



Mediation

- Mediation Process
 - Why Mediate?
- Mediation Strategies
- Disputes suitable for Mediation
- Dos and DON'Ts of mediation
 - Mediation Model

MEDIATION PROCESS



WHAT DO YOU KNOW ABOUT MEDIATION?



Mediation is voluntary.
Mediation is inexpensive.
The parties decide the outcome.
Cordial & win-win situation.

WHAT IS MEDIATION?

- ✦ **Mediation**, as used in law, is a form of alternative dispute resolution (ADR), a way of resolving disputes between two or more parties with concrete effects. Typically, a third party, the mediator, assists the parties to negotiate a settlement. Disputants may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community and family matters.

- ✦ The term "mediation" broadly refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential, possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process.

Why
Mediate?



THE BENEFITS OF MEDIATION

- ✘ Mediation often improves understanding between the parties in an ongoing relationship.
- ✘ Compared with going to court, mediation is:
 - less expensive
 - quicker
 - more informal
 - less stressful
- ✘ Mediation is voluntary. The parties and the mediator have the right to withdraw at any time, although this is rare.

BENEFITS OF MEDIATION

- ✦ **Cost**—While a mediator may charge a fee comparable to that of an attorney, the mediation process generally takes much less time than moving a case through standard legal channels
- ✦ **Less Time** - While a case in the hands of a lawyer or a court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours.

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- ✘ **Confidentiality**—While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator(s) know what happened.
- ✘ **Control**—Mediation increases the control the parties have over the resolution. In a court case, the parties obtain a resolution, but control resides with the judge or jury.
- ✘ **Compliance**—Because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high. This further reduces costs, because the parties do not have to employ an attorney to force compliance with the agreement. The mediated agreement is, however, fully enforceable in a court of law.

- ✦ **Mutuality**—Parties to a mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to "move" their position.
- ✦ **Support**—Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and guides the parties through the process. The mediator helps the parties think "outside of the box" for possible solutions to the dispute, broadening the range of possible solutions.

MEDIATION PROCESS

- Mediator opening statement
- Party opening statements
- Exchange/negotiation
- Use the mediator as a messenger
- Closure/agreement

MEDIATION STRATEGIES

• Facilitative

- The facilitative mediator “asks questions
- Validates and normalizes parties’ points of view
- Assists the parties in finding and analyzing options for resolution
- Mediator does not offer advice, recommendations or opinions



MEDIATION STRATEGIES

•Evaluative

- Often used when money is an issue in the dispute.
- Offer an opinion of the merits of the case
- Evaluation can either apply to the legal issues or factual issues, be they financial, engineering related or otherwise”
- This style may also point out strengths and/or weaknesses of the positions proposed by each side of the dispute.



MEDIATION STRATEGIES

• **Transformative**

- One of the newer styles of mediation
- Keeps the structure of the facilitative style
- Seeks to empower each of the parties and encourage each party to recognize the other party's point of view.
- Focuses a great deal on interaction and communication between the disputants



MEDIATION STRATEGIES

• Narrative

- This style of mediation pre-supposes that people become caught in the conflict cycle because they see themselves as being bound to it.
- Mediator using this style gets the parties to view the conflict from a distance, through story telling
- Linden states that this style works well when the disputants have an on-going relationship past the mediation.



WHEN TO USE MEDIATION

- Parties & Lawyers Committed To Process
- Ongoing Relationship Important
- Privacy Important
- Time Pressure To Settle

MEDIATOR'S ROLE

- Serves As A Neutral Facilitator
- Summarizes, Restates And Prioritizes Issues In A Non-Judgmental Manner
- Assists In The Generation Or Clarification Of Options
- Evaluates Options And Possible Consequences
- Enforces The Ground Rules
- Identifies Areas Of Mutual Interest

FINALLY - A LESSON FROM HISTORY

- ‘Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser...in fees, expenses and waste of time.’

Abraham Lincoln

TYPES OF DISPUTES SUITABLE FOR MEDIATION

- ✦ Mediation is suitable for resolving a wide range of disputes including:
 - ❑ business and commercial
 - ❑ Partnership
 - ❑ Family
 - ❑ workplace
 - ❑ personal injury
 - ❑ industrial and construction.

