

THE SUPREME COURT *of* OHIO
DISPUTE RESOLUTION SECTION

The Six Stage Model of Mediation

I. Stage One: Pre-Mediation

A. Case Development and Preparation

1. These activities occur in the days or weeks prior to the mediation to prepare the parties, non-party participants and the mediator for mediation
2. Sometimes the mediator performs case development, sometimes another person does
3. Pre-mediation activities may vary depending on court program and type of conflict; therefore, not all pre-mediation activities may be used in all cases

B. Case Development Activities

1. Review records, documents
2. Provide Agreement to Mediate
3. Review questionnaires parties submit concerning the background of the dispute
4. Screen (for safety concerns, needs, conflicts of interest, and appropriateness of the case for mediation)
5. Conduct Pre-mediation interview with parties, attorneys, nonparty participants, or review intake documents created by another person
6. Determine who will be participating in mediation, i.e., who are the parties, who are the nonparty participants (this information should be shared with the sides)
7. Determine mediation location
8. Schedule mediation date and time
9. Send notice of mediation date, time, and location
10. Determine how communication will occur: by phone? e-mail? text?
11. Set parameters for use of technology by participants in mediation
12. Reminder calls to parties 2-3 days prior to mediation date

C. Pre-mediation Interviews

1. Communicate with each party and his/her attorney, without the other side present
2. Describe the general mediation process and answer questions

- a. Describe how you conduct mediation, i.e., joint session, caucus, breaks, co-mediation model, use of experts, mediator's notes, etc.
- b. Describe role of mediator, parties, and nonparty participants
- c. Explain what happens if agreement reached or not reached
3. Ask if any participants have special needs, e.g., health issues, accommodations
4. Ask attorneys and parties for their view of the dispute
5. Ask what resolution might look like
6. Confirm who will be participating in mediation and how (in person? by phone?), ask for names, share with each side
7. Disclose anything that could impact mediator's impartiality
8. Ask if comfortable in same room. Note: if domestic abuse identified, follow domestic abuse protocols
9. Inquire about safety concerns, and determine if safe environment can be provided. Change location if needed. Consider having staggered arrivals and departures and other measures to protect mediator and participants.
10. Discuss Agreement to Mediate
11. Discuss if Confidentiality Agreement is needed, and if so, who will write initial draft
12. Give approximate time frame for mediation, confirm date
13. Go over mediation location, parking
14. In court programs, tell parties information shared/not shared with court

D. Day of Mediation: Room & Mediator Preparation

1. Prepare the Room
 - a. Pens, paper, forms
 - b. Flip chart
 - c. Calendar
 - d. Tissues
 - e. Calculator
 - f. Arrange seating
 - g. Arrange equipment (AV, speakerphone)
 - h. Food? Beverages?
2. Prepare the Mediator
 - a. Review names of participants
 - b. Brief overview of case documents/notes
 - c. Make notes about concerns or questions raised by document review
 - d. Note to yourself any feelings or "vibes" you may have about the parties and/or their interaction with each
 - e. Get centered, breathe, clear your mind

E. Mediator's Role in Stage One

1. Develop case for mediation
2. Prepare the parties, nonparty participants and the mediator for mediation
3. Build trust and rapport between mediator and parties, participants

II. Stage Two: Introduction

A. Beginning the Session - Mediator's Introduction

1. Introduce self and all present
2. Explain mediation process, reiterate explanation given in Stage One
3. Sign Agreement to Mediate (if applicable)
4. Sign Confidentiality Agreement (if applicable)
5. Establish Ground Rules for Mediation
6. Ask participants if they have any questions

B. Elements of a Mediator's Introduction

1. Introduce Self and All Present
2. Give Approximate Time Frame for Mediation, ask if any participants have any time restrictions, ask whether there will be multiple sessions
3. Explain Purpose of Mediation, Review the Process
4. Explain program, i.e. pre-filing, post-filing, etc., and what happens after mediation
5. Explain Role of Mediator, Parties, Attorneys, Nonparty Participants
6. Explain Mediation Privilege, Confidentiality and exceptions
7. Explain caucus
8. Explain that participants can take breaks to speak with attorneys, support persons
9. Establish Ground Rules for Mediation
10. Orient participants to physical location, i.e. restrooms, water fountains, what they may and may not bring into mediation session
11. Ask parties if they have any questions about process

