

Mediation and Conflict Resolution



Compiled by:

Edwin C. Bumbaugh

Kathryn Stoltzfus Fairfield

Timothy J. Ruebke

Kathryn K. Smith



Advancing Dialogue and Understanding

590 Neff Avenue, Suite 3000
Harrisonburg VA 22801

Voice (540) 434-0059
Fax (540) 705-1752
Email training@fairfieldcenter.org
WWW fairfieldcenter.org

CERTIFIED TRAINING

This course is certified by the Office of the Executive Secretary of the Supreme Court of Virginia. However, please note that mere attendance at this training does not guarantee successful completion of the course for mediation certification purposes. Recommendations by the certified trainer that a participant receive additional training before continuing in the certification process will be given great consideration by the Office of the Executive Secretary in evaluating a candidate for certification.

FAIRFIELD CENTER PROFILE

A group of people in the Harrisonburg/Rockingham County area, who saw the need for a creative and positive way of dealing with conflict, established the Community Mediation Center (CMC) in January of 1982. CMC was the first community-based mediation center in Virginia and has been doing business as the **FairField Center** since 2010. As a nonprofit community service organization Fairfield now serves the Central Shenandoah Valley cities of Harrisonburg, Waynesboro and Staunton; Augusta and Rockingham Counties and the surrounding region. Fairfield offers a full range of facilitated negotiation services for disputes involving individuals, families, businesses, organizations and communities. A Restorative Justice program serves victims and offenders in situations where there has been criminal wrongdoing.

Along with the Center's extensive history in providing training throughout Virginia, West Virginia, Maryland and other states across the country, it started the first school peer mediation program in Virginia in 1986. FairField gears the training programs to teach "life skills" in communication and conflict resolution: by empowering both young and old to resolve their conflicts without violence and with increased understanding.

Contributions from individuals, businesses, churches and civic groups, and grants from the United Ways of Harrisonburg / Rockingham County, Waynesboro / East Augusta County and Staunton / West Augusta County help to fund FairField Center. Training revenues, contracts and client fees, as well as money from special events and fundraisers make up the difference.

Copyrighted materials 1989 & 2021. FairField encourages reproduction of these materials but reserves all publication rights. Development of training materials is costly. A contribution of \$.10 per page, per copy for use in religious or nonprofit settings and \$.20 per page, per copy for use in other settings is requested. This money helps to fund development of new materials. For inquiries and payments contact the **FairField Center**.

CONTENTS

Certified Training	1
Fairfield Center Profile	1
Mediation & Conflict Resolution Training	4
Conflict	5
Images of Conflict	7
Personal Approaches in Dealing with Conflict	7
Conflict Approaches	8
Negotiation	10
Negotiation: Two Perspectives	11
The Two Perspectives	13
The Conflict Management Model	14
Notes Page	15
Mediation Process	16
Dispute Resolution Options	17
Defining Mediation	18
The Mediation Process	19
Mediation Preparation Checklist	20
Introduction Stage	21
Sample Agreement to Mediate	22
Information Sharing Stage	24
Information Sharing Points	25
The Clarification Stage	26
Generation of Options Stage	27
More Problem-Solving Points	28
When to Have private meetings	30
Private Meetings	31
Resolution /Closure	32
Agreement Writing Tips	33
Memorandum of Agreement	34
Transforming the Conflict	35
On Listening	36
Communication Skills	37
Effective Listening	38
Paraphrasing	39
Paraphrasing Process	40
More Mediator Communication Skills	41
Rapport Building Skills	42
Cycle of Reconciliation	43
Dealing with Emotions	44
How Do You Feel?	45
Understanding Anger	46
Power Discussion	47
Principles of Conflict Resolution	48
Negotiating with Difficult People	49
Notes Page	50
Issues for the Mediator	51
Empowerment & Recognition Transform Interaction	52
Mediator Styles	53
A Matter of Attitude	54

Attributes of a Mediator	55
Co-Mediating	56
Involving Attorneys in Mediation Sessions	57
Getting People to Mediation	58
Informal Mediation	59
Court-Referred Dispute Resolution Proceedings	60
Private-Referred Dispute Resolution Proceedings	64
Standards of Ethics and Professional Responsibility	66
Ethical Dilemmas	74
Appendix	75
Guidelines for Practice Sessions	76
Case Management Flow Chart	77
Authorization for Release of Information	78
Supreme Court of Virginia Evaluation	79
Frequently Asked Questions about Mediation	81
Virginia Certification	85
Mandatory Reporting requirements	86
Reporting Child Abuse and Neglect	89
Bibliography	90

The Chinese symbol for crisis has two parts: danger and opportunity. Although conflict is part of normal day-to-day life, we generally view conflict as danger – a crisis. The purpose of training in conflict resolution and mediation is to provide skills needed to turn conflict into opportunity.

How we manage differences or resolve conflicts largely determines how satisfying our relationships with others will be. At the heart of managing differences is speaking clearly for oneself, listening well to others and problem solving together. This is not an easy task when we feel troubled or pressured. Intense emotional energy hinders our ability to communicate and negotiate. Thus, in conflicts a trusted, impartial third party can be helpful in directing a problem-solving process.

The opportunity provided by mediation is to repair or improve relationships damaged by conflict. When persons understand each other and feel understood, a creative energy emerges which invariably transforms their relationship, producing a mutually acceptable solution to the problem.

The purpose of this training is to teach the skills needed to mediate for others. Included are communication skills and conflict theory, practice of mediation and evaluation of progress. Mediation trainers will give individual feedback to help participants address specific strengths and weaknesses.

In addition to supplementing the training experience, this manual can be used as reference in preparation for mediation or other conflict situations.

Mediation & Conflict Resolution Training will provide the opportunity to:

1. Gain insight into personal communication and conflict management style.
2. Enhance listening skills that will give others the assurance that you understand them.
3. Deal effectively with participants who have intense emotions.
4. Develop problem-solving skills helpful in your own conflicts and when working with other individuals.
5. Learn the stages of the mediation process and gain practice experience.
6. Understand ethical and legal issues facing the mediator.
7. Become acquainted with resources available for mediators.

CONFLICT



*"Not everything that is faced can be changed,
but nothing can be changed until it is faced."*

-- James Baldwin

What are our underlying attitudes?

Most discussions of conflict start by defining what conflict “is.” We prefer to start by asking what conflict is “like.” Similes and metaphors are helpful images for perceiving how people understand and experience a particular event or relationship (i.e., “Conflict is like a storm”).

- **How would you complete these sentences? What images come to mind?**

Conflict is like . . .

I experience conflict like a . . .

- **Typically, metaphors for conflict reflect negative visions. But they can be positive . . . i.e.**

- **It is helpful to see conflict as a normal and pervasive human activity providing the opportunity for both growth and change:**

Awareness allows one to make a choice rather than just reacting instinctively.

- Conflict approaches are patterned responses to confrontation.
- The approaches are learned behavior, often used automatically. They influence your strategy and orientation in dealing with conflict.
- Conflict approaches cluster into five types

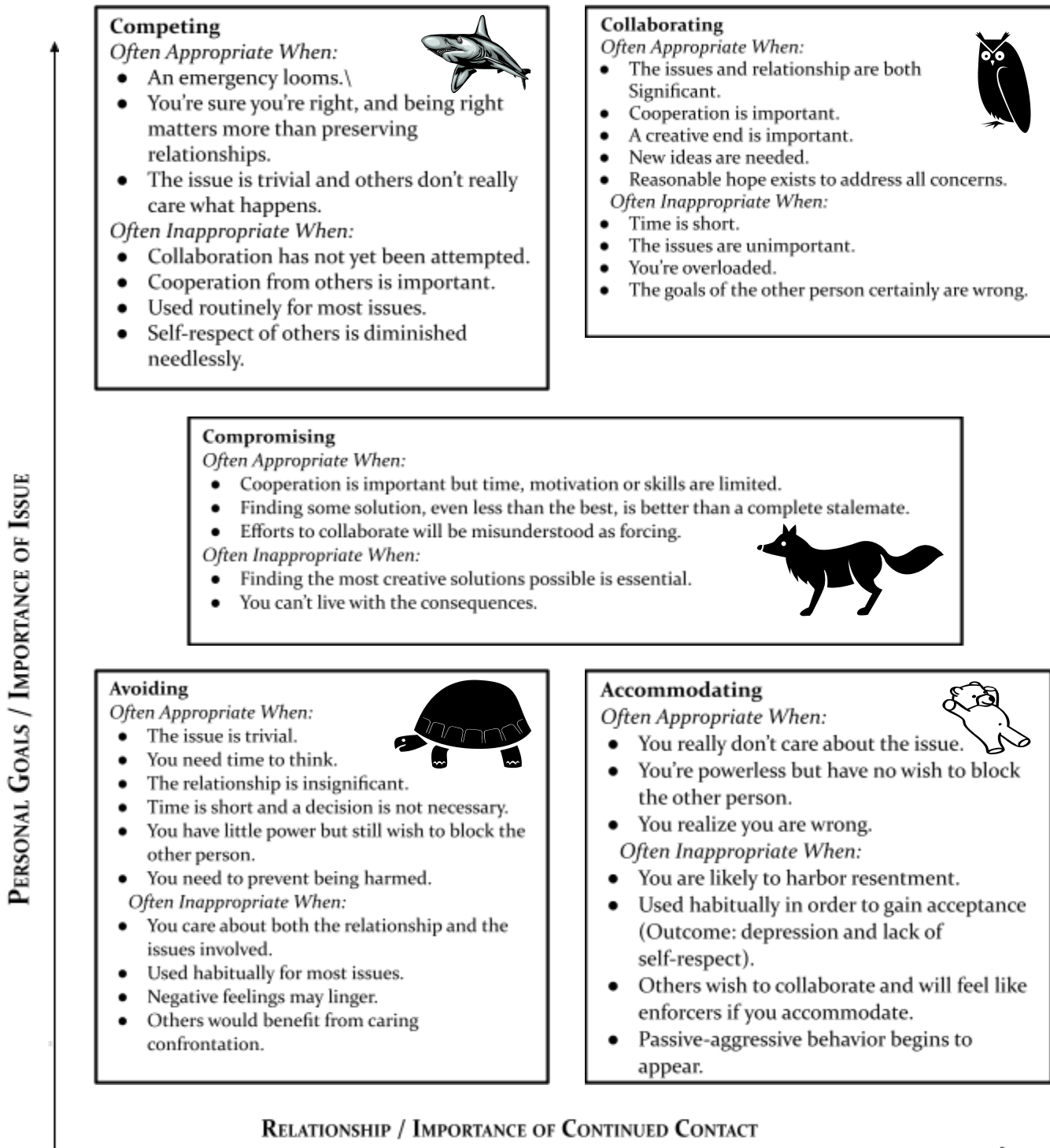
**Avoiding
Competing
Accommodating
Compromising
Collaborating**

- Awareness of your own patterned responses, as well as the patterns and responses of others, is useful.

**What is your usual approach in handling conflict?
Are you aware of moving to another approach in certain situations?
Do you know why/when you developed these patterned responses?**

- Awareness is the first step to choosing a conflict strategy most appropriate for the occasion.
- In the course of a given conflict you may use several conflict styles, beginning with avoidance to see if the problem will resolve itself, then perhaps seeing if a unilateral solution will be accepted, and if it is not, settling to work on a collaborative solution.
- As we mature, ideally we will use a collaborative style in more situations and with more skill.

When to use which approach



NEGOTIATION



“A problem well stated is a problem half solved.”

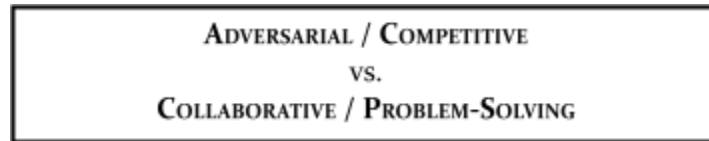
-- Source Unknown

“... who’s to say you have to lose for someone else to win?”

-- John Denver

NEGOTIATION: TWO PERSPECTIVES

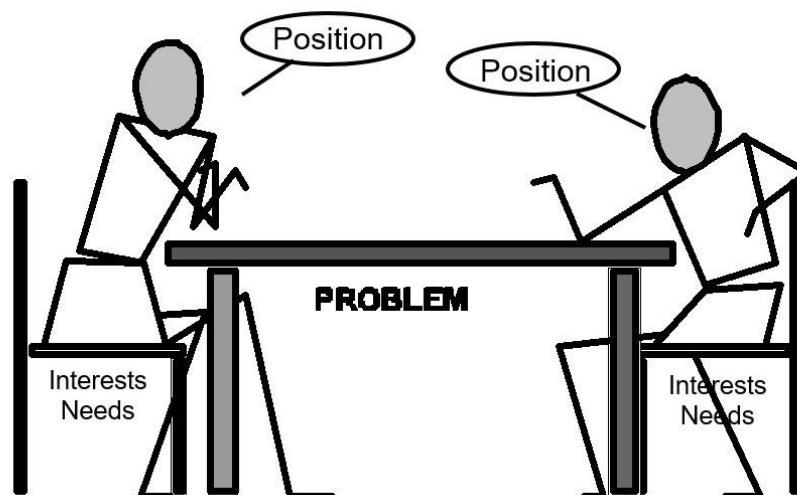
Negotiation is a consensual process of adjusting differences. We negotiate everyday, using a variety of styles and strategies. There are two principal negotiating perspectives or orientations:



Adversarial Perspective:

- Emphasizes maximizing individual gain.
- Focuses on manipulating the process to secure advantage.
- Tries to control agenda, site, physical arrangements and timing.
- Guards against openness and responsiveness to the opponent's message.
- Uses emotional pressure.
- Makes high initial demands.
- Tries to lessen the opponent's confidence.
- Encourages brinkmanship.
- Assumes "The other wants what I want."
- Conceals certain information and assumes the opponent will do the same.
- Is characterized by a preconceived "bottom line" and a strategy designed to ascertain the opponent's bottom line while concealing your own.
- Attempts to persuade the opponent to make concessions without reciprocating.
- Encourages "positional bargaining", building own case and not yielding.
- Assumes that "the more you get, the less there is for me."

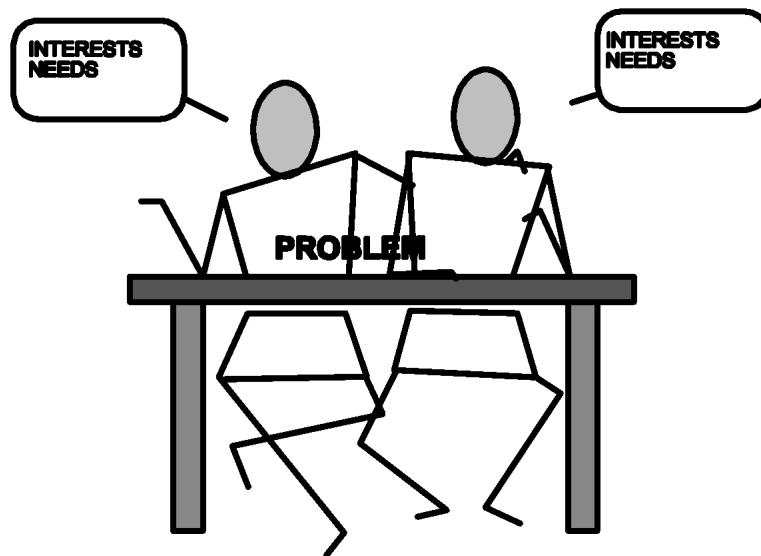
The adversarial model looks like this:



Collaborative Perspective:

- Has a “we-are-all-in-this-together” attitude.
- Sees the other as partner rather than opponent.
- Recognizes that all participants have certain interests in common.
- Seeks to meet the underlying needs and interests of all participants to the dispute.
- Assumes that ascertaining a greater number of needs of all participants will create more possible solutions which can be “dovetailed.”
- Separates the people from the problem.
- Reveals information and expects reciprocity.
- Values and builds good working relationships.
- Recognizes legitimacy of values, interests and needs of others.
- Focuses on interests rather than positions.
- Makes realistic initial demands.
- Generates options for mutual gain.
- Uses objective criteria.
- Is willing to make “principled” concessions.
- Is willing to risk.
- Seeks a win/win outcome.

The collaborative model looks like this:



Mediation is *facilitated negotiation*. The mediator normally intervenes in a dispute where the participants have assumed an adversarial perspective. Mediators attempt to shift the negotiation to a collaborative perspective.

A quick comparison of Competitive and Collaborative processes.

Competitive	Collaborative
<p>Communication:</p> <ul style="list-style-type: none"> • Guarded, secretive, deceptive • Coercive • Blaming and fault-finding • Indirect <p>Attitude:</p> <ul style="list-style-type: none"> • Mistrust and suspicion • Individualistic • Past-focused • Aggressive/defensive <p>Process:</p> <ul style="list-style-type: none"> • Bargain from positions • Attack each other • Use any standard to advance positions • Consider information and needs <p>Outcomes:</p> <ul style="list-style-type: none"> • Win/Lose • Compromise between positions • Feeling of overpowering or being overpowered • Alienation 	<p>Communication:</p> <ul style="list-style-type: none"> • Open, honest • Persuasive • Little blaming or fault-finding • Direct <p>Attitude:</p> <ul style="list-style-type: none"> • Trusting • Promoting mutuality • Future-focused • Assertive <p>Process:</p> <ul style="list-style-type: none"> • Bargain from interests and needs • Attack problems • Develop fair and objective standards • Invent options for all • Reveal needs and reasons <p>Outcomes:</p> <ul style="list-style-type: none"> • Win/Win • Mutual needs met • Mutual ownership • Dignity • Relationship

A brief overview.

Stage One: Set the Stage

- ❖ Choose an appropriate time and place to communicate
- ❖ Gather relevant information and prepare emotionally
- ❖ Agree there is a problem to solve and commit to solving the problem together
- ❖ Build rapport and determine the ground rules

Stage Two: Listen

- ❖ Allow each participant to tell their perspective of the situation
- ❖ Demonstrate respect and effective listening skills
- ❖ Paraphrase or restate what you heard
- ❖ Avoid interrupting, making assumptions or solving the problem

Stage Three: Clarify

- ❖ Ask appropriate questions to better understand
- ❖ Look for common ground and areas of agreement
- ❖ State your interests and underlying concerns
- ❖ Identify the issues needing resolution

Stage Four: Generate Options

- ❖ Prioritize and work on one issue at a time
- ❖ Identify several options
- ❖ Think creatively *without* judgment
- ❖ Evaluate pros and cons of options

Stage Five: Agree on solution

- ❖ Keep in mind the need for flexibility
- ❖ Seek a solution that satisfies everyone's interests
- ❖ Propose and counter propose until a solution is found
- ❖ Repeat verbally what is agreed to or put in writing the solution chosen

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, typical of notebook paper. There is no handwriting or other markings on the page.