WHAT HAPPENS IN MEDIATION?

- ✦ Mediation is a flexible process that can be adapted to suit the parties and the circumstances.
- ✦ Mediation is purely facilitative: the mediator has no advisory role. Instead, a mediator seeks to help parties to develop a shared understanding of the conflict and to work toward building a practical and lasting resolution.

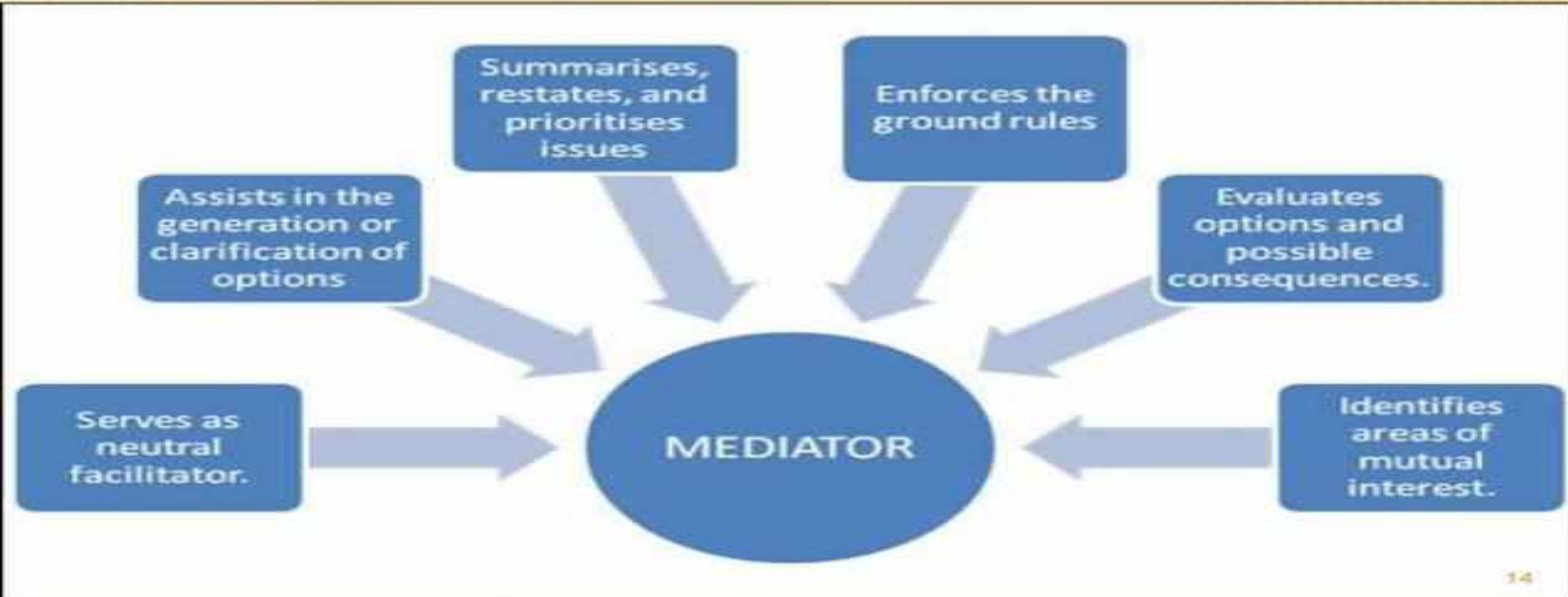
WHO IS THE MEDIATOR

- ✘ A mediator is a neutral third person who encourages those in the dispute to talk to each other about the issues. The mediator is not an advice-giver or decision-maker. The parties examine the real problems, large or small. They then create and agree upon an outcome that meets their needs and addresses their concerns.
- ✘ Mediators use various techniques to open, or improve, dialogue and empathy between disputants, aiming to help the parties reach an agreement. Much depends on the mediator's skill and training. As the practice gained popularity, training programs, certifications and licensing followed, producing trained, professional mediators committed to the

