

8:30am - 9:00am

## Overview of Mediation Process and Mediator Role



This series of slides was adapted by Carl Arnold  
from *The Mediator's Handbook*, 4th Edition

What is mediation?

What is the mediator's role?

What makes mediation work?

What is the mediation process?

What are the guiding principles of mediation?

What are some important mediation terms?

# Mediation is. . .

- A process
- for resolving disputes
- where a neutral facilitator helps
- conflicting parties
- have a conversation
- to attempt to jointly resolve their concerns.

# Mediation is. . .

## → **A process**

for resolving disputes

where a neutral facilitator helps

conflicting parties

have a conversation

to attempt to jointly resolve their concerns.

Mediation unfolds differently in each case, but still has recognizable phases.

# Mediation is. . .

A process

- **for resolving disputes**  
where a neutral facilitator helps  
conflicting parties  
have a conversation  
to attempt to jointly resolve their concerns.

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.

# Mediation is. . .

A process

for resolving disputes

→ **where a neutral facilitator helps**  
conflicting parties  
have a conversation  
to attempt to jointly resolve their  
concerns.

A mediator is a neutral person who facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute.

# Mediation is. . .

A process  
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→ **conflicting parties**  
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to attempt to jointly resolve their concerns.

They can be two or more people involved in a conflict or court case.

In Family Mediation, the parties are often the two spouses or separating parents. They can sometimes also be grandparents or other people that have developed a substantial relationship with the child(ren).

# Mediation is. . .

A process  
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conflicting parties

→ **have a conversation**  
to attempt to jointly resolve their concerns.

The way out of conflict is through dialogue, which means talking and listening to each other. Dialogue broadens the parties' understanding of their situation, of each other, and of possible mutually agreeable solutions.



# Mediation is. . .

A process  
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have a conversation

→ **to attempt to jointly resolve their concerns.**

If an agreement is reached, the goal is for 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.

A good way to define mediation is found in Rule 114  
(we'll learn more about Rule 114 later in the class)

- A process
- in which a Neutral [person]
- facilitates communication and negotiation
- to promote *voluntary decision making*
- by the parties to the dispute.

Mediation works because it provides a structure for difficult conversations.



“A mediator shall act in a manner that recognizes that mediation is based on the principle of *self-determination by the parties.*”

**A key takeaway from this training is that the clients/participants in a mediation are free to:**

- decide to make an agreement
- decide to not make an agreement
- decide they need more time to think about it
- decide they want to leave mediation at any time

# **Mediators are in charge of the process but not the outcome**

Mediators provide:

- a structure to the process to help people talk, listen and think.
- a caring, impartial attentiveness to people, process and concerns.

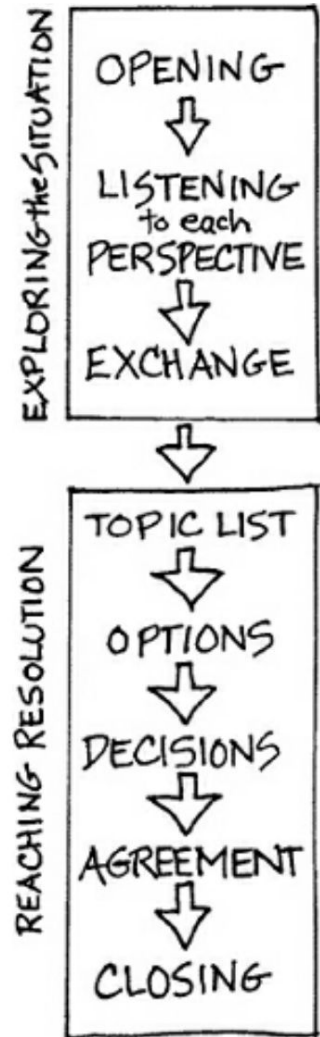
# The Mediation process

One of the most understandable ways to explain the mediation process is:

- 1) Stories (sharing and listening and clarifying)
- 2) Options (brainstorming possibilities)
- 3) Solution (if there is an agreement)

# The Mediation process

- A more thorough and detailed description of the typical steps to the mediation process is found in *The Mediator's Handbook* (see how the steps go from opening at the top to closing at the bottom).
- However, mediation can terminate at any time if someone decides to stop/leave the mediation. The mediation process isn't always linear either because, for example, more information might be shared while brainstorming, leading to more topics to discuss (and so on).