MEDIATION PROCESS



*“If you don’t agree on the problem, you’ll never
agree on the solution.”*

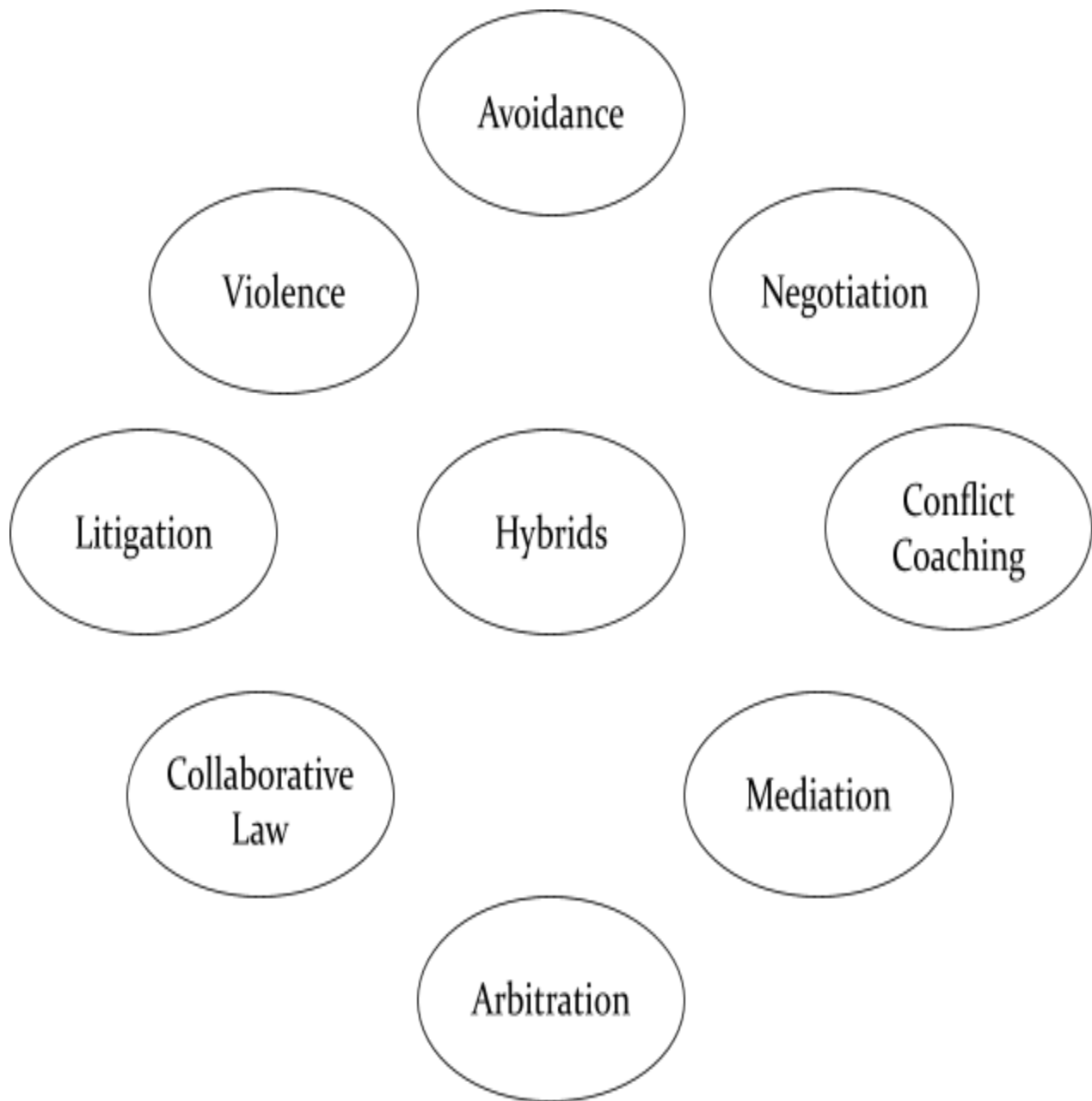
-- Source Unknown

*“Mediation’s aim is not to suppress argument,
but to give argument meaningful form and coherent process.”*

-- Peter Adler

Many choices exist for dealing with conflict.

As one moves around the circle, consider inherent flexibility, time required, financial costs, emotional stress, number of participants, control over content, control over outcome, etc.



Working toward explaining the process.

Mediation is . . .

- ❖ Facilitated negotiation.
- ❖ Helping people have difficult conversations.
- ❖ Creation of trust for the exchange of promises.
- ❖ A structured and confidential process where people in conflict, assisted by a trained and impartial mediator with no decision-making authority, are empowered to communicate their needs and interests, identify their issues, consider their options and voluntarily reach a mutually acceptable resolution.
- ❖ The opportunity to learn the value of individual differences and perspectives while negotiating win-win outcomes and identifying areas of common ground.
- ❖ The potential to transform miscommunication, disrespect and adversarial positions into understanding, trust and collaborative problem solving.
- ❖ To promote more peaceful relationships for individuals, families, businesses, organizations, communities and countries.
- ❖ An alternative to avoidance, litigation and violence.
- ❖ More than a technique or skill, it is a philosophy and a way of life.

The Role of the Mediator

is:

is not:

A brief overview.

Case Preparation

- Interview and screen potential participants for background information and appropriateness
- Inform the parties of the process, mediator role, and how they can best prepare
- Meet resistance with potential benefits
- Schedule and later remind participants of the date, time, and location for mediation

Stage One: Introduction

- Create environment for communication
- Introduce participants and build rapport
- Explain mediation procedure (*“four legals,” confidentiality, termination, etc.*) and role of mediators
- Agree on ground rules and sign Agreement to Mediate Form

Stage Two: Information Sharing

- Invite each party to present goals, background and individual perspective
- Listen actively with appropriate body language
- Summarize primary concerns and feelings of each participant. What are the emerging themes?
- Give additional round for responses and more information

Stage Three: Issue Clarification

- Ask clarifying questions
- Note common ground and highlight differences
- Clarify goals and interests
- List issues and concerns

Stage Four: Generation of Options

- Prioritize issues
- Generate options for resolution
- Evaluate options
- Separate Meetings, if appropriate

Stage Five: Resolution/Closure

- Negotiate mutually agreeable resolution
- Specificity: cover who, what, when, where, how and why
- Draft agreement in wording appropriate for circumstances
- Encourage consultation with attorney prior to signing

Follow Up and Reporting

- See how parties are doing (*check-in and get signed agreement*)
- Complete court reports and other required paperwork

Are the mediators ready for the session?

Facilities:

- ☐ Private, convenient, neutral and well lit meeting place
- ☐ Appropriate table and comfortable chairs
- ☐ Separate waiting and private meeting rooms
- ☐ Zoom, Webex, Skype, Google Meet, Microsoft Teams, etc.
- ☐ Parking and accessibility for disabilities
- ☐ Restrooms and smoking provisions
- ☐ Safety considerations

Supplies:

- ☐ Easel, chalk or dry erase board
- ☐ Markers and masking tape
- ☐ Note paper and pens
- ☐ Calendar
- ☐ Money for change
- ☐ Community resources booklet
- ☐ Calculator
- ☐ Tissues
- ☐ Glasses and water
- ☐ Forms
- ☐ Clock on wall

Preparation:

- ☐ Arrive 15 minutes early
- ☐ Read case background
- ☐ Negotiate with co-mediator
 - ☐ Introductions and opening comments
 - ☐ Agreement to Mediate
 - ☐ Summary of mediation process
 - ☐ Roles of mediator and clients
 - ☐ Ground rules and note taking policy
 - ☐ Information sharing
- ☐ Discuss styles, philosophy and strengths
- ☐ Clarify time limitations and other issues
- ☐ Anticipate case challenges and strategies
- ☐ Center yourself and prepare to greet clients

Informing participants about what to expect

Purpose

- To explain the process
- To create structure
- To develop trust and rapport

1) First Mediator Covers the Following:

- a) Welcome and make introductions
 - i) Commend parties for willingness to try mediation
 - ii) Estimate how long introduction will last before they will begin their important conversation
- b) Begin Reviewing Agreement to Mediate Form...
 - i) Parties responsibilities
 - (1) Honesty and openness
 - (2) Present perspective with willingness to understand other views
 - (3) Full disclosure
 - (4) Voluntary even if court-referred
 - ii) Mediators responsibilities
 - (1) Facilitate the process
 - (2) Not to decide right or wrong, or give advice
 - (3) Help the participants (hear and understand each other, consider their options and find their own solutions)
 - (4) Describe style (not make recommendations, personal opinions or professional evaluations) and note-taking
 - iii) Legal implications
 - (1) Mediators can not give legal advice
 - (2) Agreement may affect legal rights
 - (3) Opportunity and encouragement to consult with legal counsel at any time
 - (4) Encourage contact with attorney to review draft agreement before signing

2) Second Mediator Continues...

- a) Confidentiality
 - i) Any communication made is confidential including court
 - ii) Exceptions to confidentiality
 - iii) Mandatory Reporting and Privacy
- b) Describe procedure
 - i) Each person will describe the situation from their perspective
 - ii) Mediators will summarize and help to identify the issues
 - iii) Possible solutions will be generated and examined
 - iv) Agreements will be specified and any next steps identified
 - v) Elicit or give ground rules (*honest, open and fair; treat other party with respect; speak only when others are not talking; and, additional ground rules as needed*)
 - vi) Mention private/separate meetings and taking breaks
- c) Termination and commitment
 - i) Mediators may bring the process to an end
 - ii) Pay for two hours up-front
 - iii) Sign Agreement to mediate form

My Responsibility as a Party: I will participate in good faith: with honesty, openness and fairness. My judgment and ability to engage in mediation are not impaired in any way. I will make a sincere effort to describe my perspective and to understand the views of others. I will share all relevant information and documentation necessary. *In divorce or child support related cases, this disclosure may include assets, income, liabilities and expenses.* I am here voluntarily and know that I may withdraw at any time.

Mediator's Style/Approach: Mediators facilitate important conversations. They reduce obstacles to communication, help identify the topics, maximize the ideas for ways forward, and assist with finalizing plans. They will not take sides and will not offer opinions on the merit of the claims or the likely judicial outcome. Mediators help explore options and the strengths and weaknesses of ideas; however, they will not tell parties what to do. Mediators may stop the mediation if any party fails to participate in good faith (*e.g., failure to reveal information or produce supporting data, undue pressure, or unfair advantage, etc.*).

Legal Implications: Mediators do not give legal advice. A signed mediation agreement is enforceable in the same manner as any other written contract. Each party is encouraged to consult with independent legal counsel at any time. Any mediated agreement may affect the legal rights of the parties. Each party to the mediation should have a draft agreement reviewed by independent counsel before signing the agreement.

Confidentiality: All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing. *Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:*

1. *where all parties to the mediation agree, in writing, to waive the confidentiality,*
2. *in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation,*
3. *statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation,*
4. *where a threat to inflict bodily injury is made,*
5. *where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime,*
6. *where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint,*
7. *where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation,*
8. *where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-581.26 in a proceeding to vacate a mediated agreement, or*
9. *as provided by law or rule.*

Mandatory Reporting: According to Virginia Code §63.2-1509, if mediators have reason to suspect that a child is abused or neglected, they must report the suspected abuse immediately. Therefore, the information about the abuse is not confidential.

Privacy: Remember that e-mail and online platforms are not completely confidential methods of communication. With prior notice and consent of all parties, attorneys and other resource people may be present during mediation sessions. I affirm that no unknown / unannounced third-party is present off camera (*or able to overhear/observe in any way*) and that no recording of this meeting is being made.

Online Dispute Resolution / Mediation Process:

- Mediators provide an orientation to the mediation process and review the mechanics of the online platform. They will review this document, discussing procedural guidelines and ground rules.
- By taking turns, the parties are encouraged to state the primary topics for discussion, to give some background details about the situation, and to listen to the other party.
- Mediators clarify information that the parties have shared and help to identify the issues to be resolved.
- Parties explore options and alternatives for resolving their differences.
- While a majority of the meeting is held with all participants together in joint-session, separate and private conversations are sometimes helpful:
 - Private meetings, sometimes called a “breakout” or “caucus,” may be called by the mediators or the parties and separate rooms are used.
 - Mediators do not share information discussed during private meetings with anyone without permission.
- The mediators normally write a draft agreement for the parties to review and consider signing as a commitment to the resolution of the conflict.

Commitment: I agree to participate in a mediation process conducted by trained mediators associated with the FairField Center. The fee arrangement is as follows _____. Upon the completion of mediation, I will complete the Client Evaluation Form to offer my feedback. Mediation sessions usually last one to two hours; however, some cases may continue longer and several meetings may be necessary to resolve the issues brought to mediation. In addition, the Supreme Court requires that all clients attending mediation by court referral answer the following questions:

All discussions:

- *With what race or ethnicity do you identify?* ☐ American Indian / Alaska Native, ☐ Hispanic ☐ Asian American/Pacific Islander, ☐ Black/African American, ☐ White, ☐ 2 or more ☐ other
- *What is your **INDIVIDUAL** gross annual income (to the best of your knowledge)?*
☐ Less than \$10,000, ☐ \$10,000-19,999, ☐ \$20,000-29,999, ☐ \$30,000-39,999, ☐ \$40,000-49,999
☐ 50,000-\$59,999, ☐ \$60,000-69,999, ☐ \$70,000-79,999, ☐ \$80,000-89,999, ☐ \$90,000+

For family / juvenile & domestic relations discussions:

- *What is your relationship to the child(ren) named on the petition(s)?*
☐ Father, ☐ Mother, ☐ Grandparent, ☐ Legal Guardian.
- *How many children do you have?* _____ (*<<< number of children named on the petition*)
- *What is your marital status in regard to the other parent of the children on the petition?*
☐ Married, ☐ Separated, ☐ Divorced, ☐ Unmarried.
- Prior to this mediation I, (☐ did / ☐ did not) attend a 4-hour parenting seminar.
If you attended the seminar: what I learned was (☐ helpful / ☐ not helpful) *for the mediation.*

Signature(s):

Party: _____

Printed Name	Signature	Date
--------------	-----------	------

Attorney: _____

Each participant tells about the situation from their point of view

Purpose:

- To gather information from each participant about the nature of the problem(s)
- To discover how participants feel about their situation
- To provide an opportunity for participants to hear each other
- To further build rapport and trust

Process:

- 1) FOUR RULES (to keep in mind - not to share with the parties):
 - a) Mediators *DO NOT* give solutions
 - b) Minimum of two rounds of information sharing (could take more than that)
 - c) Mediators **may not ask any questions during the first two rounds** of info-sharing
 - d) The mediator(s) **MUST** paraphrase after **EACH** party in the first two rounds.
- 2) Begin with mediators telling the parties that they may now present the topics for discussion. Parties may also say what brings them to mediation, including the chronology of events and how they are feeling.
- 3) The mediators ask who would like to begin. After one party volunteers, the mediators get the consent of the other participant before the speaker begins.
- 4) One participant notes the primary topics/themes and explains the situation from their perspective while the other participant listens and attempts to understand.
- 5) Then, one mediator briefly summarizes the primary topics and feelings.
- 6) Next, the other party explains the situation from their perspective noting primary topics/themes while the first party listens and attempts to understand.
- 7) The other mediator briefly summarizes what has been said, trying to identify primary topics and emotions.
- 8) Each person is asked in subsequent rounds if they have anything to add, or if they would like to respond to anything they heard from the other person.
- 9) The additional comments are briefly summarized by the mediator. The summary may be more detailed if the emotional level is high or the understanding of each other low.

Sample Beginning to Information Sharing: *“We’d like to hear from one of you now. Who would like to begin by briefly describing the primary topics needing to be discussed?”* AND, to the one who did not volunteer: *“Barbara is it okay with you if Sam goes first? In a few minutes we will hear from you also.”*

Sample Switch to the Other Person after Summary of the First Person: *“Barbara, we’d like to hear from you now. Thanks for waiting patiently while Sam spoke. Before you respond to what Sam has said, would you tell us in your own words what you would like to say as if you were talking first?”*

Note Taking: During the information sharing stage, it is important to maintain a proper balance between keeping good eye contact and taking thorough notes to use for summarizing.

1. One method is to divide a sheet of paper into two columns headed by the clients' names in the order they are seated opposite the mediators (a column for each participant *without drawing a line down the middle*). The date of the mediation, the name of the co-mediator, and comments you may want to make later to your co-mediator can be written at the top of the page. At the bottom of the page the list of issues can be written.
2. Using abbreviations, shorthand, and/or coded notes may also help. Examples of codes:
 - to indicate an issue as it emerges in story-telling that should be part of summary and problem-solving
 - F** to designate feelings that emerge during the story-telling that should be part of the summary
 - C** to note commonalities as they emerge -- an alternative is to place commonalities down the center of the page
 - to refer to an offer for resolution that should be mentioned in passing, with the statement that it will be returned to during problem-solving
 - ✓ to mark resolved issues as problem-solving progresses (place the check in the above issue blocks)

Transitions: At the conclusion of the first participant's sharing, the mediator who is preparing to summarize may say, "*Let me see if I have understood what you have said so far . . .*" After summarizing, say, "*We'd like to hear from Sam now. We will come back to you Barbara in case you think of other comments you would like to add.*" The mediator does the same for the second participant. *A minimum of two rounds of information sharing is expected!*

Balancing Time: If one participant's sharing goes on and on, breaking in by one of the mediators (using similar language as in the above paragraph) is appropriate in order to balance time, and to prevent the other party from feeling that a mediator bias exists.

Reminder: Completing a thorough but brief summary of each episode of information sharing, including both the facts and feelings of the participants, is crucial.

Different Perspectives: Remember that two different and apparently irreconcilable versions in information sharing are possible. One of the real benefits of mediation is that these different versions do not have to be a barrier to resolution. Mediators do not have to establish who is telling the truth or try to reconcile the versions (*although for beginning mediators there is often a powerful temptation to do so*).

You may make a comment such as, "*I think we all recognize that you see things very differently and even have contradictory memories of what happened. I want to say that we are not here to establish who is right or what actually happened in the past, and we do not need to have those things resolved for you to make agreements about how you will solve the issues or deal with the future.*"

Productive Discussion: At the beginning of information sharing, asking the participants to address their remarks to the mediators directly rather than towards each other is sometimes necessary. This is not a rule to be maintained throughout the session, however. An indicator that a change in the tone or atmosphere of the situation has taken place is when, during problem-solving, the participants begin to talk to each other *directly* in a productive way. If what is said is accusatory or unproductive, the mediators may need to ask the participants to speak only to them again.

Reminder: Take every opportunity to point out elements that could bring understanding between the participants.