C. Mediator's Role in Stage Two

1. Explain mediation process to participants
2. Observe participants for understanding of process and willingness to participate, etc.
3. Ensure necessary documents are signed
4. Keep control of the process
5. Include each person
6. Ask necessary questions

III. Stage Three: Parties Explain the Dispute

A. Parties Tell Their Story & Listen to Each Other's Story

1. Begin by asking each party to take turns telling you about the dispute from his or her perspective
 2. Ask each party to listen to what the other is saying without interrupting-- even though it may differ from the listener's own perspective
 3. The mediator should actively listen as each party speaks
 4. This stage is often referred to as the "Storytelling Stage." Give each party time to tell the story; Don't rush to fill in silence
 5. Be prepared to intervene if parties interrupt each other excessively; suggest parties jot down comments to capture their thoughts about what the other is saying
- B. Mediator asks questions and facilitates conversation to assist the parties' understanding of the other's viewpoint. Understanding the other does not mean agreement with the other.
- C. Mediator's Role in Stage Three
1. Give each party an opportunity to describe dispute from his or her perspective
 2. Use summary and reframing to enhance understanding
 3. Ask questions and facilitate conversation
 4. Listen for statements identifying each party's interests and concerns and possible points of agreement
 5. Allow parties time to build understanding and experience being heard
 6. Keep control of the process
 7. Include each person
 8. Ask necessary questions
 9. Keep parties from jumping to solutions and refrain from taking responsibility for solutions
 10. Be flexible and adapt the process to the parties' needs in each mediation

IV. Stage Four: Identifying, Clarifying Issues & Interests

- A. How to Identify and Clarify issues and interests
1. Once the parties have explained the dispute, the mediator assists the parties in identifying and clarifying all present and underlying interests and issues
 2. A goal of this stage is to create a list of issues that will be addressed during the mediation session
 3. Issues should be stated generally; for example: "communication," "future contact," "money in escrow," "weekend visitation," "needed repairs," "financial settlement figure"
- B. What to Identify
1. Identify the Story (incidents, perceptions, areas of agreement)

2. Identify Interests (substantive, procedural, psychological)
3. Identify Relationships (past, present, future)
4. Identify Emotions (emotional impact on each party, current feelings)

C. Tips for Identifying Issues and Interests

1. Wait until each party has had a chance to talk and respond before identifying issues. If both agree on an issue, that one can be identified sooner
2. Find a way to address "hot button" issues; look at the underlying interest and reframe as an interest
3. Use positive or neutral language when identifying an issue
4. State issues generally and succinctly; use 1-3 words, i.e., "communication", "need for sleep," "remaining work," "future contact," "pickup/drop off kids"
5. Include individual issues, as well as shared issues

D. Creating List of Issues to Be Mediated

1. When it appears that all issues have been identified and no new issues are being raised by parties, the Mediator creates an issue list
2. The Mediator asks parties if the list is complete. If there are others, the Mediator identifies them and adds them to the list
3. Once the parties agree that the issue list is complete, the Mediator asks if the parties want to address the issues on the list
4. Once the issue list has been revised, the Mediator asks parties to confirm that the list contains all the issues parties want to address in mediation

E. Parties may raise new issues that were not mentioned when they were explaining the dispute. Mediator may need to go back and use the Stage Three process to let the parties discuss a new issue before completing the list of issues to be mediated.

F. Mediator's Role in Stage Four

1. Keep control of the process
2. Include each person
3. Ask necessary questions
4. Listen for Interests and Issues and consider how issues that cannot be negotiated can be reframed into issues that can be negotiated
5. Watch for moments of understanding or reconciliation
6. Summarize their interests and concerns
7. Refrain from finding solutions
8. Move parties away from focusing on facts
9. Be flexible and adapt the process to the particular needs in each mediation

V. Stage Five: Generating & Selecting Solutions

A. Parties generate and evaluate possible solutions to resolve the dispute and determine if parties can develop solutions that are acceptable

B. Tips for Generating Options

1. Ask parties for suggestions about solutions
2. Encourage parties to build on other's suggestion
3. Manage parties' critiques, analyses of suggestions, e.g., "Sounds like you have questions about how that might work, let's keep going and we'll come back to that."
4. Ask parties what they can personally do to resolve dispute
5. Reframe suggestions neutrally
6. Refer to Issue List to make sure each issue is addressed

C. Evaluating Solutions

1. Ask for parties' feedback about suggested solutions
2. Refine based on mutual input
3. Ask for clarification, ask for specifics in order to answer the questions, "who, what when, where and how"
4. Ask questions to test for workability
5. Ask "What if?" questions
6. Ask questions to help parties do a reality check: will this work?

