

PARTICIPANT AGENDA

DAY ONE

Rules—Chapter 9

Structure of a Mediation Conference—Chapter 4

Mediator Letter—Chapter 11

Opening Statement

Role Plays — Chapter 7

DAY TWO

Interventions—Chapter 6

DAY THREE

Role of Attorney

Preparation for Mediation

Mediator Styles

Mediator Tasks and Roles

DAY FOUR

Note taking

Ethics — Chapter 9

DAY FIVE

Closing and final agreement

Marketing and practice concerns

Books and articles

Professional orgs

Gender and culture

READING LIST

1. *THE MEDIATION PROCESS: Practical Strategies for Resolving Conflict (4th

Ed.) Published by Jossey-Bass; Christopher W. Moore (2014)

2. *GETTING TO YES Negotiating Agreement Without Giving In

Fisher & Ury (2011)

3. GETTING TOGETHER: Building a Relationship that Gets to Yes

Fisher & Brown (1989)

4. GETTING PAST NO: Negotiating in Difficult Situations

Ury (rev. 2007)

5. MEDIATION ADVOCACY John W. Cooley (NITA Practical Guide Series)

6. THE PROMISE OF MEDIATION: The Transformative Approach to Conflict

Bush and Folger; Jossey-Bass 2007

7. THE MEDIATOR'S HANDBOOK: REVISED & EXPANDED Fourth Edition Nov

13, 2012 by Jennifer E. Beer and Caroline C. Packard

8. THE DYNAMICS OF CONFLICT RESOLUTION Bernard Mayer (2000)

10. TALKING 9 TO 5 Tannen (1994) (Gender issues/Communication)

11. Beyond Reason: Using Emotions as You Negotiate (2005), Roger Fisher and

Daniel Shapiro

Joy L. Colwell/Civil Mediation Training (21)

Mediator Tools and Interventions

Basic Techniques

Setting the Stage and Process Techniques

Active Listening

Questions

Verbal and Non-verbal communication

Persistence and Patience

Determining Issues

Building rapport and trust**

(connection encourages full communication: distractors, humor)

empathic listening

body language

honesty, ethics and trustworthiness

discussing pleasant things/humor

demonstrating shared values

talking about family/children

affirming person as human being

show you care

share personal feelings and details

Reframe/translate/ neutral language

Venting/Day in court

Looking at needs and interests

Use parties' opening statements as springboard for questions/discussion

Modeling—mediator dress and behavior

Breaking Impasse

Evaluation techniques/ assessing risks/ reality checking/managing client expectations

Risk-cost benefit analysis (litigation costs, delay)

Good day/bad day/average day

Discussing weaknesses or uncertainties in case through artful questions

BATNA and WATNA or BALTO (Best Alternative to Litigated Outcome)

Mediator number

If they go to x, will you go to Y (if then) Bracketing

Strawman

Generating Creative Solutions

Ability to generate creative solutions

Brainstorming

What if? Questions/ Trial Balloons

Straw man (unworkable solution picked apart by parties)

Extra-legal solutions

Counsel meeting without clients (use with caution)

Pacing and Dealing with Difficult Offers and Demands

Narrow Issues or Broaden Issues

Put self in other's shoes—how are they likely to respond?

Dealing with a missing person or an unknown ruling

Suggest third party experts or fair, objective standards

One-text neutral document

Build on agreement; show progress; "cheerleading"

Boomerang

Time Out

Act Stupid ("help me understand")

Silence

When All Else Fails

Ask for help, advice or criticism (BEG) (help me help you)

Coin toss

Highly Directive or Evaluative Techniques (risky and more controversial) Risk of alienating parties

Ask leading or pointed questions

Give analysis of case, with strengths and weaknesses

Make predictions about outcome

Suggest specific resolution or settlement

Apply pressure to settle

Most Common Criticism of Unsuccessful Mediators

Lack of integrity*** (incl. breach of confidentiality)

Lack of credibility

Dishonesty in reporting other side's position

Not neutral
Pushing too hard for settlement
Gave inconsistent evaluations
Mediator lacked empathy or was disinterested
Mediator liked to listed to him- or herself talk
Did not listen
Did not understand issues/law/ or not well prepared
Just went through motions, just delivered messages
Quit too easily
Not creative, failed to propose solutions
Not flexible in approach
Poor sense of timing
Faulty evaluation skills

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