Pinpointing issues and commonalities

Purpose:

- To clarify information, needs and interests
- To highlight commonalities and new learning
- To note differences and meaning
- To identify the issues

Process:

Ask Clarifying Questions:

- Ask open questions and avoid conducting an interrogation.
- Ask questions that will promote understanding between the parties or help them to resolve the dispute, rather than questions to satisfy your curiosity. *"Sally, can you say more about why you were so upset when Karen mentioned the evaluation last Tuesday?"*
- Questions that may help uncover underlying needs/interests:
 - o What is really bothering you?
 - o What is your primary concern?
 - o What would you like to see happen?
 - o What's motivating you to say that?
 - o Why is that important to you?
 - o What's missing for you right now?

Note Common Ground and New Learning:

- Before focusing on their differences, it is valuable to assist the parties in recognizing what they have in common. *"It sounds like both of you hope to have a less stressful work environment in the future."*
- Point out a common goal, concern, interest, experience, or feeling between the parties. *"One thing you both seem to have experienced is a lot of disappointment over the way this situation has been handled."*
- Ask the parties if they have learned any new information or reached a new understanding about how the other feels or views the situation.
- Point out the things that have emerged in story-telling as new learning and how this could make a difference. *"I think one of the things that came out when you were talking was that Tom did not know before today what Ted had done to try to solve the problem..."*

List Issues and Concerns:

- Identify topics/themes noted, whether mentioned by one or both parties;
- Write the issues on paper or an easel for all to see;
- Word issues in a general, non-positional, positive way;
- Start with issues that apply to both parties;
- Alternate issues that apply to only one party;
- Collapse issues, but maintain at least two different issues -- use sub-points;
- Ask parties if the listing is acceptable and covers all concerns;
- Let the parties know they can add issues later; and,
- Check with the parties regarding their readiness to move forward.
- *Example list of issues and concerns:*
 1. **Money**
 2. **Contract**
 3. **Relationship**
 4. **Court**

Solutions to each issue are found

Purpose

- To assist the parties to relate to each other productively
- To help the participants generate options for solutions
- To guide the participants to negotiating agreements consistent with their needs and interests

Points for the Mediator

The conflict often appears overwhelming, confusing and unmanageable during the generation of options stage. No clear map exists on how to proceed as in the previous stages. The mediator must use a tool kit rather than a road map. The mediator must combine people, process and problem-solving skills.

People Skills: Build on rapport with the parties and enable them to relate to each other.
 Acknowledge feelings
 Highlight commonalities and good intentions
 Coach effective communication
 Affirm parties' progress

Process Skills: Assist the parties to participate in a collaborative negotiation and decision-making process.
 Be a process advocate
 Emphasize fair standards
 Elicit full participation
 Promote joint problem-solving

Problem-Solving Skills: Guide the parties in considering options and making mutually satisfactory decisions.
 Focus on interests, not positions
 Manage the process
 Focus on future, not past
 Don't give up

Prioritize Issues: Issues are best negotiated one at a time. Criteria to decide about which issue to begin:
Easiest to resolve Most urgent Most important Parties' preference

Follow this simple technique for generating options :

- 1) Tell the participants you will ask each of them in turn to make a proposal to the other that would resolve the problem for them. Ask which of them has a proposal to make to the other for resolution.
- 2) Repeat the proposal after it has been stated by the party, and ask the other party if they are in agreement. If they are in agreement, you are ready to move to the next issue. If not, and usually they are not at this point, ask them what would need to be changed about the proposal to make it acceptable.
- 3) Ask the originator of the proposal if the counter proposal is acceptable. If not, what modification would make it acceptable? Go back and forth, adding and subtracting, perhaps bringing in elements of other issues if necessary, to get as close to agreement as possible.
- 4) You may get to a point where you can make no further progress. The mediators can summarize where this attempt stands, then explain that they will now ask the second participant to make a proposal that will be handed back and forth in the same way for additions, subtractions, conditions or modifications in an effort to reach agreement.

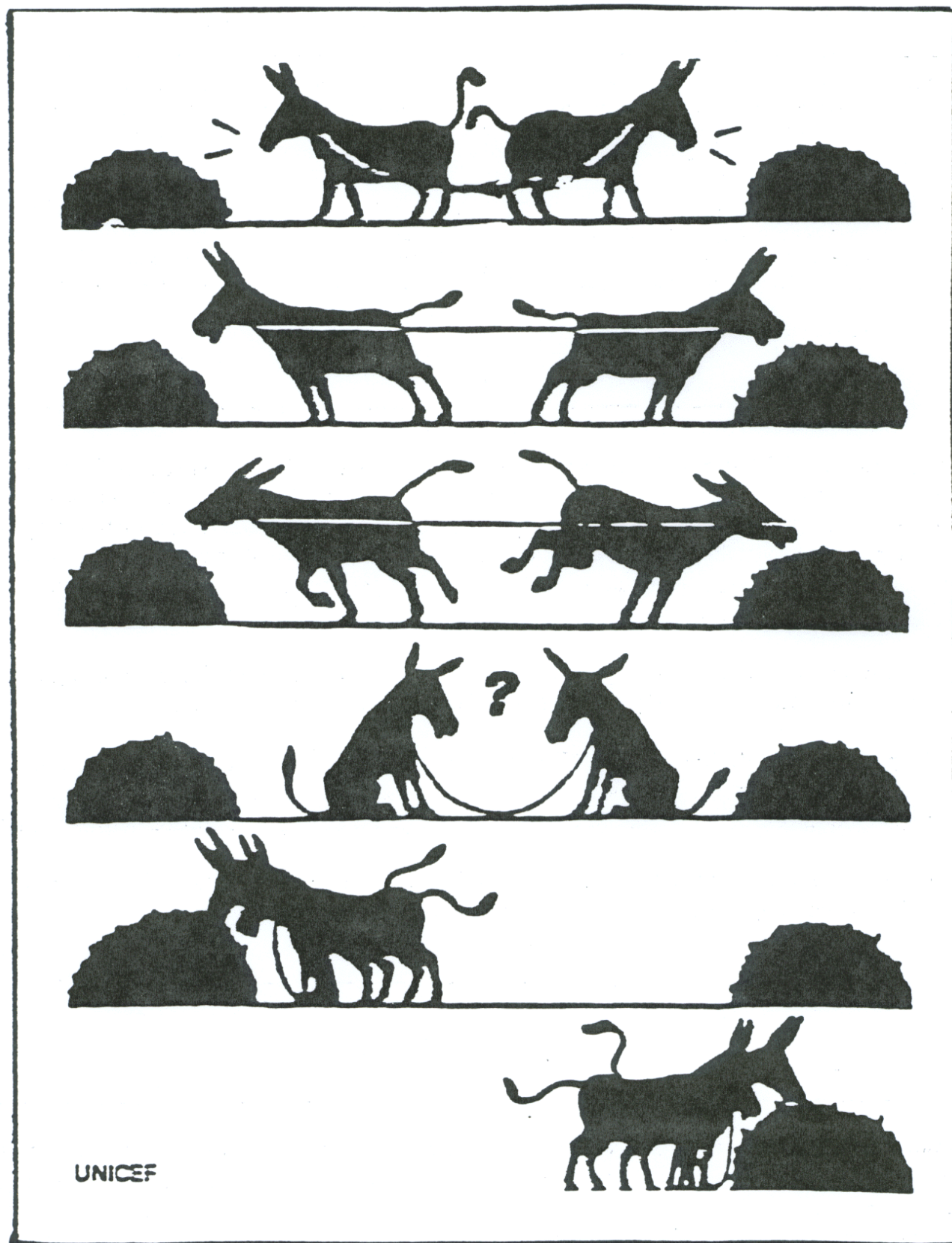
Impasse: At times parties get stuck and the outlook can appear gloomy. Before giving up, consider several strategies for resolving the impasse...

- 1) Move to a different issue
- 2) Propose linking two issues that could be tradeoffs
- 3) Consider “what-if” or “if-then” options
- 4) Hold a “Brainstorming” session
- 5) Go to private meetings
 - a) Simply take a break
 - b) Check for additional information
 - c) Reality test and/or look at BATNA (Best Alternative to a Negotiated Agreement)
- 6) Assign homework
- 7) Schedule another session and end the current meeting

Watch for Hidden Offers: Sometimes hostile language hides an offer for resolution. Somehow the participant seems to need to accompany the movement toward resolution with a barb, perhaps in order to not appear to be giving in, or perhaps for protection if the offer is rejected. The mediators may be so occupied with trying to manage the process and laundering the language that they miss the offer for resolution. Practice at listening for hidden offers can help. Finding “Hidden Offers” is a search and rescue operation on the part of the alert mediator.

- **An Example:** *“If, instead of calling the police, ‘Mr. Peace-and-Quiet’ had just come and told me the music was too loud for his sensitive ears, I **would** have turned it down.”*
- **A Response that Gets the Hidden Offer and Launderes the Language:** *“So one solution might be that in the future if Joe feels the music is too loud and he talks to you directly, you would be willing to turn it down. What other details might you add to your proposal?”*
- **Practice:** (1) *“If he’d stopped acting like such an idiot, I would have fixed his fence long ago.”* **and** (2) *“There is no way she can take my bike into the city when she runs errands. She doesn’t ride safely or lock it up properly when she gets there.”*

Reframing: Often participants can only see the negative side of a motive, behavior, or proposal. Through reframing, mediators can help participants perceive an action or offer in a different or positive light. *“Although you believe you are entitled to a complete refund, I wonder if you can see any advantages to accepting the lower offer, as they have said it would give you cash in hand, and you wouldn’t have to leave work to take your chances in court.”*



Meeting separately can be helpful for a number of reasons.

There is an
impasse in the
Generation of
Options stage.

You suspect one
participant is
withholding
information.

When the
mediators need
to confer with
each other.

A participant is
very emotional
and needs a
break or
focused
attention.

When a
participant
continues
disrespectful or
interruptive
behavior.

A participant
has a serious
misconception
and reality
testing is
needed.

To address an
imbalance of
power.

A separate, confidential time for each participant to meet with the mediators.¹

PURPOSE:

- To reality test and move through a problem-solving impasse
- To reduce the emotional intensity of a situation
- To gather more information about a certain topic
- To address an imbalance of power
- To confer privately with co-mediator

PROCESS: Before separate meetings --

1. Check with your co-mediator: *"I'm thinking this might be a good time to meet with each party separately. What do you think?"*
2. Explain to the participants that you would like to have private meetings: *"Remember at the beginning we said we might want to meet with each of you separately at some point. We would like to do that now."*
3. Remind participants of the purpose: *"This is a time for us to hear more from each of you. We might ask some questions, and look at other ways to solve the problem(s). What is said will be kept confidential unless you give us permission to share information with the other party. Let's start with about 15 minute meetings with each of you."*
4. Ask one of the participants to wait in an appropriate area and show them there: *"Brad, is it okay with you if we meet first with Sam, and then with you?"*
5. If appropriate, give an assignment to the participant who will be waiting: *"While you wait perhaps you could make a list of the urgent bills that must be paid, and think of a new proposal that not only you could live with but that you believe Sam would accept."*

During private meetings --

6. Allow for further venting of issues and emotions: *"Is there anything that you would like to add at this point that you didn't feel comfortable saying with Brad in the room?"* (then paraphrase) . . .
7. Ask the participant further questions: *"What ideas do you have about resolving this problem that not only meet your needs, but that you would accept if you were Sam?"* . . .
8. Help the participants see the problems with their positions. This is reality testing: *"You said you will just forget mediation and go to court. Have you asked your lawyer how much this will cost?"*
9. Be more direct, if appropriate: *"It is possible that if you went to court the judge would use these same body shop estimates to determine the amount of reimbursement you would need to pay?"*
10. Explore possible options for resolution. Help to put their proposal together; *"If Brad gave you an apology, would you be willing to pay some of the money?"*
11. Ask the participant if there is anything that they have said which they do not want you to share with the other party. Confidentiality must be maintained; however, it may be appropriate to point out the advantage to them of your being able to share certain information that they have asked to be kept confidential. The mediator must ultimately respect the decision of the party.
12. Participants change places and meet individually for about the same amount of time (repeat from #5 on).

After separate meetings -- Bring the parties back together, thank them, and let them know of the status while taking care to respect confidentiality.

¹ **KEEP EACH PRIVATE MEETING SHORT.** Be mindful of what the waiting party could be thinking. Even if you need more time in a separate session, you should break and have a private meeting with the other side, then meet again in separate sessions with each participant -- or, set a time estimate and check with the other party if you wish to extend it.

Time to pull all the arrangements together

Purpose:

- To specify solutions acceptable to both parties for resolving each issue
- To state clearly WHO is agreeing to WHAT, WHEN, WHERE, HOW and sometimes WHY
- To prepare parties to explain the agreement to others
- To clarify next steps if no agreement is reached

Points for the Mediator: An effective mediation agreement should be:

- **SPECIFIC:** Avoid ambiguous words such as “soon,” “reasonable,” “cooperative,” “neighborly,” “frequent” and “quiet” as they can mean different things to different people. Be detailed and give examples or definitions, if appropriate.
- **CLEAR ABOUT DATES AND DEADLINES:**
 - *Richard and Lynn will build a five-foot high board fence along the property line between their houses. Lynn will buy the materials and Richard will construct the fence.*
 - *Lynn will purchase the lumber for the fence no later than May 8, and Richard will complete the construction by May 30. Both parties will paint their side of the fence by June 30.*
- **BALANCED:** Everyone should “win” something and agree to do/not do something:
 - *Richard will . . . and Lynn will . . .*
- **POSITIVE:** Encourage participants to state in positive terms what they will do in the future.
- **REALISTIC:** Can the participants live up to their agreement? It is best if the agreement speaks only to actions over which the participants have control.
- **CLEAR AND SIMPLE:** Avoid legal jargon. Use the participants’ language when possible. Make sure the agreement is written in terms all parties can understand.
- **PREPARE FOR SIGNING:** Go over the agreement with the parties, or mail it to them for their responses. Does it cover all issues? Is it worded the way they want it? Does it need to be reviewed by attorneys? Do they pledge to live up to it? Should there be agreement on some review process in the future or consequences if the agreement is not followed?
- **SIGNATURE BY ALL PARTIES:** Having covered all the above questions, the parties may sign and each person should be given a copy.

More pointers for mediators when drafting a document.

Writing Mechanics:

- Begin with an opening statement giving the goal or reason for the agreement.
- If the agreement is long, organize the points under general headings with sub-points.
- Be specific with amounts, dates, times and explanations (who, what, when, where and why).
- Use clear, simple and positive language while avoiding ambiguous words.
- Consider the audience when choosing the writing format and degree of formality.

Writing Safeguards:

- Review each point to see if it is realistic for clients and ask what they wish for in terms of contingencies.
- Inquire if any issues have been overlooked.
- Ask about their intentions for the agreement and state their intentions in the document. Do the parties want the agreement to serve as a guideline for an attorney to draft formally, or for the mediation agreement to be the document they sign?
- Determine the next steps if involved in a court case and state that in writing. Options include dropping the charges, non-suiting, continuing the case, or having the agreement entered as a court order.
- Recommend the clients have an attorney review the agreement before signing.
- Proofread the agreement for errors or lack of clarity at least twice before giving to clients.

Options:

- Consider a short term agreement with a review date.
- Write alternative proposals under consideration.
- Write homework assignments including specifics.
- Specify steps for resolving future conflicts.
- How will the agreement be shared with others?

Definite No's:

- Use boilerplate language or a lot of legalese.
- Interpret the meaning of a law.
- State how the law applies in a specific area.
- Evaluate the strengths or the weaknesses of a case.
- Predict a court outcome.

Memorandum of Agreement

FairField Center

590 Neff Ave, Suite 3000, Harrisonburg, VA 22801

Phone: (540) 434-0059 • Fax: (540) 705-1752 • E-mail: mediation@fairfieldcenter.org

January 3, 2021

Mediators: Eddie Bumbaugh

Courtney Shreckhise

Participants: Hearing Aids, Inc. (Elizabeth Wright)

John Bench

In order to resolve the issues of payment for hearing aids and miscommunication, the parties agree to the following:

1. Hearing Aids

- a. The total outstanding debt is \$975.00 (\$915.00 for hearing aids and \$60.00 court costs). Interest and other expenses will be waived if this Agreement is followed.
- b. John will pay half this amount (\$487.50). He will make 19 payments of \$25.00 and a final payment of \$12.50. The first payment will be made on Saturday, February 17, 2021, and additional payments will be made each Saturday until the date of the last payment on July 22, 2022. The payments will be made by money order and mailed to Hearing Aids, Inc.

2. Communication

- a. If these payments are made as scheduled, Elizabeth will make arrangements for the Quota Club to pay the remaining balance of \$487.50. Prior to making these arrangements, Elizabeth will write a letter to John informing him of what needs to happen in terms of his responsibility for thanking the Quota Club.
- b. Within one week after receiving Elizabeth's letter, John will write a thank you letter to the Quota Club and mail it to the address specified. If John has any questions or needs more information, he will contact Elizabeth by phone or letter.

3. Court and Mediation

- a. If this Agreement is signed by both parties, Elizabeth will request a continuance of the February 27, 2021 court hearing until early July 2021. If payments are made as scheduled, Elizabeth will ask the court to drop the charges prior to the trial date.
- b. Should any differences arise in the future that they are unable to resolve successfully on their own, John and Elizabeth will return to mediation before seeking court intervention.

The parties are encouraged to and provided the opportunity to consult with legal counsel before signing this agreement. If either signs without consulting an attorney, the signature represents the voluntary waiver of the right to that consultation. By law, a signed mediation agreement is enforceable in the same manner as any other written contract.

Signatures of Participants:

TRANSFORMING THE CONFLICT



“For every real problem there is at least one elegant solution.”

-- Harvey Jackins

By Ralph Roughton

- ❖ When I ask you to listen to me and you start by giving advice, you have not done what I asked.
- ❖ When I ask you to listen to me and you begin to tell me why I shouldn't feel that way, you are trampling on my feelings.
- ❖ When I ask you to listen to me and you feel you have to do something to solve my problem, you have failed me, strange as it may seem.
- ❖ Listen! All I ask is that you listen, not talk or do . . . just hear me.
- ❖ When you do something for me that I can and need to do for myself, you contribute to my fear and inadequacy.
- ❖ And I can do for myself. I'm not helpless. Maybe discouraged and faltering, but not helpless.
- ❖ But when you accept as simple fact that I do feel what I feel, no matter how irrational, then I can quit trying to convince you and get about the business of understanding what's behind this irrational feeling. And when that's clear, the answers are obvious and I don't need advice.
- ❖ So, please listen and just hear me. And if you want to talk, wait a minute for your turn, and I'll listen to you.

Excerpts from *On Listening* by Ralph Roughton.

A foundation for transforming conflict.

How we communicate with each other involves a variety of elements, including both verbal and non-verbal skills. In order to increase the quality of our communication with others, focusing on these techniques is helpful. Communication skills are taught to us in a variety of settings: academic, work and our home situations. Our “teachers” sometimes simply teach us from their communication history, and at times from a highly specific and research-based background. Communication skills are the tools of success for mediation and every other human interaction.