D. Reality Testing

1. Is it specific? Is it workable? Try some "What If's"
2. Columbo technique: "Help me understand....."
3. The greater the mistrust between the parties, the greater the need for more details
4. Got communication?
5. How will third parties and "shadow negotiators" respond to possible solution?

E. Selecting the Solutions

1. Summarize agreement terms, stating what agreement has been achieved
2. Clarify vague agreement terms
3. Confirm parties commitment to the agreement
4. Decide on agreement format
5. Discuss recourse if agreement isn't maintained

F. Mediator's Role in Stage Five

1. Facilitate and manage conversation
2. Ask questions to help parties generate, evaluate and select solutions
3. Reframe suggestions neutrally
4. Keep control of the process
5. Include each person
6. Ask necessary questions
7. Mediator may need to be actively involved in guiding this stage. For example, if parties agree that an amount of money will be paid, a mediator should ask, "when will that payment occur?" "are you thinking of a cash payment?" or other questions to insure a detailed agreement
8. Be flexible and adapt the process to the particular need in each mediation

VI. Stage Six: Concluding Mediation

- A. Mediator concludes mediation by thanking participants
- B. Mediator confirms if and how agreement will be memorialized. While most parties want agreements memorialized in writing, some parties may want a verbal agreement instead of a written agreement
- C. Mediator discusses next steps (if any) for parties
- D. Mediator may distribute mediation evaluation forms to participants
- E. Mediator completes required outcome forms and other necessary paperwork
- F. Memorializing the agreement in a record, e.g. Memorandum of Understanding, audio recording, fill-in-blank template form
 1. Memorandum of Understanding may be prepared by mediator or an attorney
 2. Mediator remains in role of scrivener in writing Memorandum of Understanding or Agreement
 3. If the final format of the agreement is not created in the mediation, e.g., settlement agreement to be drafted by attorneys, create "schedule" for that to occur and include that in MOU/summary
- G. What if No Agreement?
 1. Review which issues have been resolved and which issues remain, summarize partial agreements in a record if parties request.
 2. Discuss whether a future mediation session might be useful. Consider the passage of time, discussion with or approval from other constituents, consultation with outside experts, obtaining/exchanging missing information, telephone or email follow-up

3. Discuss other dispute resolution processes
 4. If appropriate, encourage parties to continue to communicate about resolution of the dispute
- H. Thank all present for their participation
1. Congratulate parties who reach resolution
 2. Normalize “no agreement” for parties who do not reach agreement
 3. In-court programs: inform parties what information will be reported to court and what information will not be shared with the court
 4. Be clear that mediation is over; escort parties out of room, do not engage in lengthy discussions with either side afterward
- I. Documentation, Outcome Forms, Paperwork, Records Completion
1. Complete and distribute appropriate paperwork
 2. Complete mediator’s records
 3. Make report to court. Ensure that outcome notice in Court programs complies with requirements of Uniform Mediation Act and any local court rules
 4. Do any follow-up required by court program; the court may ask you to:
 - a. Follow up with parties/attorneys before next court date to make sure that any filings are done prior to next court date
 - b. Follow up with parties/attorneys close to next court date to see if settlement may now be possible
- J. Mediator’s Role in Stage Six
1. When attorneys participate in the mediation, consider having them, not the mediator, draft the language of a settlement agreement, when attorneys participate in the mediation
 2. If attorney is not involved, as often is the case with family mediation, mediators will use a “Memorandum of Understanding” document.
 3. Some programs create boilerplate “fill-in-the blank” forms for mediators to use.
 4. Mediator (in above two points) acts only as scrivener, writing down the language agreed upon by the parties
 5. Do not give legal advice
- K. Mediator Self-evaluation
1. Reflect and self-evaluate
 2. Debrief if working with a co-mediator