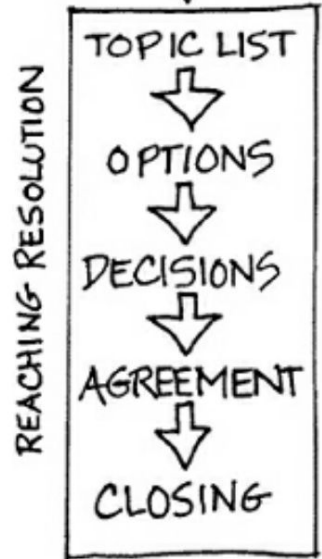
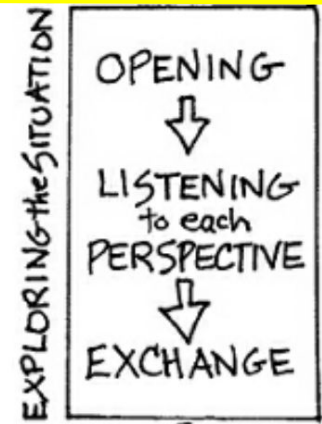
# The Mediation process

## 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.

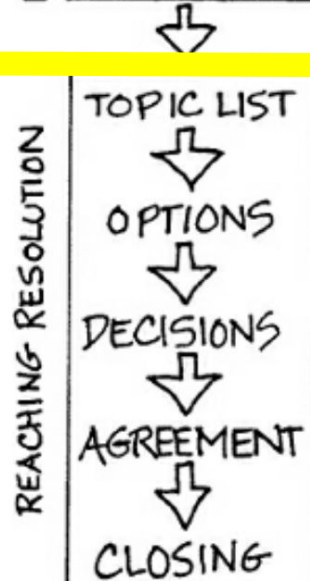
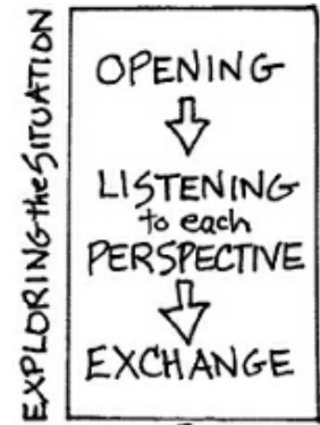
**3. The Exchange:** In open discussion, participants check out misunderstandings and fill in information gaps. They look at specific examples of behaviors and impacts. The focus is on understanding each person’s concerns in order to identify their interests and what topics need attention. Often there’s de-escalation from a self-protective, adversarial mode towards a readiness to cooperate.



# The Mediation process

## 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.



# Positions vs. Interests

<b>Position</b> (what a person asserts that they want, stated as a conclusion or demand. Often only one option provided or seems possible)	<b>Interest</b> (The need or desire behind a position. Often opens up many different possibilities for brainstorming a resolution that meets their interests)
I need sole legal custody because we can't make any decisions together	I am worried that we won't be able to agree about what church/mosque/synagogue to take the kids, or whether they will go to church/mosque/synagogue at all.
The other parent has to pay 100% of childcare after we separate.	I'm concerned that I won't be pay my bills unless we figure who will pay for what children's expenses, including childcare.
I have to have the house.	I need a place to live and enough space to have the kids during my parenting time.

# Positions vs. Interests

Mediation can be especially helpful in situations where two people can't get what they want or move forward without each other's cooperation. They are often stuck in adversarial mode.

Once they get to mediation, they may continue to use these strategies until their understanding of the situation starts to shift. Mediators can help participants shift their thinking to be more constructive.



# Positions vs. Interests

Positions = Premature Solutions

“The kids must live with me full time. That’s non-negotiable.”

A party’s “position” or stance at the start of a mediation—their demands or requests, their ideas about how to settle the conflict—are their protective armor. These positions are backed up, implicitly or explicitly, by threats or promises.

Parties may cling tightly to their well-rehearsed demands, and fear they will lose face or lose protection if they back down.

# Positions vs. Interests

Most positions are one-sided or premature solutions to a half-understood problem.

Because parties are operating on incomplete information about the other parties, their proposed solutions are likely to be unrealistic. Or they may be designed to fix a problem that proves not to be the real problem after all.