EFFECTIVE LISTENING REQUIRES THE FOLLOWING (*reminder: cultural differences may exist!*):

Non-Verbal Skills:

- Eye Contact
- Facial Expressions
- Head Nodding – Gestures
- Posture – Distance
- Voice Tone – Volume

Verbal Skills

- Paraphrasing
- “I” Statements
- Preference Statements
- Purpose Statements
- Agreement Statements

COMMON INEFFECTIVE WAYS OF LISTENING: To enhance our communication skills, let’s also keep in mind what isn’t appropriate in a mediation setting -

DON’T:

- ❖ ... be a “Sherlock Holmes.” As a listener, your role is to listen, not to be a detective, attempting to solve the problem.
- ❖ ... be a mind reader. Avoid getting caught up in what you are hearing and making assumptions about what you think they are thinking: *stop thinking and listen.*
- ❖ ... give advice. When you are listening, your goal is to create an environment where a person feels they can say what is on their mind. Often advice is the last thing they want or need.
- ❖ ... take over the agenda. This isn’t your time to talk or to share personal experiences or your insight into their problem. Honor the importance of the other person’s issues and agenda.

All of these responses are useful sometimes, but they are often unhelpful. More than good advice, evaluation, or questioning, most people simply need someone who will listen . . . someone who will acknowledge their situation and feelings.

If we can truly listen, most people are capable of using their inner resources to come up with their own good ideas.

Listening is active!**Purpose:**

- ❖ To provide reassuring attitude to help speaker relax
- ❖ To convey empathy, respect and acceptance of persons regardless of their beliefs, ideas and conduct
- ❖ To identify and summarize each person's perceptions, feelings and issue
- ❖ To state clearly the basic problems and issues for resolution

Listening Skills:

RESPONSE	DEFINITION	PURPOSE
Non-verbal Communication	<ul style="list-style-type: none"> • Eye contact, • Facial expression, • Head nodding and gestures, • Posture, and distancing • Voice tone and volume 	To convey: <ul style="list-style-type: none"> • <i>"I am listening."</i> • <i>"I am interested."</i> • <i>"You are important."</i> • <i>"I care."</i>
Clarification Statements	<ul style="list-style-type: none"> • <i>"Say more about . . ."</i> • <i>"What did you mean exactly when you said..."</i> • <i>"Please give an example regarding..."</i> 	<ul style="list-style-type: none"> • To encourage elaboration. • To check the accuracy of what you heard • To learn specific information when general statements are made
Paraphrase Facts & Feelings	<ul style="list-style-type: none"> • Say back to the speaker the essence, rephrasing the content of the participant's message. • Remember to restate the emotions related to the content 	<ul style="list-style-type: none"> • Clear up confusing messages • Help participants focus on content of their message • Highlight the content when focus on feelings may be self-defeating • Encourage useful expression of feelings • Develop participant awareness of dominating feeling • Assist party in discriminating among feelings
Summarization	<ul style="list-style-type: none"> • Two or more concise statements which capture the essence of each viewpoint 	<ul style="list-style-type: none"> • Tie together elements of messages • Identify common themes, issues and interests • Interrupt wandering and rambling

Stating in one's own words the facts and feelings of what another has said.

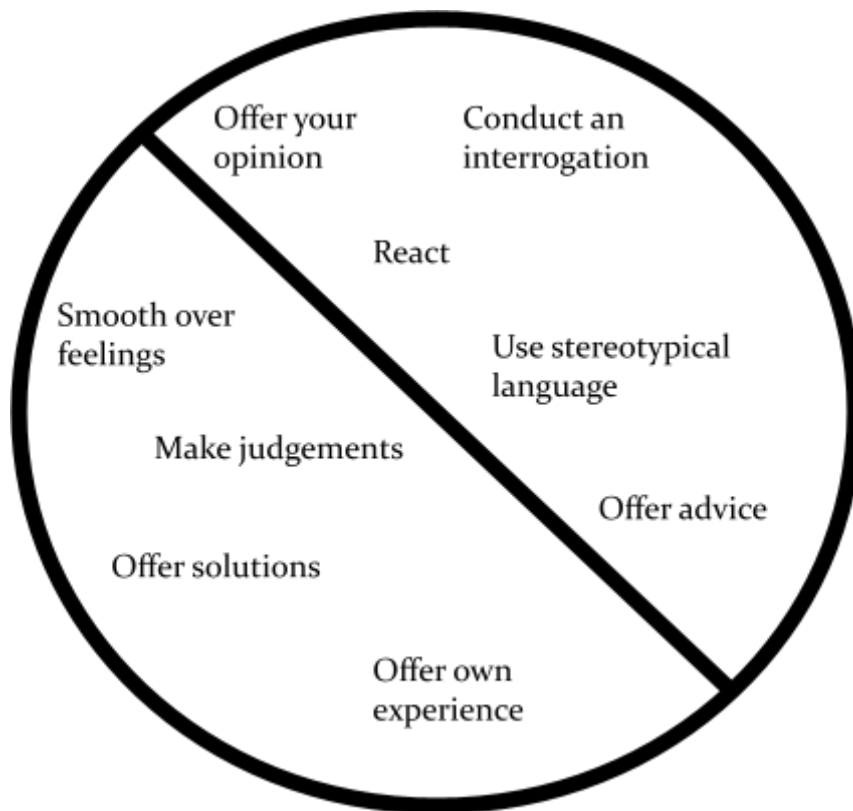
Purpose:

- To understand what has been said and communicate back that understanding.
- To acknowledge the feelings of the speaker.
- To provide another opportunity for the parties to hear the other person's perspective in a less threatening way.
- To elicit more information or clarification.
- To slow down the process when emotions are high.

Benefits:

- Promotes diffusion of anger and other emotions on the part of the participants.
- Jogs the memory for other relevant information.
- Ends repetitive story-telling. Often a party repeats their story again and again because they do not feel heard. After the summarization, people feel like they have been heard.
- Preserves self-esteem. Feeling heard and understood enhances one's feelings of worth. Negotiation cannot take place when all the energy of the participant is occupied in trying to uphold their self-esteem.

What Not to Do When Paraphrasing:



Practice summaries page

Skills Part One (*Feelings & Facts*):

Speaker: He told me the total cost for putting the water line under the road would be around \$300.00. He's crazy if he thinks I'm going to pay him \$620.00!

Paraphraser: You were surprised (*feeling*) to get the bill when you understood it would be approximately \$300 (*fact*)...

Speaker: You know if he would have just tried to get in touch with me about the car not working, I would have been happy to try and work things out.

Paraphraser: _____

Speaker: They came out to repair the air conditioner four times. It still doesn't work right and occasionally the heat kicks in! I've paid them what I think is fair and I won't pay more.

Paraphraser: _____

Speaker: Even though I accidentally let my cat get out, his dog is so vicious that he should have it tied up, or at least within a fence don't you think? He needs to do something about that dog and pay something towards this veterinary bill.

Paraphraser: _____.

Skills Part Two (*Laundering the Language*): Occasionally participants make derogatory and volatile remarks toward each other. Mediators need to reduce the potential for increased hostility by cleaning up the language (*laundering*) while summarizing what was said. This requires sensitivity and skill so that the mediator does not gloss over or water down real feelings and ways of viewing the situation. Laundering is needed, not bleaching . . .

Speaker: He's just a lazy slob. The porch was supposed to be finished three weeks ago, his junk is lying all over my yard, and he obviously doesn't care about the work he does or the people he's doing it for!

Paraphraser: Right now you're very disappointed with the quality of the work, as well as the time-line for the porch's completion.

Speaker: I hate him, and I don't think we can be house-mates anymore. He's completely irresponsible and hasn't paid the landlord for the last two months of rent! What a jerk!

Paraphraser: _____.

Skills to boost professional (and personal) communication effectiveness

SPEAKING FOR SELF ("I" STATEMENTS): Identifying yourself as the source of the message.

- To take responsibility for, and to give information about, your awareness, feelings, thoughts and actions
- To differentiate your experience from the experience of another
- To avoid blaming and attacking another person

I feel _____ (feeling)
When you _____ (action)
Because _____ (reason)

In mediation, a party continues to interrupt: *"I feel disappointed when there are interruptions because we had all agreed in the beginning that only one person would talk at a time."*

Your co-mediator isn't sharing the load. You've called for a break. Give an "I" message:

PREFERENCE STATEMENTS: Without placing demands, clearly stating your choices and desires.

- To clarify your intentions and desires
- To provide information needed for negotiation
- To avoid making demands on others

"I would prefer that..."
"We would find it helpful if..."
"It may not be possible, but we would like..."

You and your co-mediator would like to meet separately with the parties: *We would find it helpful to meet with you each separately for a time . . .*

You've decided whom to meet with first. Let the other party know by a preference statement:

PURPOSE STATEMENTS: Making a clear statement about a past or future action.

- ❖ To make your motivations clear as a way of understanding your intentions
- ❖ To enable others to determine what they can/can't do to help you achieve your purpose

"My purpose is..."
"I'm hoping to..."
"We're trying to..."

You and your co-mediator would like to meet separately with the parties
. . . *We're hoping to move the process forward and to also give each of you a chance to take a little break . . .*

You've provided paper for the parties to use for notes. Give a purpose statement:

AGREEMENT STATEMENTS: Stating what you agree with as a preface to telling your opinion.

- ❖ To highlight commonalities and areas of understanding
- ❖ To build cooperative spirit

One of the clients is frustrated with the time it has taken to work toward a resolution: *Yes, I've no doubt that spending this much time is tiring; however, I've seen a good deal of movement on both of your parts over the last 1½ hours . . .*

"I agree..."
"You've got a good point when you say that..."
"You're right that..."
"I can see that..."

One of the clients is upset with the amount of time they had to wait during a separate meeting and confronts you. Give an agreement statement:

What to consider for building the relationship with participants.

Purpose: To help participants feel comfortable --

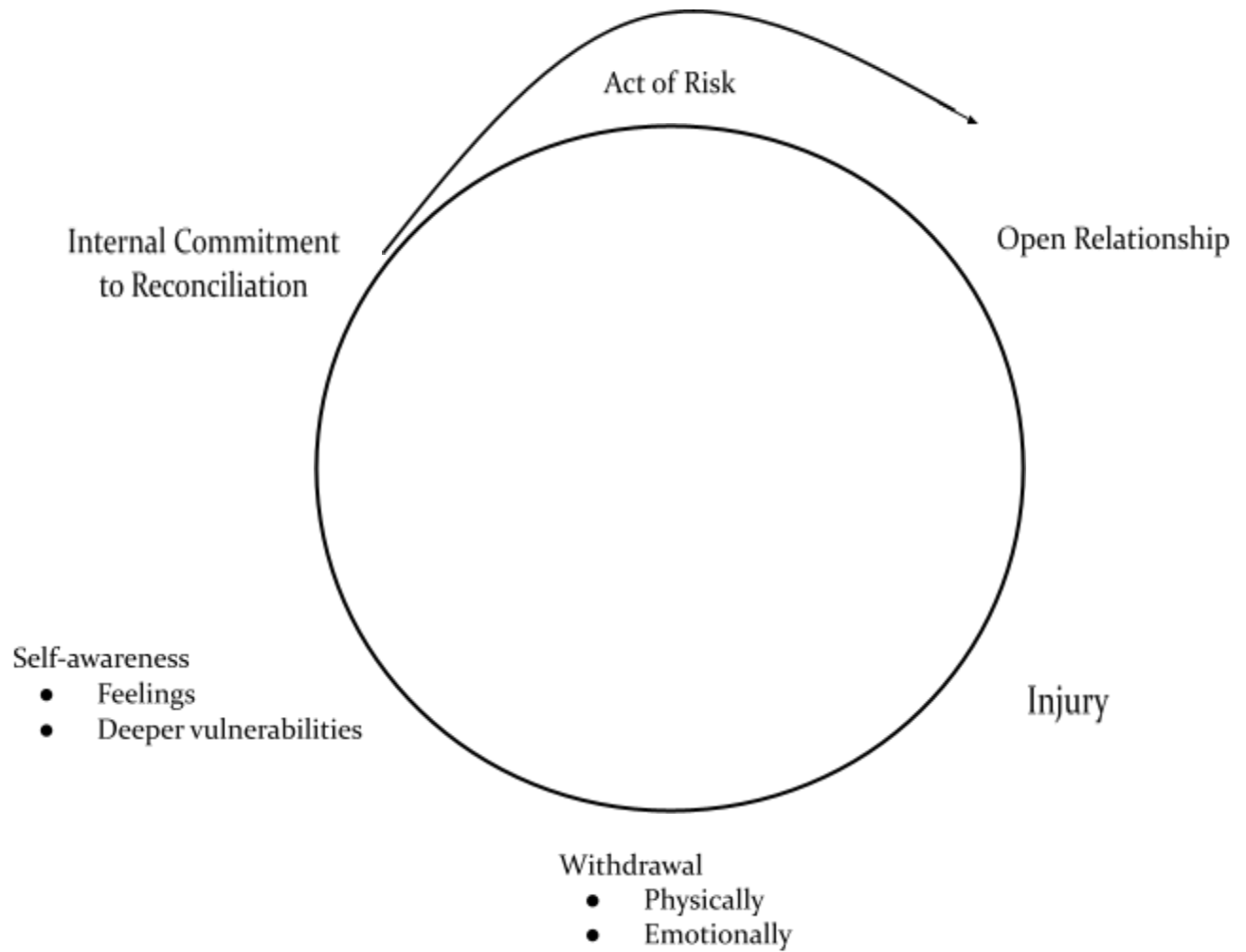
- ...With you as a helping professional.
- ...With participating in mediation.
- ...With the possibility of working effectively with you and the other party.

Rapport: Defined as a harmonious and understanding relationship between people.

Process for developing rapport:

- 1) *Imagine what it might feel like to come into a mediation for the first time as a participant:*
 - a) What might they be feeling?
 - b) What questions would you have as a participant?
- 2) *Get yourself ready: sit with an open body position:*
 - a) Arms and legs uncrossed.
 - b) Lean forward.
 - c) Good eye contact.
- 3) *Create an appropriately relaxed environment:*
 - a) Sit quietly and relaxed, maintain a calm and genuine tone of voice.
 - b) Explain the process and its intention to be informal.
 - c) Encourage the participants to fully participate within the boundaries of the groundrules.
- 4) *Use appropriate pleasantries:*
 - a) Don't let the informality allow you to relax your demeanor too much -- be "professional" and be "friendly."
 - b) Participants may not be in the emotional position to warm up to you immediately. They may feel suspicious and uncertain of the process and its value in their situation.

Pattern of restoring balanced relationships over time.



Credit – Ron Kraybill, Eastern Mennonite University

What to do when feelings may be presenting a barrier.

Purpose:

- ❖ To recognize that emotions are a *real* part of the problem -- they too are *facts*.
- ❖ To address participants' anger and other feelings in a helpful way.

Process:

- ❖ **Listen attentively to the expression of emotion and make it clear that you have heard the feelings.** Tell the participants that they will each have uninterrupted time to express their feelings in a way that is respectful of the other person -- then control the process to assure this.
- ❖ **Acknowledge the emotions in the summary.** *"It is clear from what you have said that you are very upset by what has been happening at school between your child and your neighbor's child."*
- ❖ **Recognize the validity of the emotion without taking sides.** *"It is certainly understandable that you would feel this way, given how you see the circumstances."*
- ❖ **Acknowledge that although you recognize the anger that the participant is feeling, your acknowledgment cannot make it go away.** *"It seems that you are very angry and hurt because of Tom's decision to leave the business. I suspect that you realize that my acknowledgment of these feelings cannot make them go away and that more time is needed for such emotions to subside. Perhaps getting some issues settled here would be a beginning."*
- ❖ **Use separate sessions.** In separate session you can permit more venting and show more empathy without fear of being perceived as taking sides by the other participant. Getting the participants apart may permit some cooling off.
- ❖ **Ask the participants to make a deliberate decision to set aside the anger in order to settle issues that need resolution.** This is best done in separate meetings and often includes reality testing: *"What do you have to gain by setting your anger aside and working to reach agreement?"* -- *"What do you have to lose if you don't?"* -- If there is agreement to set anger aside for now, the mediation session can proceed.
- ❖ **Shuttle diplomacy.** In extreme cases, anger may be such a barrier that none of the foregoing ideas work. The mediator may need to physically go back and forth between the participants in separate rooms to help them to come to agreement.
- ❖ **Break off the session.** In some situations it may be necessary to end the session because of the anger. Plant the seed of hope for future success by suggesting that at some later time progress may be possible and they are welcome to return to mediation.
- ❖ **Counseling.** In a separate meeting, the mediator may suggest to a participant that they seek help in dealing with their anger by going for counseling. The mediator may talk briefly about the benefit to the participant in coming to terms with these feelings.

How Do You Feel?

Expanding our emotions vocabulary.

Admired
Encouraged
Grateful
Included
Happy
Glad
Blissful
Ecstatic
Joyful
Fortified
Thankful
Humble
Loved
Loving
Glad
Pleased
Determined
Optimistic
Protected
Sure
Safe
Secure
Respected
Dignified
Competent
Confident
Capable
Talented
Mature
Sympathetic
Thoughtful
Concerned
Responsible
Accountable
Trusted
Appreciated
Love struck
Infatuated



Bashful
Shy
Sheepish

Concentrating
Confident
Curious

Interested
Surprised
Dismayed
Shocked

Disbelieving
Confused
Perplexed
Puzzled
Undecided

Unconcerned
Indifferent
Weird
Strange

Hurt
Neglected
Slighted
Abandoned
Let down
Devastated

Betrayed
Misled
Resentful
Cold

Relieved
Satisfied
Comfortable

Jealous
Envious

Disappointed
Defeated
Discouraged
Disgusted
Frustrated
Exasperated
Overwhelmed
Obstinate

Innocent
Blamed unjustly

Accused unjustly
Blamed
Guilty
Responsible
Accountable



Humbled
Insulted
Put down

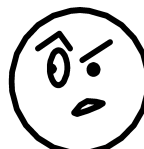
Meditative
Thoughtful
Reflective
Ponderous

Lonely
Bored



Angry
Mad
Cross
Hateful
Incensed
Sick & tired of
Upset
Furious
Enraged
Outraged

Suspicious
Withdrawn
Depressed
Excluded



Inept
Incompetent
Incapable

Superior
Cocky
Arrogant
Smug

Surly
Greedy
Selfish

Ridiculous
Foolish
Idiotic
Hysterical
Aggressive
Mischievous
Irresponsible
Immature
Prudish

Gentle
Peaceful
Gratified
Content

Worried
Anxious
Frightened
Scared
Fearful
Unsafe
Threatened
Insecure
Afraid
Paranoid
Mistreated
Disliked
Unloved
Hated
Sad
Forlorn
Grieving
Sorry
Regretful
Apologetic
Remorseful
Distrusted
Pained
Miserable
Nervous
Tense
Stressed
Negative

*Credit: adapted from
Robert Garrity*

A difficult emotion to express and feel good about experiencing.

