No*, William Ury says, “To change the game, change the frame”. The purpose of reframing is to shift the focus from positions to interests. Strong, emotional, value-laden statements contain underlying interests or concerns. The negotiator has a responsibility to listen attentively and reflectively by paraphrasing and asking open-ended questions. She listens to uncover each party’s interests and concerns and restate or reframe them in such a way that both parties can agree that the problem has been clarified and properly defined.

**STEPS IN REFRAMING**

- Listen attentively to how each party describes and defines the problem or issue.
- Reflect back what you have heard by asking open-ended questions and paraphrasing.

**QUESTIONS**

- Why is this important to you?
- What are your concerns?
- What if you were able to....?
- What would make this fair?
- What do you see as the next step?
- How can we?
- What can be done to?
- What timeframe is acceptable to you?

**PARAPHRASING**

- What is important to you is ....
- You’re concerned that ....
- So, you’d be willing to ....
- To make this fair, you need ....
- So, you think the next step is ....
- So, you think we should ....
- The options you favor are ....
- This situation needs to be resolved by ... because ....

- Eliminate the adversarial language and define the problem or issue according to interests rather than positions. Use objective, neutral language and frame the issue so it is a joint problem statement.
- Get agreement from both parties that the problem or issue statement accurately describes their joint interests.
EXAMPLES OF REFRAMING

- Frame the issue in terms of the problem rather than the personalities, attitudes or behaviors of the parties.

- Frame the issue so it is objective rather than judgmental.
  
  *Frame:* “I can't work with Martha because she’s controlling.”
  
  *Reframe:* “Let's talk about what would help you and Martha work together better.”

- Frame issues so they are a joint problem.

- Frame the issue so it is more specific.
  
  *Frame:* “I can't meet the deadline when Jane doesn't get me the information I need.”
  
  *Reframe:* “Let's talk about what you need to meet the July 15th deadline.”

- Frame the issue so that multiple solutions are possible.
  
  *Frame:* “I don't have a car right now and the bus route doesn’t fit my schedule.”
  
  *Reframe:* “Let's talk about your transportation needs and some options for getting you to your classes.”

- Frame the issue within areas where people have the authority and resources to make a decision and implement it.
  
  *Frame:* “I don't feel like I have any input in developing my own educational plan.”
  
  *Reframe:* “Let's talk about how Joan can take more responsibility in developing her plan and how Charlie can help her.”

- Frame issues in terms of future action rather than past blame.
  
  *Frame:* “No one told me I had to fill out this paperwork to be eligible for funding. I'm supposed to register for classes next week.”
  
  *Reframe:* “Let's talk about how we can get this paperwork completed so you can register on time.”

- Separate issues or problems from people to depersonalize the conflict.
  
  *Frame:* “I’m tired of Susan’s sarcastic remarks and put-downs.”
  
  *Reframe:* “Let’s review the ground rules and add any that can help us stay focused on moving toward agreement.”
THE NEGOTIATION PROCESS
A CHECKLIST FOR THE STEPS IN INTEREST-BASED NEGOTIATION

STEP 1: INTRODUCTION OF PEOPLE AND PROCESS

Purpose: To introduce the negotiation process and agree on the roles and behaviors of the parties involved.

- Introduce yourself.
- Ask the parties involved to introduce themselves if they have never met.
- State the purpose of the meeting using neutral terms. Check with the other parties to see if they agree with the purpose as stated.
- Explain that this is a process whereby the parties work to identify issues and uncover needs, develop options, consider alternatives, and reach a consensual settlement.
  - The parties in a dispute choose to participate.
  - They are the ones to decide how the dispute will be settled.
- Explain that your role as the negotiator is to facilitate and assist both sides in finding a solution to the problem.
- Describe the process or procedures
  - Each party will have an opportunity to describe the situation or problem.
  - There will be a time for questions or clarification.
  - The needs of each party will be identified, clarified and agreed upon.
  - Options for solving the problem will be discussed.
  - Alternatives will be explored and all parties will work to find a solution.
- Explain the use of private, caucus meetings with one or both parties
  - To vent feelings that are interfering with effective communication
  - To clarify priorities and perceptions
  - To explore options and test possible agreements
- Agree on the ground rules and post, if necessary, for all to see. (See page 23 for Ground Rules.)
- Ask the parties if they are willing to resolve their conflict.
**STEP 2: IDENTIFYING ISSUES AND SETTING THE AGENDA**

**Purpose:** To identify the issues in the dispute as described by each party.

- Ask each person to explain the problem situation.
- Remind the other parties to listen without judging and take notes on issues or points they want to address when it is their turn.
- The negotiator should listen and take note of the issues.
- When appropriate, the negotiator should ask questions and summarize for clarification.
- List the issues that have been identified and ask if there are others.
- Create an agenda for discussing the issues in order.

**STEP 3: MOVING FROM POSITIONS TO INTERESTS**

**Purpose:** To identify the interests, needs and concerns that must be addressed in a settlement and the criteria by which the terms of the agreement will be measured.

- Explain the difference among issues, positions and interests.
  - Issues are the topics or areas of dispute that the parties believe must be addressed in order to resolve a conflict. Issues answer the WHAT question.
  - Positions are ideas about HOW the conflict may be settled. Positions are usually opposing or there wouldn't be a conflict.
  - Interests are the bedrock concerns, values, needs, underlying a position, that must be satisfied in order for a satisfactory settlement. They answer the WHY question of a dispute. They include such basic needs as security, economic well-being, a sense of belonging, control, etc. The interests of the parties may be compatible or opposing.
- Follow the agenda
  - Ask each party to identify the interests for each issue. These are the needs that must be addressed in a satisfactory settlement.
  - Assist in restating (reframing) issues or positions so they are interests.
  - Give the other parties the opportunity to ask questions.
  - Repeat these steps with each party represented in the mediation.
- Use the interests that have been identified to create criteria by which a satisfactory settlement will be measured.
STEP 4: CREATING OPTIONS OR ALTERNATIVES

Purpose: To create a list of options or alternatives for solving the problem.

- Brainstorm a list of options or alternatives for solving the problem.
- Caution the parties to avoid evaluating the options or making judgmental comments about them until all ideas have been expressed.
- Encourage the parties to build on each other's ideas.

STEP 5: MOVING TOWARD AGREEMENT

Purpose: To evaluate and select the option or combination of options that will solve the problem.

- Discuss and evaluate each option against the criteria that the parties have agreed will satisfy their interests.
- Use policies for evaluating options or alternatives
- Eliminate options that are unsatisfactory.
- Modify options to better satisfy interests.
- Move the parties toward agreement by:
  ✓ Creating a clear picture of the desired end result
  ✓ Making trade-offs, splitting the difference or blending ideas
- Select the most acceptable option.

STEP 6: REACHING AND FINALIZING AN AGREEMENT

Purpose: To finalize an agreement that is acceptable to all parties.

- Write down the agreements as they occur.
- Identify action steps and assign responsibilities.
- Determine criteria for success of failure of the agreement.
- Determine how the agreement will be monitored or enforced.
- Formalize the agreement in writing, if appropriate.
BIBLIOGRAPHY