# Positions vs. Interests

One tool of mediators is to see if it might be helpful to change the conversation from a standoff between dueling positions to a discussion of how the parties can meet their interests.

Concentrate on information and interests. Instead of getting them to ease up on their positions and strategies, patiently work to bring out useful information, maintaining an attitude of caring and curiosity about their needs.

Don't get distracted by the parties' power and rights mindset or by strong position-taking. Give them time and patiently work to help them to shift gears to share their concerns and what is important to them—what is behind/driving their demands.

# Positions vs. Interests

Interest-based problem-solving means both listening and sharing—more than participants may be ready for. Try to create an emotionally supportive atmosphere that helps them to weather criticisms, to hear or tell uncomfortable facts. They are likely to take that risk gradually if they see hope of a resolution. Explore the passions behind their positions.

Positions may be rooted in the person's sense of identity and world-view—coming from their genuine and deeply-felt fears, not just a tactical proposal.



# Positions vs. Interests

Interests = What Matters and Why

Sometimes it's about what they fear about their future.

“I won't get to see my kids enough”  
“I don't know how I'll pay my bills”

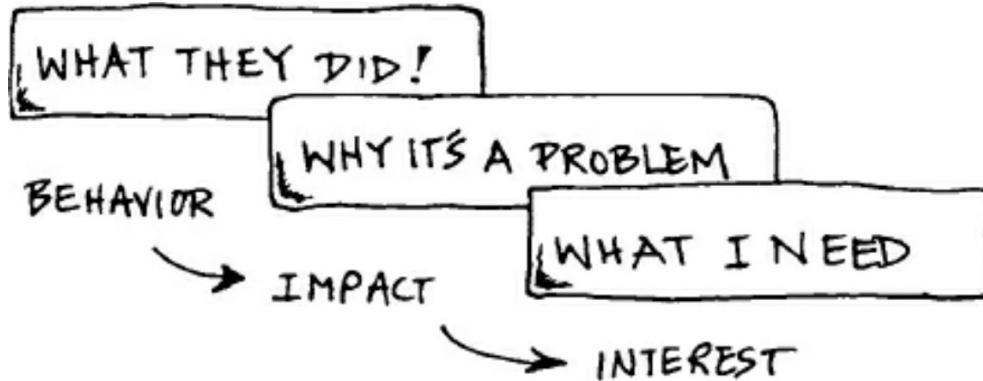


# Positions vs. Interests

Interests = what matters and why

Sometimes it's a fear grounded in what has happened in the past.

“Because they did that, I can't trust them with the children”



# Positions vs. Interests

Each person will have many interests, some of them contradictory, some of them not fully recognized by the person themselves. Mediators can help the participants get behind their positions to their interests.

Then, the mediation is often more productive because interests can often be resolved in more than one way. This opens the door to brainstorming about all the possibilities.

Everyone has lots of interests, sometimes they are competing or overlapping. They can be evaluated later in the mediation process.

# Positions vs. Interests

Interests define the problem in a way that opens up a range of potential solutions.

Working to understand interests helps the mediator understand, articulate, clarify, and legitimize people's needs and wants.

Interests help identify what criteria a successful agreement will need to meet.

Sometimes it is possible for mediators to frame their needs as mutual problems, increasing motivation to work together on resolving them.

# We are learning “Facilitative Mediation”

Transformative Mediation	Facilitative Mediation	Evaluative Mediation
<p>Seeks to empower the parties and encourage their recognition and understanding of each other. The focus/priority of the mediator is more on supporting the parties rather than on controlling the process or resolving topics.</p> <p>This model seeks to transform the people and the conflict by supporting the participants rather than focusing on the substantive “issues”</p>	<p>“A process in which a Neutral [person] <i>facilitates</i> communication and negotiation to promote <i>voluntary decision making</i> by the parties to the dispute.”</p> <p>The mediator is in charge of the process but they don’t give their own opinions about the outcome. They help the parties identify their interests, identify and prioritize topics and explore possible solutions.</p>	<p>Expands the role of the mediator to be more of an expert who gives assessments and opinions to the parties about the legal issues and an opinion as to how the parties should expect the court to rule on the case or issue presented.</p>

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## Overview of Mediation Process and Mediator Role

**Questions?**