Anger:

- ❖ Is a complex response to real or perceived injustices
- ❖ Isn't always what it appears to be
- ❖ Has five first cousins: *fear, pain, powerlessness, shame* and *guilt*

Anger and Mediation:

- ❖ Do not expect rational negotiation to occur when someone is very angry
- ❖ Recognize the variety of ways anger can show itself
 - o Overtly (yelling, hostile language, physical threats)
 - o Covertly (withdrawal, criticism, silence)
- ❖ Seek to determine the feeling underneath the presenting anger
- ❖ Affirm to the client the validity of this emotion (whether or not you or anyone else agrees)
- ❖ Anger can and will impede the resolution process if it is not acknowledged

Anger and the Mediator:

- ❖ The manner in which you manage your anger can be reflected in your mediator style and effectiveness
- ❖ The degree of comfort you have with angry people may affect your ability to remain neutral
- ❖ Choose your words carefully with an angry person because what you say can be misinterpreted

An important and always present dynamic to consider.

It is inevitable that participants bring varying levels of power to the mediation session. Power can come from different sources.

Mediators have the responsibility to empower both parties, so that they can better see each other's point of view and come to solutions based on mutual strengths.

The mediator tries to help the party who appears to have less power to discover and create their own power. The mediator does not want to disempower the stronger party, but rather to help each participant fully understand the situation and express their needs in appropriate ways.

Sources of Power:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Balancing Power:

❖ Before the Mediation Session:

❖ During the Mediation Session:

❖ After the Mediation Session:

Separate the people from the problem.
Be soft on the people and hard on the problem.

Focus on interests, not positions
When positions look incompatible, look at underlying interests and needs

Generate options for mutual gain
Work for a win/win approach

Assure a fair process
Process is just as important as the outcome

Practice direct communication
Talk with others, not about them

Test reality when there is an impasse
What is the best alternative to a mediated agreement? If you leave mediation, what is your next step?

In his book, *Getting Past No*, William Ury identifies five challenges for negotiating with difficult people.

Don't React:

- ❖ Control your own behavior.
- ❖ Regain your mental balance and stay focused on achieving what you want.
- ❖ Don't get mad; don't get even; focus on what you want.

Disarm Your Opponent:

- ❖ Help your opponent regain mental balance.
- ❖ Defuse defensiveness and other emotions such as fear, suspicion and hostility.
- ❖ Give your opponent a hearing.
- ❖ Express your views without provocative language.
- ❖ Acknowledge your differences with optimism.
- ❖ Create a favorable climate for negotiation.

Change the Game by Changing the Frame :

- ❖ Shift bargaining over positions to exploring interests.
- ❖ Don't reject - REFRAME. Recast what opponent says into a problem-solving frame.

Make it Easy to Say "YES" :

- ❖ Build a bridge to connect the gap between his/her interests and yours.
- ❖ Help opponent to save face.
- ❖ Start from where your opponent is in order to guide him/her toward an eventual agreement.

Make it Hard to Say "NO":

- ❖ Bring opponent to their senses, not their knees.
- ❖ Turn your adversary into a partner.
- ❖ Ask reality-testing questions which educate about the costs of not agreeing.

[illegible]

ISSUES FOR THE MEDIATOR



*“It’s interesting that there is such a large gap
between advice and help.”*

-- Source Unknown

A main goal of mediation is to empower the participants to make their own needs known and to choose solutions that fulfill their needs. A second central goal is to promote the understanding of the other person's point of view, needs and motives. Robert Bush has called these two goals empowerment and recognition in his important work, "The Promise of Mediation."

The mediator needs to learn to recognize the opportunities for empowerment and recognition throughout the mediation process. Mediators can conduct the five stages in a mode of lesser or greater control so that even the process can be largely that of the participants. In the introduction stage the mediator can ask the participants if they wish to establish any guidelines for the process. If there is name-calling during storytelling or problem-solving, the mediator can ask the participants whether they wish to do anything about it. In this mode, the mediator does more following of the participants: mediators go back and forth between participants summarizing, working for empowerment, and lifting up opportunities for them to extend recognition to each other.

The transformative model maintains that the primary goal is to better the relationship between the two participants. Chances will exist for parties to make many small decisions and they may even reach an ultimate agreement resolving the immediate problem that brought them to the table.

"Empowerment is achieved when disputing parties experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face regardless of external constraints." *The Promise of Mediation* by Bush and Folger.

Empowerment & Recognition Work Together:

Empowerment leads to recognition. Recognition leads to empowerment. Empowerment may be the result of parties feeling the personal ability to move forward in making decisions. Once empowered, a party may be able to look at things from the other person's perspective. They may also be able to attribute different motives for past actions, changing the interpretation of those past events. This may lead to greater understanding of the other person and open the possibility for agreement to solve the problems. Focus on fostering empowerment and recognition can mean that the mediation process results not only in resolution of the immediate problems, but also in significant changes in the dynamics of their relationship. It can bring about an increased level of trust and help them in preventing conflict with each other and with others in the future.

Effects of Empowerment and Recognition:

Empowerment: A person feels...

- Confidence in their perceptions and in their ability to make good decisions.
- Heard and understood by the other person.

Recognition: A person can...

- See the point of view of the other person.
- Consider a different interpretation of past actions and motives.
- Recognize the validity of the other person's perspective.
- Become open and responsive to the needs of the other person.

Responding to Opportunities for Empowerment and Recognition:

1. Identify the opportunity.
2. Invite elaboration or reflection, beginning with a paraphrase of what raised the opportunity.
3. Help the parties respond to the opportunity if they choose to.

Examples of Opportunities for Empowerment and Recognition.

When a person:

1. Makes a statement referring to the other's opinion or treatment of them.
2. Expresses doubt or confusion about the mediation process or objects to it.
3. Expresses any form of remorse for an action.
4. Makes an offer even though practically hidden in what is being said.
5. Expresses strong feelings on some matter.
6. Expresses some form of agreement on any matter with the other person.
7. Refers to a value that the two hold in common.
8. Maintains a negative opinion of the other person.

MEDIATOR STYLES

In order to safeguard mediators from potential complaints and to provide consumer satisfaction with the mediation process, the Standards of Ethics and Professional Responsibility for Certified Mediators ask the mediator to clarify in the beginning with the parties their personal style and approach to mediation. If the parties are uncomfortable with that style or desire something different, the mediator may adjust their style or withdraw from the case.

In describing one's style, mediators do not have to go into great detail, but must ensure the parties understand as clearly as possible the mediator's intentions. For example, a facilitative mediator might describe his/her style as follows: "I will facilitate discussions between the parties. I will assist in enhancing and clarifying communications. I will not give any personal opinions or evaluations of the case. I will encourage the parties to develop their own solutions." An evaluative mediator might describe their style as follows: "I will assume that you need my assistance in providing directions to the appropriate grounds for settlement. I may discuss the strengths and weaknesses of your positions with you separately. I may help you assess the value and cost of alternatives to settlement. I may give you a settlement range, propose a solution, predict the courts disposition or give you an evaluation/opinion based on my experience. In doing so, I will ensure that these techniques do not interfere with my impartiality or your self determination." A mediator whose style begins facilitative, but may become evaluative, should make that clear in the description. If the co-mediation model is used, the mediators must agree on the style they will both use and have it reflected in the Agreement to Mediate. Mediators may draft a standard clause describing their style and modify it if necessary on a case by case basis.

Discussion regarding mediation style, particularly the "evaluative" style, raises other issues. For instance, legal evaluative techniques may in some instances be found to rise to the level of legal advice. Legal advice is prohibited for all mediators. Additionally, legal evaluative techniques could raise unauthorized practice of law issues for mediators not trained or licensed in law, as well as constitute a violation of the lawyer ethics rule precluding representation of parties with conflicting interests. The new Standards are silent on the issue of permissible evaluative techniques. If such techniques are used, mediators must note that they may not violate the prohibition against giving legal advice, they must not adversely affect the parties' self-determination, they must remain impartial and they may not coerce the parties into any decision.

Reprinted: Resolutions, Fall 1997.

Skills and techniques are important, but mediator attitude is essential.

Attitude toward:

The Parties: Respect is the key. Mediators need to respect the dignity and competence of each party. Mediators must also respect the parties' responsibility for resolving their own conflict.

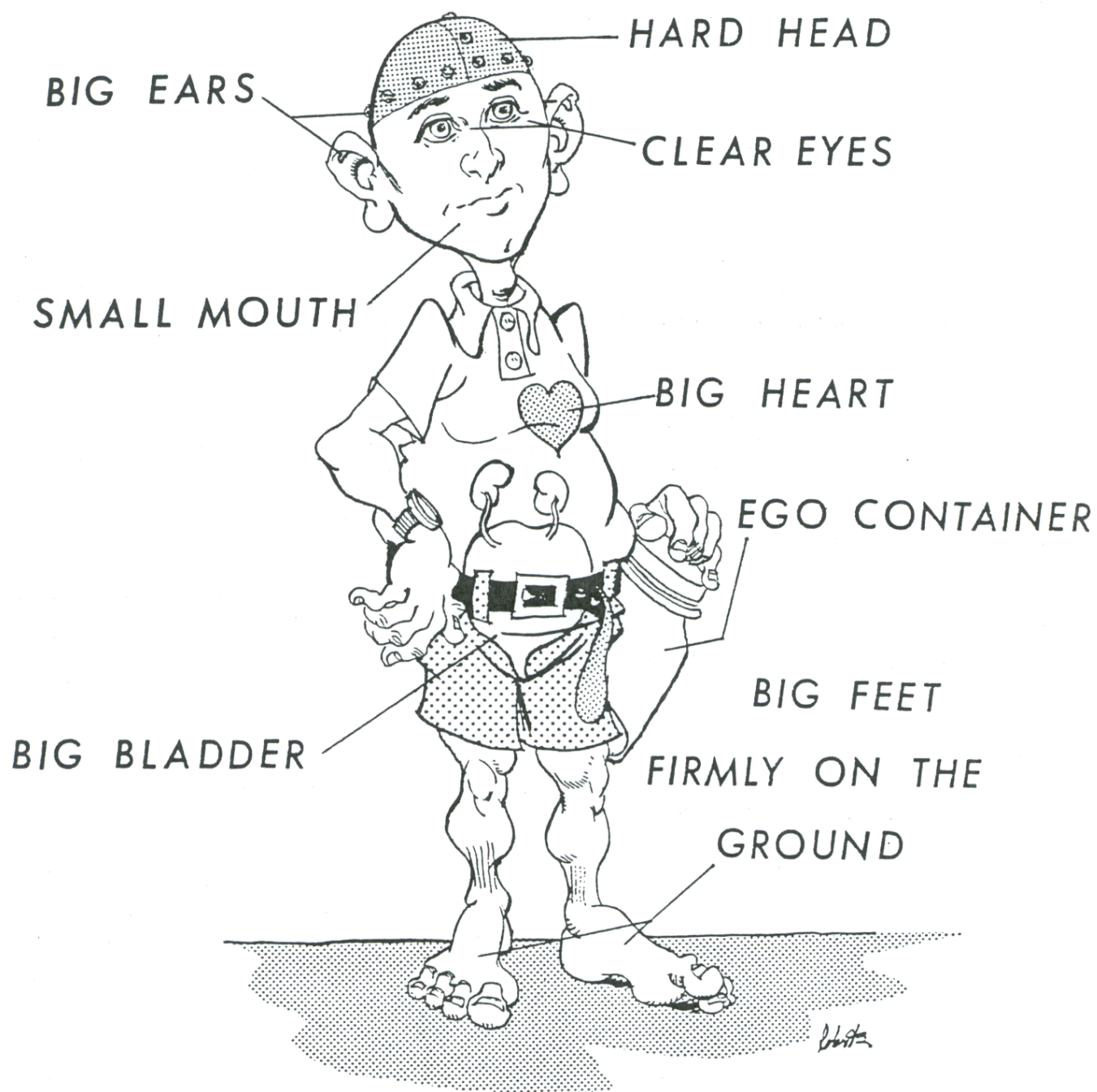
Oneself: Humility helps. Jim Laue has aptly described the importance of an "ego container" for a mediator - an imaginary box to constrain one's self-importance.

The Process: Keep it simple. Mediation is an uncomplicated, flexible process that makes sense. Mediators need to resist the urge to make it more complex.

Conflict: Conflict is a normal, natural part of life. Mediators who interact collaboratively with persons who are in conflict are modeling positive problem solving behavior.

Interplay of Emotions and Rational Thought: Legitimize feelings. Mediation allows for the safe and productive expression of feelings. Parties need to do this before they can negotiate rationally and exchange information productively.

Reconciliation: True reconciliation brings healing. It may seem impossible or at least unlikely, but mediators need to be willing for the parties to seek it - they deserve it.



Team facilitation of the process.

Working with another mediator has a number of advantages:

- 1) **Gender balance.** This is of particular importance in cases involving more than one gender.
- 2) **Complementing styles and experience.**
 - a) One mediator may focus more on issues, the other on feelings.
 - b) One may take the lead in directing the process, the other may be monitoring the process, assuring that no important elements are overlooked.
 - c) Co-mediators should discuss before the session how they will work together.
- 3) **“Two heads are better than one.”** Especially in difficult cases, the two mediators can decide together how to proceed.
- 4) **Co-mediators can model how to handle conflict in a positive way.** From time to time the two mediators may have different ideas about which direction should be taken. A brief discussion of how to proceed and a resolution of the difference can usually take place in the presence of the participants.
 - a) Co-mediators should learn to communicate with each other during the session. Examples: *“I’m wondering if it would be a good idea at this point to speak to Dan and Betty separately; what do you think?”* To signal that the other mediator may need to slow down: *“I’d like to take a minute to hear from Dan and Betty about how they are feeling about how things are going.”*
 - b) Co-mediators can also model how to correct misperceptions or mistakes on the part of the other mediator.
 - c) If co-mediators need to meet alone to determine direction or to resolve a difference between them, either may ask for a short break.

How to include advocates in the process .

Purpose:

- ❖ To help clients feel comfortable in meeting and making decisions with the other party.
- ❖ To address legal issues while avoiding the unauthorized practice of law.

Process:

1. Notify other parties that a client plans to bring their attorney and that they may also do so.
2. Speak separately with the attorneys. Explain:
 - a. The purpose of this private attorney discussion is to cover the mediation process and to clarify roles. Explain:
 - i. How mediators conduct the session (process, style and roles).
 - ii. The Agreement to Mediate Form with emphasis on confidentiality of the session.
 - iii. That attorneys:
 - (1) Are there as advisors to their clients and can confer privately with them.
 - (2) Can be most helpful if they empower their client to negotiate rather than taking over the negotiation.
 - b. Who writes the agreement is an issue to be decided in the mediation.
3. Then, before beginning session, give opportunity for clients to meet with attorneys alone to go over the Agreement to Mediate Form and to clarify roles, procedures and strategy.
4. Bring all parties into the mediation room with clients facing mediators and attorneys on each end of the table.
5. Review process, style, roles and acknowledge the different role for attorneys in being relatively inactive.
6. After second round of information sharing ask the attorneys if they wish to add anything regarding the background or goals.
7. Suggest a separate meeting during problem solving to allow clients and attorneys to meet to make and discuss proposals. Reserve right as mediator to meet with clients and their attorneys together, or alone with the client(s) or attorney(s).
8. At the end of the session, clarify all issues covered, determine who will write agreement, and decide next steps.

Preparing participants for the process.

Getting people to agree to bring a conflict to mediation is usually the hardest task of mediating. Statistics show that once both parties have sat down together at the mediation table, the odds are four to one that they will work out an understanding that both parties find acceptable. However, only approximately half of the cases referred actually end up at the mediation table. Skills at explaining mediation and defusing resistance to the process are essential.

Guidelines in accomplishing this:

- ❖ **BUILD RAPPORT** – Exchange greetings, make introductions, put the person at ease, create a non-threatening environment. Begin with a purpose statement that communicates concern: “I’ve come to visit (or I’m calling) because I’m aware of the difficulties you’ve been experiencing with your neighbors, and I’m wondering if there’s any way I could be helpful to you?” – In mediation centers this will necessarily be more formal since the staff has no previous acquaintance with the participants.
- ❖ **CLARIFY ROLES** – Briefly share information with the person about your role and the function of mediation in their situation. Also convey what they will do: *“Right now I would like to hear from you your view of the situation, next I’ll explain mediation, and then together we can decide if mediation could be of benefit. What you say will be confidential.”*
- ❖ **IDENTIFY CONCERNS** – Begin to gather information about the situation. Listen actively: most people are eager to share their perceptions. Non-judgmental attentiveness on the part of the mediator is highly effective in building trust. *“I know this kind of experience is painful and I’d be happy to hear you out if it would be helpful.”* Or, if you are talking with the second party: *“Jim has already told me a bit about how he sees things. I know there are several sides to this and I’m wondering how this looks from your perspective.”*
- ❖ **SEEK INFORMATION** – Help sort out the facts, identify real concerns, issues and feelings. Utilize open/closed-ended questions, probing, clarifying, paraphrasing, pulling common themes together, and focusing on relevant data. Inquire about alternatives and consequences – *“Describe things you’ve tried so far to resolve this.” “What other strategies have you considered?” “Looking at things long term, what impact would mediation have on the situation?”* And, *“What about the alternatives, such as litigation or avoiding the issue?”*

CAUTION: *Once both parties have agreed to mediation, avoid encouraging them to you. Instead, urge parties to hold their comments for sharing directly with the people who can benefit most from hearing them, the parties concerned.*

- ❖ **IMPLEMENT PLAN** – What are the next steps, who will do what and when, expectations? Focus on providing information, not persuading. Many people respond to a matter-of-fact description of the process but resist efforts designed to convince them to mediate. Answer their questions, encourage, and refer to other resources as necessary.
- ❖ **LONG TERM EDUCATION** – Reach out through schools, churches, civic groups and to the media to educate people in the community about the usefulness of mediation and conflict management skills.

When family, friends or colleagues begin a trip to nowhere through arguing, persons skillful in mediation can often have a substantial impact by engaging in informal mediation.

