Six Stage Mediation Model

1. Pre-Mediation
2. Opening Statement
3. Gather Party Perspectives
4. Set the Agenda
5. Brainstorm & Develop Options
6. Prioritize and Select Options
7. Closure
Positions vs. Interests

<table>
<thead>
<tr>
<th>Position</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ One person’s solution to an issue</td>
<td>□ One person’s concern about an issue</td>
</tr>
<tr>
<td>□ Typically expressed as a demand</td>
<td>□ What each party needs for satisfaction or resolution</td>
</tr>
<tr>
<td>□ Reasons behind positions: needs, concerns, hopes, fears</td>
<td></td>
</tr>
</tbody>
</table>

Why Should a Mediator Explore the Interests of the Parties?

□ Foundation for parties to find resolution that addresses interests on both sides
□ Understanding one’s own interests can lead to new ideas
□ Understanding the interests of the other party may lead to recognition of the other party’s basic needs
□ Parties may discover that they share common interests
□ Helps parties prioritize (interests) and analyze (proposals)

Transforming Positions to Interests

The sooner parties declare their positions, the more likely they are to argue for them and the more difficult it becomes for them to change their minds without losing face.

For that reason, mediators may avoid asking parties to express positions until after the opening presentations....
Strategies for Exploring Interests

- Active Listening
- Engaging with Genuine Curiosity

First Communication Exercise

- Find a partner you don't know
- Review ROLE #1
  - Don't read ROLE #2
- Have a three minute conversation with your partner

Watch for assumptions that can skew listening

Your own:
- About the parties
- About the situation
- About the best way to reach an agreement

The parties:
- About each other
- About the situation
- About the only way to solve the dispute

Unconscious bias
Incomplete facts
Process
Position
Process Assumptions

<table>
<thead>
<tr>
<th>Unhelpful</th>
<th>Helpful</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Judging — The solution is obvious, I just need to convince them to adopt it.</td>
<td>□ The best agreement will come from the parties.</td>
</tr>
<tr>
<td>□ Multitasking — I can listen while I think about something else.</td>
<td>□ Listening is hard work that requires concentration.</td>
</tr>
<tr>
<td>□ Preparing to respond</td>
<td>□ If I listen well, I can satisfy their need to be understood.</td>
</tr>
<tr>
<td>□ Daydreaming</td>
<td></td>
</tr>
</tbody>
</table>

Effective Listening Behaviors

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Convince yourself to stay curiously engaged</td>
</tr>
<tr>
<td>□ Be authentic</td>
</tr>
<tr>
<td>□ Resist the urge to argue, advise, judge, daydream and defend</td>
</tr>
<tr>
<td>□ Avoid questionable listening behaviors</td>
</tr>
<tr>
<td>□ Taking notes throughout a conversation</td>
</tr>
<tr>
<td>□ Simply stating I understand</td>
</tr>
</tbody>
</table>

Second Communication Exercise
Third Communication Exercise

- When you are speaking, consider the following:
  - How the "listener" is listening - what concrete strategies do they use?
  - How it feels to be heard / to know you have not been heard

What Do They Look Like?

**Poor Listeners**
- Glance at their watch, tap their feet, and drum their fingers.
- Finish people's sentences and make assumptions.
- Interrupt to disagree and rush to correct the speaker.
- Focus on the speaker's delivery or mannerisms.
- React emotionally.
- Ignore non-verbal cues.
- Tell others how they should feel.
- Control others' feelings.
- Talk more than they listen.

**Active Listeners**
- Encourage
- Elicit
- Restate
- Clarify
- Empathize
- Summarize
- Reframe
FRED & MARY Interests

Negotiation is...

- A basic means of getting what you want from others
- It is a back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.

What Is Negotiable?

Negotiable Issue =
A behavior (or lack of behavior) of one party which frustrates the need of another party.
**Negotiable Issues for Mediation**

- **Behaviors**
  - How people treat each other
  - Sharing space
  - Respecting boundaries
  - Communication about problems
  - Following through on promises
  - Ways people do their work

- **Structures & Systems**
  - How decisions are made
  - Rules & regulations
  - Procedures
  - Schedules
  - Job responsibilities

- **Objects & Money**
  - Treatment of property
  - Reimbursement

**Can Be Discussed (But Not Negotiated or Mediated)**

- **Beliefs**
  - Principles, values
  - Attitudes
  - Anger
  - Personal Style
  - What Happened

- **Perceptions**
  - Management
  - Style
  - Interpretations
  - Prejudices
  - Blame/fault
  - Rights

**Mediator's Goals in Framing Issues**

- Separate the people from the problem.
- Reflect parties' interests not legal issues.
- Framed in neutral terms.
- Forward-looking, not about past actions or blame.
The Agenda

- Structures the mediation.
- But not set in stone.
- Each discussion item relates to a separate issue.
- Encompasses issues raised by both parties.
- Items are negotiable.
- Don't be afraid to reset and add to the agenda.

Principles for Ordering the Agenda

- Threshold issues (if any) first.
- Start with “easy” issues to establish momentum and find common ground.
- Alternate between each individual’s issues to encourage tradeoffs.