CRITERIA OF A MEDIATOR

- ✘ The following are useful criteria for selecting a mediator:
- ✓ Personal attributes—patience, empathy, intelligence, optimism and flexibility
- ✓ Qualifications—knowledge of the theory and practice of conflict, negotiation and mediation, mediations skills.
- ✓ Experience— mediation experience, experience in the substantive area of dispute and personal life experience
- ✓ Training
- ✓ Professional background
- ✓ Certification and its value
- ✓ Suitability of the mediation model
- ✓ Conflicts of interest
- ✓ Cost/fee

DUTIES OF THE MEDIATOR



THE MEDIATOR WILL HELP YOU TO

- Work out what you want to happen
- ✖ Find your own solutions to the situation
- ✖ Prepare what you want to say
- ✖ Get your point across in a constructive way
- ✖ Be listened to without interruption
- ✖ Put together an agreement of what you want to change

THE MEDIATOR WILL NOT

- Tell you what to do
- Take sides
- Judge you
- Force you to do anything

COUNSELING & MEDIATION

A counsellor generally uses therapeutic techniques. Some—such as a particular line of questioning—may be useful in mediation. But the role of the counsellor differs from the role of the mediator. The list below is not exhaustive but it gives an indication of important distinctions:

- ✦ A mediator aims for clear agreement between the participants as to how they will deal with specific issues. A counsellor is more concerned with the parties gaining a better self-understanding of their individual behaviour.

- ✘ A mediator, while acknowledging a person's feelings, does not explore them in any depth. A counsellor is fundamentally concerned about how people feel about a range of relevant experiences.
- ✘ A mediator focuses upon participants' future goals rather than a detailed analysis of past events. A counsellor may find it necessary to explore the past in detail to expose the origins and patterns of beliefs and behaviour.
- ✘ A mediator controls the process but does not overtly try to influence the participants or the actual outcome. A counsellor often takes an intentional role in the process, seeking to influence the parties to move in a particular direction or consider specific issues.

- ✘ A mediator relies on all parties being present to negotiate, usually face-to-face. A counsellor does not necessarily see all parties at the same time.
- ✘ A mediator is required to be neutral. A counsellor may play a more supportive role, where appropriate.
- ✘ Mediation requires both parties to be willing to negotiate. Counselling may work with one party even if the other is not ready or willing to participate.
- ✘ Mediation is a structured process that typically completes in one or a few sessions. Counselling tends to be ongoing, depending upon participants' needs and progress.

THE MEDIATION PROCESS

- ✦ Mediation is a voluntary process in which the mediator facilitates the disputing parties.
- ✦ Mediation can be conducted in any setting where the disputants can be accommodated.
- ✦ Mediation gives the parties the opportunity to discuss the issues.
- ✦ The mediator helps the parties to agree on a mutually acceptable resolution.
- ✦ Mediation must be strictly confidential.

THE MEDIATION MODEL

- ✦ Introduction
- ✦ Problem Determination
- ✦ Summarization
- ✦ Issue Identification
- ✦ Generation and Evaluation of alternatives
- ✦ Selection of appropriate alternatives
- ✦ Conclusion

- ✦ **Introduction:** This is the first formal contact between the parties and the mediator. The mediator should identify the parties, define mediation, explain the mediation process and establish ground rules.
- ✦ **Problem Determination:** The mediator asks each party to relate his/her side of the story. During this stage there is a flow of information from the parties to the mediator.

- ✦ **Summarization:** After each party has completed their stories, the mediator uses non-judgmental and neutral words to summarize. The summary must be an accurate statement of each party's story.
- ✦ **Issue Identification:** The mediator then assist the parties in identifying those issues that need to be mediated if the dispute is going to be resolved.

- ✦ **Generation and Evaluation of Alternatives:** During this stages, the parties propose alternatives for resolving the dispute. These alternatives will be discussed in an effort to effect a resolution of the problem.
- ✦ **Selection of Appropriate Alternatives:** The parties agree on which alternatives will resolve the dispute. (Choose the best solution.)
- ✦ *Note: Both parties should agree on the solution, it should be a win – win situation.*

- ✦ **Conclusion:** The Mediation should conclude with a final re-statement and clarification of the terms of the resolution

Me·di·a·tion :

Intervention between conflicting parties to promote reconciliation, settlement, or compromise

REFERENCES

- ✘ http://www.crs.org.au/html/what_is_mediation.htm
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