Without even using the work mediation, you can often secure a role as mediator by using mediation skills; *“Say, let’s try something. How about if we agree that each of you gives the other person a chance to explain, uninterrupted, what you think is going on here. Then we’ll try to agree on what the main areas of difference are and talk about how you might deal with them one at a time.”*

Even more informally, you can often de-escalate a debate-veering-towards-feud simply by intervening and paraphrasing what each side is trying to say. Both parties know they are heard, and the third-person can use the attentiveness this maneuver earns to move the discussion forward in a focused way. *“Andy, it sounds like you’ve really felt misunderstood about...And Judy, from your perspective, you felt manipulated when...I’m still not clear about all of this. I’d like to ask you to take turns clarifying what your frustrations have been and then take a look at your ideas for resolving this.”*

Mediating in Your Family:

-
-
-

Mediating Between Children:

-
-
-

Mediating at Work:

-
-
-

Chapter 20.2.
COURT-REFERRED DISPUTE RESOLUTION PROCEEDINGS

Code of Virginia

20.2.	Sec.	8.01-576.4.	Scope and definitions.
		8.01-576.5.	Referral of disputes to dispute resolution proceedings.
		8.01-576.6.	Notice and opportunity to object.
		8.01-576.7.	Costs.
		8.01-576.8.	Qualifications of neutrals; referral.
		8.01-576.9.	Standards and duties of neutrals; confidentiality; liability.
		8.01-576.10.	Confidentiality of dispute resolution proceeding.
		8.01-576.11.	Effect of written settlement agreement.
		8.01-576.12.	Vacating orders and agreements.

§ 8.01-576.4. Scope and definitions.

The provisions of this chapter apply only to court-referred dispute resolution services.

As used in this chapter:

- "Conciliation" means a process in which a neutral facilitates settlement by clarifying issues and serving as an intermediary for negotiations in a manner which is generally more informal and less structured than mediation.
- "Court" means any juvenile and domestic relations district court, general district court, circuit court, or appellate court, and includes the judges and any intake specialist to whom the judge has delegated specific authority under this chapter.
- "Dispute resolution proceeding" means any structured process in which a neutral assists disputants in reaching a voluntary settlement by means of dispute resolution techniques such as mediation, conciliation, early neutral evaluation, nonjudicial settlement conferences or any other proceeding leading to a voluntary settlement conducted consistent with the requirements of this chapter. The term includes the orientation session.
- "Dispute resolution program" means a program that offers dispute resolution services to the public, which is run by the Commonwealth or any private for-profit or not-for-profit organization, political subdivision, or public corporation, or a combination of these.
- "Dispute resolution services" includes screening and intake of disputants, conducting dispute resolution proceedings, drafting agreements and providing information or referral services.
- "Intake specialist" means an individual who is trained in analyzing and screening cases to assist in determining whether a case is appropriate for referral to a dispute resolution proceeding.
- "Mediation" means a process in which a neutral facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.
- "Neutral" means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services.

- "Orientation session" means a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication. (1993, c. 905; 2002, c. 718.)

8.01-576.5. Referral of disputes to dispute resolution proceedings.

While protecting the right to trial by jury, a court, on its own motion or on motion of one of the parties, may refer any contested civil matter, or selected issues in a civil matter, to an orientation session in order to encourage the early resolution of disputes through the use of procedures that facilitate (i) open communication between the parties about the issues in the dispute, (ii) full exploration of the range of options to resolve the dispute, (iii) improvement in the relationship between the parties, and (iv) control by the parties over the outcome of the dispute. The neutral or intake specialist conducting the orientation session shall provide information regarding dispute resolution options available to the parties, screen for factors that would make the case inappropriate for a dispute resolution proceeding, and assist the parties in determining whether their case is suitable for a dispute resolution process such as mediation. The court shall set a date for the parties to return to court in accordance with its regular docket and procedure, irrespective of the referral to an orientation session. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date.

Upon such referral, the parties shall attend one orientation session unless excused pursuant to § 8.01-576.6. Further participation in a dispute resolution proceeding shall be by consent of all parties. Attorneys for any party may participate in a dispute resolution proceeding. (1993, c. 905; 2002, c. 718.)

§ 8.01-576.6. Notice and opportunity to object.

When a court has determined that referral to an orientation session is appropriate, an order of referral to a neutral or to a dispute resolution program shall be entered and the parties shall be so notified as expeditiously as possible. The court shall excuse the parties from participation in an orientation session if, within fourteen days after entry of the order, a written statement signed by any party is filed with the court, stating that the dispute resolution process has been explained to the party and he objects to the referral. (1993, c. 905; 2002, c. 718.)

§ 8.01-576.7. Costs.

The orientation session shall be conducted at no cost to the parties. Unless otherwise provided by law, the cost of any subsequent dispute resolution proceeding shall be as agreed to by the parties and the neutral. (1993, c. 905; 2002, c. 718.)

§ 8.01-576.8. Qualifications of neutrals; referral.

A neutral who provides dispute resolution services other than mediation pursuant to this chapter shall provide the court with a written statement of qualifications, describing the neutral's background and relevant training and experience in the field. A dispute resolution program may satisfy the requirements of this section on behalf of its neutrals by providing the court with a written statement of the background, training, experience, and certification, as appropriate, of any neutral who participates in its program. A neutral who desires to provide mediation and receive referrals from the court shall be certified pursuant to guidelines promulgated by the Judicial Council of Virginia. The court shall maintain a list of mediators certified pursuant to guidelines promulgated by the Judicial Council and may maintain a list of neutrals and dispute resolution programs which have met the requirements of this section. The list may be divided among the areas of specialization or expertise of the neutrals.

At the conclusion of the orientation session, or no later than ten days thereafter, parties electing to continue with the dispute resolution proceeding may: (i) continue with the neutral who conducted the orientation session, (ii) select any neutral or dispute resolution program from the list maintained by the court to conduct such proceedings, or (iii) pursue any other alternative for voluntarily resolving the dispute to which the parties agree. If the parties choose to proceed with the dispute resolution proceeding but are unable to agree on a neutral or dispute resolution program during that period, the court shall refer the case to a neutral or dispute resolution program who accepts such referrals, on the list maintained by the court on the basis of a fair and equitable rotation, taking into account the subject matter of the dispute and the expertise of the neutral, as appropriate. If one or more of the parties is indigent or no agreement as to payment is reached between the parties and a neutral, the court shall set a reasonable fee for the service of any neutral who accepts such referral pursuant to this paragraph. (1993, c. 905; 2002, c. 718.)

§ 8.01-576.9. Standards and duties of neutrals; confidentiality; liability.

A neutral selected to conduct a dispute resolution proceeding under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A neutral has an obligation to remain impartial and free from conflict of interests in each case, and to decline to participate further in a case should such partiality or conflict arise. Unless expressly authorized by the disclosing party, the neutral may not disclose to either party information relating to the subject matter of the dispute resolution proceeding provided to him in confidence by the other. In reporting on the outcome of the dispute resolution proceeding to the referring court, the neutral shall indicate whether an agreement was reached, the terms of the agreement if authorized by the parties, the fact that no agreement was reached, or the fact that the orientation session or mediation did not occur. The neutral shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the dispute resolution proceeding, unless the parties otherwise agree.

However, where the dispute involves the support of minor children of the parties, the parties shall disclose to each other and to the neutral the information to be used in completing the child support guidelines worksheet required by § 20-108.2. The guidelines computations and any reasons for deviation shall be incorporated in any written agreement between the parties.

With respect to liability, when mediation is provided by a mediator who is certified pursuant to guidelines promulgated by the Judicial Council of Virginia, then the mediator, mediation program for which the certified mediator is providing services, and a mediator co-mediating with a certified mediator shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or conduct a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. This language is not intended to abrogate any other immunity that may be applicable to a mediator. (1993, c. 905; 1994, c. 687; 2002, c. 718.)

§ 8.01-576.10. Confidentiality of dispute resolution proceeding.

All memoranda, work products and other materials contained in the case files of a neutral or dispute resolution program are confidential. Any communication made in or in connection with the dispute resolution proceeding that relates to the controversy, including screening, intake and scheduling a dispute resolution proceeding, whether made to the neutral or dispute resolution program staff or to a party, or to any other person, is confidential. However, a written settlement agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the dispute resolution proceeding agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and actually used in the dispute resolution proceeding, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § [8.01-576.12](#) in a proceeding to vacate a mediated agreement, or (ix) as provided by law or rule. The use of attorney work product in a dispute resolution proceeding shall not result in a waiver of the attorney work product privilege. (1993, c. 905; 1994, c. [687](#); 2002, c. [718](#); 2013, cc. [283](#), [383](#).)

§ [8.01-576.11](#). Effect of written settlement agreement.

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case. In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order. (1993, c. 905; 1994, c. 687.)

§ [8.01-576.12](#). Vacating orders and agreements.

Upon the filing of an independent action by a party, the court shall vacate a mediated agreement reached in a dispute resolution proceeding pursuant to this chapter, or vacate an order incorporating or resulting from such agreement, where:

1. The agreement was procured by fraud or duress, or is unconscionable;
2. If property or financial matters in domestic relations cases involving divorce, property, support or the welfare of a child are in dispute, the parties failed to provide substantial full disclosure of all relevant property and financial information; or
3. There was evident partiality or misconduct by the neutral, prejudicing the rights of any party.

For purposes of this section, "misconduct" includes failure of the neutral to inform the parties in writing at the commencement of the mediation process that: (i) the neutral does not provide legal advice, (ii) any mediated agreement may affect the legal rights of the parties, (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so, and (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

The fact that any provisions of a mediated agreement were such that they could not or would not be granted by a court of law or equity is not, in and of itself, grounds for vacating an agreement.

A motion to vacate under this section shall be made within two years after the mediated agreement is entered into, except that, if predicated upon fraud, it shall be made within two years after these grounds are discovered or reasonably should have been discovered. (1993, c. 905; 2002, c. 718.)

CHAPTER 21.2.
PRIVATE-REFERRED DISPUTE RESOLUTION PROCEEDINGS

Code of Virginia

21.2.	Sec.	8.01-581.21.	Definitions.
		8.01-581.22.	Confidentiality; exceptions.
		8.01-581.23.	Civil immunity.
		8.01-581.24.	Standards and duties of mediators; confidentiality; liability.
		8.01-581.25.	Effect of written settlement agreement.
		8.01-581.26.	Vacating orders and agreements.

§ 8.01-581.21. Definitions.

As used in this chapter:

- "Mediation" means a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.
- "Mediation program" means a program through which mediators or mediation is made available and includes the director, agents and employees of the program.
- "Mediator" means an impartial third party selected by agreement of the parties to a controversy to assist them in mediation. (1988, cc. 623, 857; 2002, c. 718.)

§ 8.01-581.22. Confidentiality; exceptions.

All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the mediation agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-581.26 in a proceeding to vacate a mediated agreement, or (ix) as provided by law or rule. The use of attorney work product in a mediation shall not result in a waiver of the attorney work product privilege. (1988, cc. 623, 857; 2002, c. [718](#); 2013, cc. [283](#), [383](#).)

§ 8.01-581.23. Civil immunity.

When a mediation is provided by a mediator who is certified pursuant to guidelines promulgated by the Judicial Council of Virginia, or who is trained and serves as a mediator through the statewide mediation program established pursuant to § [2.2-1202.1](#), then that mediator, mediation programs for which that mediator is

providing services, and a mediator co-mediating with that mediator shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or conduct a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. This language is not intended to abrogate any other immunity that may be applicable to a mediator. (1988, cc. 623, 857; 2002, c. [718](#); 2012, cc. [803](#), [835](#).)

§ 8.01-581.24. Standards and duties of mediators; confidentiality; liability.

A mediator selected to conduct a mediation under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A mediator has an obligation to remain impartial and free from conflicts of interest in each case, and to decline to participate further in a case should such partiality or conflict arise. Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information relating to the subject matter of the mediation provided to him in confidence by the other. A mediator shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the mediation, unless the parties otherwise agree.

However, where the dispute involves the support of minor children of the parties, the parties shall disclose to each other and to the mediator the information to be used in completing the child support guidelines worksheet required by § 20-108.2. The guidelines computations and any reasons for deviation shall be incorporated in any written agreement by the parties. (2002, c. 718.)

§ 8.01-581.25. Effect of written settlement agreement.

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. If the mediation involves a case that is filed in court, upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case. In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order. (2002, c. 718.)

§ 8.01-581.26. Vacating orders and agreements.

Upon the filing of an independent action by a party, the court shall vacate a mediated agreement reached in a mediation pursuant to this chapter, or vacate an order incorporating or resulting from such agreement, where:

1. The agreement was procured by fraud or duress, or is unconscionable;
2. If property or financial matters in domestic relations cases involving divorce, property, support or the welfare of a child are in dispute, the parties failed to provide substantial full disclosure of all relevant property and financial information; or
3. There was evident partiality or misconduct by the mediator, prejudicing the rights of any party.

For purposes of this section, "misconduct" includes failure of the mediator to inform the parties at the commencement of the mediation process that: (i) the mediator does not provide legal advice, (ii) any mediated agreement may affect the legal rights of the parties, (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so, and (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement. (2002, c. 718.)

OFFICE OF THE EXECUTIVE SECRETARY
OF THE SUPREME COURT OF VIRGINIA

STANDARDS OF ETHICS AND PROFESSIONAL
RESPONSIBILITY FOR CERTIFIED MEDIATORS

Adopted by the Judicial Council of Virginia April 5, 2011
Effective Date: July 1, 2011

A. GENERAL

The Commonwealth of Virginia permits the referral of civil disputes pending in court to mediators certified pursuant to Guidelines adopted by the Judicial Council of Virginia. The referral of cases from the court system to mediation places an important responsibility upon persons who serve as mediators. Confidence in the mediation process and in the integrity and competence of mediators depends upon mediators conducting themselves in accordance with the highest ethical standards. These Standards are intended to guide the conduct of mediators certified pursuant to Guidelines adopted by the Judicial Council of Virginia and to promote public and judicial confidence in the mediation process.

This section and the Scope and Definitions provide general orientation. The text of the body of these Standards is authoritative and the Comments accompanying each section are interpretive.

B. SCOPE AND DEFINITIONS

These Standards of Ethics and Professional Responsibility apply to all certified mediators in their capacity 1) as mediators in court-referred and all other mediations in the Commonwealth of Virginia; 2) as trainers of certified mediation courses; and 3) as mediation mentors.

Mediation, as defined in Virginia Code § 8.01-581.21, is “a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.” See also Virginia Code § 8.01-576.4.

Mediator, as defined in Virginia Code § 8.01-581.21, “means an impartial third party selected by agreement of the parties to a controversy to assist them in mediation.” See also Virginia Code § 8.01-576.4.

These Standards recognize the need for flexibility in style and process and are not intended to unduly restrict the practice of mediation.

Comment: It is the intent of the drafters of the Standards that the term “party” means an individual who has an issue to be resolved, and the term “participant” means everyone, other than the mediator, who participates in the process, including the parties.

C. ASSESSING THE APPROPRIATENESS OF THE MEDIATION

Prior to and throughout the mediation, the mediator should assess whether:

1. mediation is an appropriate process for the parties;
2. each party is able to participate effectively in the mediation; and
3. each party is willing to enter and participate in the mediation in good faith.

If in the judgment of the mediator the conditions specified in C.1. through C.3. are not met, the mediator shall not commence or continue the mediation.

Comment: Section 8.01-576.5 of the Code of Virginia allows a court to refer any contested civil matter to a dispute resolution orientation session. "Orientation session" is defined in Section 8.01-576.4 as a preliminary meeting during which the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication. A major goal of the orientation session is to educate the parties about dispute resolution processes available to them, such as mediation.

The orientation session can also play an important role as an assessment tool. Assessment as to whether a case is appropriate for a dispute resolution process, like mediation, may involve, particularly in family cases, separate screening interviews with the parties. Where appropriate, these interviews should include specific questions regarding violence and abuse (physical, emotional, and verbal abuse and/or threats), child abuse/neglect, drug and/or alcohol use, and balance of power. In cases where separate screening interviews have been conducted by an intake specialist or organization, such as a court program or community mediation center, such screening must meet the requirements of this Section. This in no way relieves the mediator from continual assessment of appropriateness throughout the mediation process. See Section K.4.

D. INITIATING THE PROCESS

1. Description of Mediation Process. The mediator shall define mediation (as defined in Scope and Definitions) and describe the mediation process to the participants.
 - (i) The description of the process shall include an explanation of the role of the mediator.
 - (ii) The mediator shall also generally describe his or her style and approach to mediation. The parties must be given an opportunity to express their expectations regarding the conduct of the mediation process. The parties and mediator must include in the Agreement to Mediate a general statement regarding the mediator's style and approach to mediation to which the parties have agreed.
 - (iii) The mediator shall describe the stages of the mediation process.
2. Procedures
 - (i) Prior to commencement of a court-referred mediation, the mediator shall inform the parties in writing of the following:
 - 1) The mediator does not provide legal advice.

- 2) Any mediated agreement may affect the legal rights of the parties.
 - 3) Each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so.
 - 4) Each party to the mediation should have any draft agreement reviewed by independent legal counsel prior to signing the agreement.
- (ii) In all other cases, the mediator shall inform the parties, orally or in writing, of the substance of the following:
- 1) The mediator does not provide legal advice.
 - 2) Any mediated agreement may affect the legal rights of the parties.
 - 3) Each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so.
 - 4) Each party to the mediation should have any draft agreement reviewed by independent legal counsel prior to signing the agreement.
- (iii) The mediator should reach an understanding with the parties regarding the procedures which may be used in mediation. This includes, but is not limited to, the practice of separate meetings (caucus) between the mediator and participants, the involvement of additional interested persons, the procedural effect on any pending court case of participating in the mediation process, and the ability of any party or the mediator to terminate the mediation.

Comment: In section D.1.a., the description of the mediation process may include an explanation of the role of the mediator as that of a facilitator, not advocate, judge, jury, counselor or therapist. The role of the mediator also includes, but is not limited to, assisting the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping the parties reach voluntary agreements.

In Section D.1.c., the stages of mediation should include at a minimum, an opportunity for all the parties to be heard, the identification of issues to be resolved in mediation, the generation of alternatives for resolution, and, if the parties so desire, the development of a Memorandum of Understanding or Agreement.

In Section D.2.b., the primary role of the mediator is to facilitate the voluntary resolution of a dispute. In order to ensure that parties make informed decisions, mediators should make the parties aware of the importance of consulting other professionals. Particularly where legal rights are involved or the parties' expectation is to enter into a binding and enforceable agreement, clear notification of the information in (b) 1-4 is essential. A mediator can most effectively verify that he or she has informed the parties of the items listed in (b) 1-4 if these items are put in writing.

E. SELF DETERMINATION

1. Mediation is based on the principle of self-determination by the parties. Self-determination is the act of coming to a voluntary, uncoerced decision.
2. The mediator may provide information and raise issues. The mediator has no vested interest in the outcome of the mediation. Therefore, the mediator must encourage the

parties to develop their own solution to the conflict. The mediator may suggest and explore options for the parties to consider, only if the suggestions do not interfere with the mediator's impartiality or the self-determination of the parties. The mediator may not recommend a particular solution to any of the issues in dispute between the parties or coerce the parties to reach an agreement on any or all of the issues being mediated.

3. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. The mediator may not coerce a party into an agreement, and shall not make decisions for any party to the mediation process.
4. The mediator shall promote a balanced process and shall encourage the participants to participate in the mediation in a collaborative, non-adversarial manner.
5. A mediator must obtain consent from the parties before conducting another dispute resolution process, such as arbitration, in the same matter as the one being mediated. Prior to requesting the parties' consent, the mediator shall inform the parties of the following:
 - (i) the procedures that will be used in the additional dispute resolution process, and
 - (ii) the implications of having the same neutral conduct both processes.

A mediator who conducts an additional dispute resolution process, in the same matter as the one being mediated, assumes different duties and responsibilities that may be governed by other professional standards.

F. PROFESSIONAL INFORMATION

1. The mediator shall encourage the parties to obtain independent expert information and/or advice when such information and/or advice is needed to reach an informed agreement or to protect the rights of a party.
2. A mediator may give information only in those areas where qualified by training or experience and only if the mediator can do so consistent with these Standards.
3. When providing information, the mediator shall do so in a manner that does not interfere with the mediator's impartiality or the self-determination of the parties.

Comment: The role of the mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another professional is problematic and thus, a mediator should distinguish between the roles. For additional information, see Virginia's Guidelines on Mediation and the Unauthorized Practice of Law.

G. IMPARTIALITY

1. A mediator shall conduct a mediation in an impartial manner. Impartiality means freedom from favoritism or bias in word, action, or appearance. If the mediator cannot conduct the mediation in an impartial manner, the mediator shall not serve.

2. A mediator should avoid the appearance of partiality, as viewed by the parties, at all times in providing mediation services. A mediator shall promptly disclose any facts, including any actual or potential conflicts of interest, that are known to the mediator and could reasonably be seen by the parties as creating an appearance of partiality. This is an ongoing duty.
3. The parties may also raise, at any time, any concerns they may have regarding the appearance of partiality by the mediator.
4. After appropriate disclosure and discussion of any matters regarding the appearance of partiality on the part of the mediator, the mediator may proceed with the mediation, if the mediator and all parties agree. Otherwise, the mediator shall not serve.

Comments:

1. A mediator should not act from favoritism or bias based on any participant's personal characteristics, background, values, beliefs, or performance at a mediation, or any other reason.
2. Matters that may create an appearance of partiality include, but are not limited to, (a) a mediator's involvement in, or opinions and beliefs about, the subject matter of the dispute and (b) a mediator's known current, known past, or reasonably anticipated future relationship or affiliation, whether personal or professional, with any participant in the mediation process.
3. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual impartiality or raises an appearance of partiality as viewed by the parties. However, a mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual impartiality or raise an appearance of partiality as viewed by the parties.
4. In making any disclosures under this Standard, the neutral should not reveal any confidential information. Mediators should consider whether written or verbal disclosure is more appropriate, considering the situation requiring disclosure.

H. CONFIDENTIALITY

1. In order to inform the participants about confidentiality in mediation, the mediator shall use an Agreement to Mediate that contains the statutory language relating to confidentiality and any requirements for mandatory reporting that are applicable to the mediation. In such Agreement, the mediator and parties may also agree in writing to create (a) any additional confidentiality provisions that are not inconsistent with law and (b) any additional exceptions to confidentiality. Any such additional exceptions or confidentiality provisions must be in writing and signed by the participants. The statutory language to be included from Virginia Code § 8.01-581.22 is as follows:

All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

- (i) where all parties to the mediation agree, in writing, to waive the confidentiality,
 - (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation,
 - (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation,
 - (iv) where a threat to inflict bodily injury is made,
 - (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime,
 - (vi) where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint,
 - (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation,
 - (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-581.26 in a proceeding to vacate a mediated agreement, or
 - (ix) as provided by law or rule.
2. At the commencement of the orientation session and of any mediation, the mediator shall inform the participants of any mandatory reporting obligations of the mediator, such as the reporting of allegations of child abuse (Virginia Code § 63.2-1509).
 3. At the commencement of the orientation session and of any mediation, the mediator shall inform the participants of any required reporting to the court in court-referred cases. For example, in reporting on the outcome of the dispute resolution proceeding to the referring court, the mediator shall indicate whether an agreement was reached, the terms of the agreement if authorized by the parties, the fact that no agreement was reached, or the fact that the orientation session or mediation did not occur (Virginia Code § 8.01-576.9.).
 4. The mediator shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the dispute resolution proceeding, unless the parties otherwise agree (Virginia Code § 8.01-576.9. See also Virginia Code § 8.01-581.24.).
 5. The mediator should have a reasonable understanding of confidentiality in mediation.
 6. The mediator shall promote understanding among the participants of the extent to which the mediator and the participants will maintain confidentiality.
 7. If a mediator participates in teaching, research or evaluation of mediation, the mediator shall protect the anonymity of the participants and abide by their reasonable expectations regarding confidentiality.
 8. Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information relating to the subject matter of the mediation provided to him in confidence by the other (Virginia Code § 8.01-581.24.).

I. AGREEMENT

1. Prior to the parties entering into a mediated agreement, the mediator shall encourage the parties to consider the meaning and ramifications of the agreement and the interests of any third parties.
2. The mediator shall encourage review of any agreement by independent legal counsel for each of the parties prior to the mediated agreement being signed by the parties.
3. If the mediator has concerns about the possible consequences of a proposed agreement or that any party does not fully understand the terms of the agreement or its consequences, the mediator may raise these concerns with the parties and may withdraw from the mediation.

J. COMPETENCE

1. If at the time of the referral, a mediator determines that he or she lacks sufficient mediator skill or subject-matter knowledge to effectively mediate the dispute, the mediator shall notify the parties and shall decline to mediate the dispute, unless the parties agree otherwise.
2. If a mediator determines during the course of a mediation that he or she lacks sufficient mediator skill or subject-matter knowledge to effectively mediate the dispute, the mediator shall notify the parties and shall withdraw, unless the parties agree otherwise.

K. QUALITY OF THE PROCESS

1. A mediator shall conduct a mediation in a manner that promotes diligence, timeliness, safety, procedural fairness, and mutual respect among all the participants. A mediator should agree to mediate only when the mediator is prepared to commit the time and attention essential to an effective mediation.
2. A mediator shall act consistently with all Virginia statutes governing mediation, mediators, and dispute resolution proceedings.
3. A mediator should promote honesty and candor between and among all participants.
4. The mediator shall terminate the mediation when, in the mediator's judgment, the integrity of the process has been compromised. (For example, by inability or unwillingness of a party to participate effectively; gross inequality of bargaining power or ability; and unfairness resulting from nondisclosure, where there is a legal duty to disclose, or fraud, by a participant.) The mediator may explain the reason for the mediator's termination, so long as the explanation is consistent with the obligations arising under these Standards, including but not limited to the obligation of confidentiality.
5. Mediators shall conduct themselves in a manner that will instill confidence in the mediation process and in the integrity and competence of mediators. Mediators shall conduct mediations consistent with the proper administration of justice. For example, a mediator shall not:

- a) commit a criminal or deliberately wrongful act that reflects adversely on the mediator's honesty, trustworthiness or fitness to provide mediation services, conduct mediation training programs, and/or mentor; or
- b) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the mediator's fitness to provide mediation services, to conduct mediation training programs, and/or to mentor; or
- c) knowingly assist or induce another person to violate or attempt to violate the Standards of Ethics and Professional Responsibility for Certified Mediators.

L. FEES

- 1. A mediator shall fully disclose compensation, fees, and, charges to the parties.
- 2. A mediator shall not enter into a fee agreement contingent on the result of the mediation or the amount of settlement because such a practice creates an appearance of partiality.
- 3. A mediator shall not give or receive any commission or other monetary or non- monetary form of consideration in return for referral of parties for mediation services.

Comment: Section L.3. is not intended to preclude a dispute resolution organization or program from receiving a commission or consideration for acceptance of a case which it then refers to a member of the organization's panel of neutrals.

M. ADVERTISING – A mediator shall be truthful in advertising, solicitation, information distributed electronically through a website, or other communication about the mediator's qualifications, experience, services and fees.

N. COMMUNITY SERVICE – A mediator is encouraged to provide pro bono or reduced fee services to the community, where appropriate.

O. ADDITIONAL RESPONSIBILITIES – These Standards are not intended to be exclusive and do not in any way limit the responsibilities the mediator may have under codes of ethics or professional responsibility promulgated by any other profession to which the mediator belongs or any other code of ethics or professional responsibility to which the mediator subscribes, such as those promulgated by the American Bar Association, the Association for Conflict Resolution or the American Arbitration Association. However, where these Standards and another code of ethics or professional responsibility conflict, these Standards take precedence.

P. ENFORCEMENT OF THE STANDARDS OF ETHICS AND PROFESSIONAL RESPONSIBILITY – The Standards of Ethics and Professional Responsibility for Certified Mediators shall be enforced through the processes set out in the Procedures for Complaints Against Certified Mediators, Mediation Trainers, and Mediator Mentors available on the Supreme Court of Virginia web site (www.courts.state.va.us)

1. One client comes to mediation well prepared with documents from her accountant, information from her attorney, and the ability to verbalize her proposals well. The other client seems to be hesitant to agree with the proposals, but appears uncertain how to respond. How should this situation be handled?
2. Two days ago, you completed a mediation session and the one party's employer called to ask if her employee in fact attended a mediation appointment during work hours, was anything said during the mediation about the employer, and has the problem been resolved? If this information is not given, the employer said the employee might be terminated. What can you do?
3. The mediation is about to begin and suddenly you recall a previous contact with one of the clients, but the client does not seem to recognize you. You had dated his younger sibling for about a year approximately three years ago. What issues are involved, and what should you do as a mediator?
4. In the mediation, the landlord threatens his tenants, saying that if they don't agree to drop the complaints about the furnace malfunctioning, he will evict them and tell other apartment managers not to rent to them because they are nothing but trouble.
5. You accept a mediation case based upon the information gathered during the intake interview. After the first session dealing with workplace communication issues, the clients wish to return a second time to mediate sexual harassment. You have had very little exposure to this issue, and you have had no formal training. What are your options as a mediator?
6. The parties have negotiated an agreement that calls for the one party to not only accept full responsibility for payment of damages in a questionable situation, but to pay interest far in excess of the current rate. What should you do?
7. You have completed the introduction and information sharing has begun. You get the impression one of the parties is seriously and heavily medicated. What do you do?

APPENDIX



*“The great thing in this world is not so much where we stand,
but rather in what direction we are moving.”*

-- Source Unknown

Turn down the lights and bring up the curtain . . .

Although for many people role-playing is often the least favorite learning exercise, we know that it is one of the most effective ways to learn mediation skills. Both the mediators and the participants have opportunities to learn from the role-playing experience.

Guide for the Role Playing Mediator:

- ❖ Set up and conduct the mediation as realistically as possible, so that you get the chance to try the mediator hat on for size.
- ❖ Feel free to refer to the manual during the practice session.
- ❖ Understand the difficulty for your role-playing “disputants” to stay in role . . . encourage them to stay in character.
- ❖ Be yourself and be genuine!

Guide for the Role Playing Party:

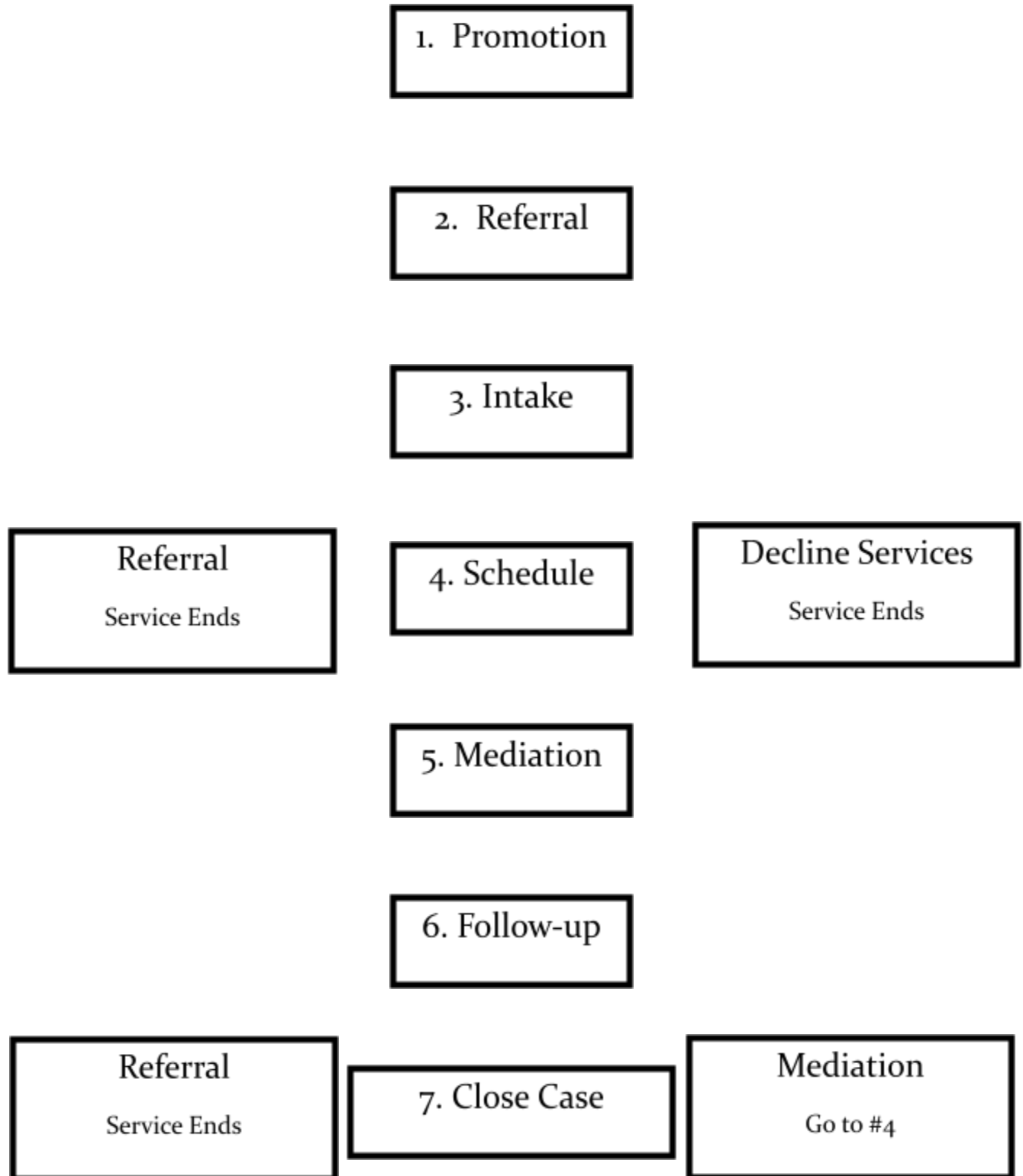
- ❖ Read through the information provided. Give your best effort to act the part.
- ❖ Feel comfortable to add “facts” not provided in writing, if necessary to respond to one another.
- ❖ Allow yourself to get into the role and “feel” the emotions. Be aware of impressions that develop about how real parties might feel based on the mediator’s reactions, word choices and style.
- ❖ Allow the mediators to lead you through the process -- as tempting as it may be, hold your compliments and critiques until the practice session is completed.
- ❖ If you are unable to maintain your role, ask for a break.
- ❖ Do not create a character or situation that is impossible to resolve. *Caution:* there is a tendency for participants to enjoy their role so much that the mediators have no chance to practice the process. Don’t try to outsmart the mediators; and don’t be a pushover. Give them some practice in enforcing the ground rules, but respond when they have effectively intervened.
- ❖ REMEMBER . . . You will be serving as the mediator next! The simulation will be the most rewarding for you and the mediators if you stay in character and react to the process as naturally and with as much integrity as possible.

Processing the Practice session:

- ❖ *Thinking points for the mediator:*
 - o What challenged you as you facilitated this process?
 - o What emotions did you feel?
 - o What did you do well and what are areas for improvement?
- ❖ *Thinking points for the participants:*
 - o What did you learn about playing the role of a participant through this process?
 - o What did the mediators do that helped engage or disengage the party?
 - o What did the mediators do well and what are areas for improvement?

CASE MANAGEMENT FLOW CHART

Seeing the case from beginning to end.



AUTHORIZATION FOR RELEASE OF INFORMATION

Regarding: _____

The FairField Center is hereby authorized to release and receive confidential information to and from:

Name _____

Agency _____

Address _____

This information is to be used for professional purposes only. This authorization may be revoked at any time by submitting a written request to that effect.

Signature

Signature

Signature

Signature

Witness

Date

**SUPREME COURT OF VIRGINIA
Office of the Executive Secretary**

Evaluation of Mediation Session(s) and Mediator(s)

This information will be used to inform the court system and the mediator(s) about your experience with mediation. With your help, we can ensure that quality mediation services continue to be available to the citizens of the Commonwealth. This information may be shared with the mediator(s).

I. Session Evaluation

Name: _____ Date: _____

Address: _____
Street

City State Zip

Phone Number: (Day) _____ (Evening) _____

Email Address: _____

1. I am (check one): ☐ a party to the mediation ☐ an attorney representing a party

2. For this case, mediation was (check one):

☐ very appropriate ☐ somewhat appropriate ☐ not at all appropriate

Comments:

3. Total hours spent in the mediation session(s): _____ Number of Sessions: _____

4. The mediation process was:

☐ very helpful ☐ somewhat helpful ☐ not at all helpful

5. Mediation ended with an agreement on:

☐ all of the issues ☐ some of the issues ☐ none of the issues

6. Would you use mediation again? ☐ yes ☐ no

7. Would you recommend mediation to others? ☐ yes ☐ no

FORM ADR-1002 revised June 2020

(OVER)

II. Mediator Evaluation

Mediator A: _____
Print First & Last Name

Mediator B: _____
Print First & Last Name

Mediator's Certification Number

Mediator's Certification Number

Please rate your mediator(s) on the following:

5 = Very Good 4 = Good 3 = Adequate 2 = Unsatisfactory 1 = Poor 0 = Does not apply

The Mediator . . .	Mediator A	Mediator B
1. explained the mediation process and procedures.	5 4 3 2 1 0	5 4 3 2 1 0
2. provided useful information.	5 4 3 2 1 0	5 4 3 2 1 0
3. was a good listener.	5 4 3 2 1 0	5 4 3 2 1 0
4. allowed me to talk about issues that were important to me.	5 4 3 2 1 0	5 4 3 2 1 0
5. was respectful.	5 4 3 2 1 0	5 4 3 2 1 0
6. helped clarify issues.	5 4 3 2 1 0	5 4 3 2 1 0
7. encouraged us to come up with our own solutions.	5 4 3 2 1 0	5 4 3 2 1 0
8. informed me that I could consult an attorney. <input type="checkbox"/> yes <input type="checkbox"/> no		
9. was neutral. <input type="checkbox"/> yes <input type="checkbox"/> no		
10. wrote our agreement clearly and accurately <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> doesn't apply		
11. Share any comments on the mediation process and/or the mediator(s):		

Please return this Form to the Mediator or Program Director, email it to drsapplications@vacourts.gov, or mail directly to:
Dispute Resolution Services
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219

FORM ADR-1002 revised June 2020

1. What type of qualification is available in Virginia for mediators?

In Virginia, mediators may be **certified** pursuant to [Guidelines](#) established by the Judicial Council of Virginia.

Mediators may be certified in four categories: General District Court (GDC), Circuit Court-Civil (CCC), Juvenile and Domestic Relations District Court (J&DR), and Circuit Court-Family (CCF).

2. What do I need to do to become certified?

For information on becoming a certified mediator visit our [Certification Requirements](#) page.

3. Do I need a particular degree to get certified?

You must have earned a minimum of a Bachelor's Degree to qualify for certification as a court-referred mediator in Virginia. You may apply for a waiver of this requirement by submitting a letter to Dispute Resolution Services, describing your relevant work and life experience. The letter must be accompanied by a resume and two letters of recommendation that address your oral and written communication skills. Additional information may be requested. If certification is your objective, you should seek a waiver prior to beginning mediation training.

4. Where can I get information regarding training?

Certified mediation training programs are offered throughout the year, around the state, by different trainers. A [Certification and Training](#) listing mediation courses is available at www.courts.state.va.us. You will need to contact the trainers directly to learn of dates, location, and cost of upcoming training. Be careful to ensure that the trainer is certified to conduct the training program.

5. Where can I get the observation and co-mediation requirements completed?

Often the mediation organization or Center at which you receive training is a good source for case observations and co-mediations. You may consult the list of [Mentors](#) or you may use Mentor Status as a search criterion in the [Directory of Certified Mediators](#) to identify those who are Mentors. Contact Mentors in your area to determine if they would be willing to assist you in meeting your observation and co-mediation requirements. In addition, the Supreme Court of Virginia enters into contracts with certified mediators to provide services to the courts. These contractors are required to mentor mediators in training. Contact the [Mediation Services Contractors](#) in your area.

6. Must I be certified to mediate court-referred cases in Virginia?

Yes. A neutral who desires to provide mediation and receive referrals from the court shall be certified pursuant to [Guidelines](#) promulgated by the Judicial Council of Virginia. The parties may however, pursue any other alternative for voluntarily resolving their dispute.

7. If I took mediation training in another state, can I get a waiver of the certification requirements?

Yes. If you have been certified/qualified/registered/trained as a mediator in another state, you may submit information regarding your previous training and experience to the Division of Dispute Resolution Services. DRS will evaluate the content and length of the training you have received and determine which, if any, of the training and mentorship requirements may be waived. At a minimum, individuals receiving training out of state must take a two-hour course on [Virginia's Standards of Ethics for Certified Mediators](#) and, if not licensed to practice law in Virginia, attend a four-hour course on Virginia's judicial system.

8. Where can I find a list of certified mediators?

A [Searchable Directory of Court-Certified Mediators](#) can be accessed and the search criteria you enter will narrow your search accordingly. You may search by name, level of certification, education/relicense, training and experience, specialty areas, hours available, language proficiency, jurisdictions served, and fee scale. As you click on each name your search produces, you will be linked to their detailed mediator profile, including contact information. If you prefer to search by geographic location, you may go to the [Master List of Mediators](#) and click on a judicial circuit on a map of Virginia to view all mediators who have indicated by their profile form they are available to mediate in that circuit.

9. Is mediation mandatory in Virginia?

No. [Section 8.01-576.5](#) authorizes judges to refer appropriate civil matters to a dispute resolution orientation session. The orientation session is an informational meeting to allow the parties to learn about mediation and consider the appropriateness of their case for mediation. Parties may opt out of the orientation session. The orientation session is free of cost. Participation in an ADR process following the orientation session is voluntary.

10. What are characteristics of parties that make mediation more appropriate?

Party Characteristics

1. Mediation will likely lead to a better outcome for the parties.
 - An apology or privacy may be more important than a litigated outcome.
 - The key is that it is *their* outcome. The parties decide together what solution meets their needs most appropriately.
2. Mediation is likely to save the parties time and money.
 - Cost related factors include the mediator's fees, the costs of counsel during the ADR process, and the costs of party attendance at the sessions.
 - The state provides funding in order to provide parties with access to free mediation services.
 - While parties are encouraged to have counsel, many pro se litigants participate in mediation effectively.
 - Research findings on cost and time-savings in ADR have been mixed, but its qualitative value is unquestionable. Over 90% of parties using mediation are satisfied with process, would use it again in the future and would recommend it to others.
3. The parties have and wish to maintain a personal or business relationship.
 - Where there is a business or personal relationship, ADR may reduce hostility and help find a resolution that benefits both sides.
 - Often there is more at stake than the surface monetary value of the claim.
4. The parties and their attorneys can use mediation effectively.
 - If one or both attorneys are known to be exceedingly uncooperative, consider whether they would try to subvert the process or not participate in good faith.
 - If clients appear to have unrealistic expectations, ADR might help an attorney help his client face facts realistically.
5. One or both parties are pro se.
 - ADR is very appropriate in cases involving two pro se litigants.
 - Where one party is unrepresented, the neutral has a responsibility to ensure a balance of power and that the parties make informed decisions.
6. Settlement depends on information that parties want to keep confidential.
 - ADR offers privacy and a chance to share information or emotions that may be irrelevant to the facts of the case.
 - Cases involving trade secrets or situations where parties may be intimidated by a formal, public court proceeding are appropriate.

11. What are characteristics of cases that make them more appropriate for mediation?

Case Characteristics Making Mediation Inappropriate

1. The case involves novel legal issues, ambiguous precedent, constitutional issues, or public policy.
2. A judgment would contribute to the development of the law.
3. The public should have information about the case and its resolution.
4. There is an imbalance of bargaining power between the parties.

Case Characteristics Making Mediation Appropriate

5. There is a need to save time.
6. There is a need to save money.
7. There is a need for the client to avoid trial for emotional or personal reasons.
8. There is a need to avoid trial because the risk of losing is not acceptable.
9. There is a need for complexity, flexibility or creativity in the desired solution.
10. There is a need for privacy and/or confidentiality in resolving the matter.
11. There is a need for assistance in overcoming communication barriers.
12. There is a need for the parties to vent, to provide information, to get information, to explain positions and interests.
13. There is a need for assistance in dealing with a difficult client, opposing party, opposing attorney, etc.
14. There is a need to maintain or improve ongoing relationships between the parties.
15. There is a need to seek partial solutions to the dispute to narrow the scope and intensity of the dispute.
16. There is a need to informally assess the opposing party or perhaps the opposing attorney to better evaluate the case for resolution.
17. There is a need to examine positions and explore underlying interests.
18. There is a need for assistance in managing the litigation of the case.
19. There is a need for the parties to invest in and own the solution.
20. There is a need for a reality check regarding the merits of the dispute.
21. There is a need for assistance in evaluating the merits of the dispute.
22. There is a need to keep control of the process.
23. There is a need to keep control of the outcome.

12. What Factors Affect Attorneys' Interests In Using Mediation?

1. Mediation provides the advocate with an additional means with which to serve the client.
2. Mediation allows the advocate to nurture the relationship with the client.
3. Mediation provides the attorney with an effective marketing tool.
4. Mediation is less taxing than the court room.
5. Mediation may allow the attorney to avoid certain problems:
 - bad case
 - good, but prohibitively expensive case
 - bad witness
 - lying witness
6. Mediation allows the attorney to stay involved as the primary provider of legal services.

13. How much discovery is necessary before or during the ADR process?

1. Permitting discovery may help parties evaluate the soundness of their positions and those of their opponents and give parties more confidence in their ability to recognize a reasonable settlement offer.
2. As discovery costs go up, parties may feel a greater incentive to settle.
3. Without enough information, a case generally cannot settle for a fair value and such settlements may not endure.
4. ADR neutrals, like mediators, may be able to assist parties in making informal exchanges of discovery materials.
5. Discovery during ADR allows parties to return to litigation without undue delay if ADR does not result in full settlement.
6. If mediation is scheduled early, discovery may be limited to production of key documents needed for the mediation or to a small number of depositions of critical persons.

14. What does confidentiality in mediation mean?

Confidentiality is a bedrock principle of most ADR processes. Section 8.01-576.10 of the Code states that:

All memorandum, work products or other materials contained in the case files of a neutral or dispute resolution program are confidential. Any communication made in or in connection with the dispute resolution proceeding which relates to the controversy, whether made to the neutral or dispute resolution program or to a party, or to any other person if made at a dispute resolution proceeding, is confidential. However, a written settlement agreement shall not be confidential, unless the parties otherwise agree in writing.

There are also special exceptions to confidentiality detailed in the Code of Virginia . For instance, allegations of child abuse, threats of future harm, and information regarding the commission of a crime is not confidential. Information that is shared in mediation that would be otherwise discoverable, such as tax documents, is not confidential.

15. What can the mediator report back to the court?

Mediators can report that an agreement was reached and the terms of that agreement, or that an agreement was not reached. Mediators can also report that the orientation session did not take place or that the mediation did not take place.

16. What is the effect of an agreement reached in mediation?

If agreement is reached, it should be put in writing and the terms should be communicated to the court if the parties agree. Any agreement reached in mediation is enforceable as a contract and may be entered by the court as an order dismissing the case, if consistent with law and public policy.

If the parties do not reach an agreement, that should be reported back by the neutral, without any comment or recommendation. Where there is no settlement, the court can schedule a pre-trial conference and ask the parties whether issues were narrowed or whether the case can be streamlined because of the progress made in the ADR session.

17. Where can I find resource materials regarding mediation?

The Division of Dispute Resolution Services has a resource library with books and videos that you are welcome to borrow. Please come by to browse or contact us if you would like to find out if we carry a resource that you are interested in.

VIRGINIA CERTIFICATION

Contact Department of Dispute Resolution Services in the Supreme Court - (804) 786-6455

General District Court Certification	<ul style="list-style-type: none"> - 20-Hour Basic Mediation Training Course - 4-Hour Virginia's Judicial System Training Course - 2 Mediation Observations (w/certified Mentor) - 3 Co-Mediations (min. 5 hours) (w/certified Mentor) - Submission of 1 Memorandum of Understanding / Agreement
Juvenile and Domestic Relations Court Certification	<ul style="list-style-type: none"> - 20-Hour Basic Mediation Training Course - 20-Hour J&DR Family Mediation Training Course - 4-Hour Virginia's Judicial System Training Course - 8-Hour Domestic Violence in Mediation Training Course - 2 Observations of Domestic Relations Cases (w/certified Mentor) - 5 Domestic Relations Co-Mediations (min. 10 hours) (w/certified Mentor) - Submission of Child Support Worksheet & Memorandum of Understanding/Agreement
Circuit Court-Civil Certification (also qualifies mediator to mediate cases in General District Court but not family cases in Circuit Court)	<ul style="list-style-type: none"> - 20-Hour Basic Mediation Training Course - 20-Hour Advanced Training Course (to handle procedurally complex cases) - 4-Hour Virginia's Judicial System Training Course - 2 Observations of Circuit Court-Civil Cases (w/certified Mentor) - 5 Co-Mediations of Circuit Court-Civil Cases (min. 10 hours) (w/certified Mentor) - Submission of 1 Memorandum of Understanding / Agreement
Circuit Court-Family Certification (also qualifies mediator to mediate cases in Juvenile & Domestic Relations District Court but not General District Court or non-family cases in Circuit Court)	<ul style="list-style-type: none"> - 20-Hour Basic Mediation Training Course - 20-Hour J&DR Family Mediation Training Course - 12-Hour Advanced Mediation Training (in family finance and economic issues including equitable distribution and spousal support) - 4-Hour Virginia's Judicial System Training Course (min. 5 hours) (w/certified Mentor) - 8-Hour Domestic Violence in Mediation Training Course - 2 Observations of Domestic Relations Cases (w/certified Mentor) - 5 Domestic Relations Co-Mediations (min. 10 hours) (w/certified Mentor) - Experience in equitable distribution and support matters, submission of child support worksheet & memorandum of understanding/agreement

For the most up to date mediator certification and recertification and mentoring information, as well as current forms, applications, and directories, please visit the Department of Dispute Resolution Services at the Supreme Court of Virginia's website:

<http://courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/home.html>

§ 63.2-1509. Requirement that certain injuries to children be reported by physicians, nurses, teachers, etc.; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;
2. Any hospital resident or intern, and any person employed in the nursing profession;
3. Any person employed as a social worker or family-services specialist;
4. Any probation officer;
5. Any teacher or other person employed in a public or private school, kindergarten, or child day program, as that term is defined in § 22.1-289.02;
6. Any person providing full-time or part-time child care for pay on a regularly planned basis;
7. Any mental health professional;
8. Any law-enforcement officer or animal control officer;
9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;
10. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;
11. Any person 18 years of age or older associated with or employed by any public or private organization responsible for the care, custody or control of children;
12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
13. Any person 18 years of age or older who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect;
14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance;
15. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith;
16. Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a public or private sports organization or team;

17. Administrators or employees 18 years of age or older of public or private day camps, youth centers and youth recreation programs;

18. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client; and

19. Any minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church, unless the information supporting the suspicion of child abuse or neglect (i) is required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

If neither the locality in which the child resides nor where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department's toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment. The judge may consult with the Department in selecting a local department to respond to the report or the complaint.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee, pursuant to this subsection, such person shall notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the Department's toll-free child abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the Board. Any person required to make the report pursuant to this subsection shall disclose all information that is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department, which is the agency of jurisdiction, any information, records, or reports that document the basis for the report. All persons required by this subsection to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). Provision of such information, records, and reports by a health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall, due to the special medical needs of infants affected by substance exposure, include (i) a finding made by a health care provider within six weeks of the birth of a child that the child was born affected by substance abuse or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) a diagnosis made by a health

care provider within four years following a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to maternal abuse of a controlled substance during pregnancy; or (iii) a diagnosis made by a health care provider within four years following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report. Such reports shall not constitute a per se finding of child abuse or neglect. If a health care provider in a licensed hospital makes any finding or diagnosis set forth in clause (i), (ii), or (iii), the hospital shall require the development of a written discharge plan under protocols established by the hospital pursuant to subdivision B 6 of § 32.1-127.

C. Any person who makes a report or provides records or information pursuant to subsection A or who testifies in any judicial proceeding arising from such report, records, or information shall be immune from any civil or criminal liability or administrative penalty or sanction on account of such report, records, information, or testimony, unless such person acted in bad faith or with malicious purpose.

D. Any person required to file a report pursuant to this section who fails to do so as soon as possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse or neglect, shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make the report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

E. No person shall be required to make a report pursuant to this section if the person has actual knowledge that the same matter has already been reported to the local department or the Department's toll-free child abuse and neglect hotline.

1975, c. 341, § 63.1-248.3; 1976, c. 348; 1978, c. 747; 1993, c. 443; 1994, c. 840; 1995, c. 810; 1998, cc. 704, 716; 1999, c. 606; 2000, c. 500; 2001, c. 853; 2002, cc. 747, 860; 2006, cc. 530, 801; 2008, cc. 43, 268; 2012, cc. 391, 504, 640, 698, 728, 740, 815; 2013, cc. 72, 331; 2014, c. 285; 2017, cc. 176, 428; 2019, cc. 98, 295, 414; 2020, cc. 461, 860, 861

■ Report Child Abuse/Neglect to Child Protective Services (CPS)

- In Virginia: (800) 552-7096
- Out-of-state: (804) 786-8536
- Hearing-impaired: (800) 828-1120

The Virginia Department of Social Services operates a CPS Hotline 24/7 to support local departments of social services by receiving reports of child abuse and neglect and referring them to the appropriate local department of social services. The CPS Hotline is staffed by trained social workers.

CPS Hotline staff may provide general information and educational materials about child abuse or neglect to callers from the general public, child care providers, school educators and medical professionals on recognizing and reporting suspected child abuse or neglect.

CPS Hotline staff is also trained to provide crisis counseling and intervention if needed, and can provide information and referral assistance to callers to locate prevention and/or treatment programs in their area

■ ■ Report Adult Abuse to Adult Protective Services (APS)

To report suspected financial exploitation or other kinds of abuse to the elderly or adults with a disability, call your [local department](#) of social services or the Virginia Department of Social Services' 24-hour, toll-free APS hotline at: (888) 832-3858.

APS investigates reports of abuse, neglect, and exploitation of adults aged 60 and over and incapacitated adults over 18 years of age and provides services when persons are found to be in need of protective services. The goal of APS is to protect a vulnerable adult's life, health, and property without a loss of liberty. When this is not possible, APS attempts to provide assistance with the least disruption of life style and with full due process, protection, and restoration of the person's liberty in the shortest possible period of time. APS seeks to achieve simultaneously and in order of importance: freedom, safety, and minimal disruption of lifestyle and least-restrictive care.

Find this content at:

<http://www.dss.virginia.gov/about/abuse.html>

- Bush, Robert A. Baruch and Joseph P. Folger. *The Promise of Mediation*. Jossey-Bass Publishers, San Francisco, revised 2005.
- Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement Without Giving In*. 2nd ed. Penguin Books, New York, revised 2011.
- Hocker, Joyce and William Wilmot. *Interpersonal Conflict*. ed. Brown and Benchmark, Madison, Wis, 2017.
- LeBaron, M. (2003). *Bridging Cultural Conflicts: A New Approach for a Changing World* (1st edition). Jossey-Bass.
- Lerner, Harriet Goldhor. *The Dance of Anger*. Harper & Row, New York, revised 2014.
- Lovenheim, Peter and Guerin, Lisa, *Mediate, Don't Litigate*. McGraw-Hill, Inc., New York, revised, 2004.
- Moore, Christopher. *The Mediation Process: Practical Strategies for Resolving Conflicts*. 4th ed. Jossey-Bass, San Francisco, 2004.
- Stone, Douglas, Bruce Patton and Sheila Heen. *Difficult Conversations: How to Discuss What Matters Most*. Viking Penguin, New York, revised 2010.
- Trujillo, M. A., Bowland, R.-C. C. and knowledge S. Y., Myers, R.-C. C. and knowledge L. J., Richards, R.-C. C. and knowledge P. M., & Roy, B. (Eds.). (2008). *Re-Centering Culture and Knowledge in Conflict Resolution Practice* (First Edition). Syracuse University Press.
- Umbreit, Mark. *Mediating Interpersonal Conflicts: A Pathway to Peace*. CPI Publishing, West Concord, MI, revised 2006.

Journals, Newsletters, and Websites:

ACResolution, Association for Conflict Resolution, <https://acrnet.org/page/ACResMag>

Beyond Intractability, <https://www.beyondintractability.org/moos>

Mediate.com, <https://mediate.com/>

The Journal of Conflict Resolution, Sage Publications, Inc.,
<https://us.sagepub.com/en-us/nam/journal-of-conflict-resolution/journal200764>

Virginia Mediation Newsletter. The Virginia Mediation Network
<https://www.vamediation.org/membership/newsletters>,