

OBJECTIVES OF TRAINING

RELEVANCE OF TRAINING

Object to make trainees more efficient.

Structured according to task.

Focused, specialized and result oriented.

Identify the gaps in expertise and to fill gaps to raise level of expertise.

Indispensable on threshold.

Object to improve skills, common knowledge and attitude.

Need for quality control in any Training Programme.

ADULT LEARNERS

Adults must want to learn.

Adults learn

only what they feel they
need to learn.

by doing and performing

by solving practical problems.

From their past experiences.

Adults learn best – in an
informal environment.

- through a variety of training
methods.

PRINCIPLES OF LEARNING

PEOPLE LEARN ONLY WHAT THEY ARE READY TO LEARN.

PEOPLE LEARN BEST WHAT THEY ACTUALLY PERFORM.

PEOPLE LEARN FROM THEIR MISTAKES.

PEOPLE LEARN EASILY WHAT IS FAMILIAR TO THEM.

PEOPLE FAVOUR DIFFERENT SENSES FOR LEARNING.

PEOPLE LEARN METHODOLOGICALLY AND, IN THEIR CULTURE, SYSTEMATICALLY.

PEOPLE CANNOT LEARN WHAT THEY CANNOT UNDERSTAND.

PEOPLE LEARN THROUGH PRACTICE.

PEOPLE LEARN BETTER WHEN THEY CAN SEE THEIR OWN PROGRESS.

PEOPLE RESPOND BEST WHEN WHAT THEY ARE TO LEARN IS PRESENTED UNIQUELY FOR THEM. EACH OF US IS DIFFERENT.

CONFLICT AND CONFLICT RESOLUTION

It is easier to perceive error than to find the truth, for the former lies on the surface and is easily seen while the latter lies in the depth, where few are willing to search for it.

**Johann Wolfgang Von
Goethe**

Conflict is natural

Respect people; attack problems

A. CONFLICT

Conflict is a natural part of life.

Conflict emerges when disagreements, differences, annoyances, competition or inequities threaten something important.

If conflict is dealt with in a healthy way, a solution that satisfies everyone can be generally found.

Conflict has its negative side. It may hurt feelings and fracture relationship.

B. SOURCES OF CONFLICT

| SOURCE | STRATEGIES |
|--|--|
| Data Lack of information Misinformation Different interpretations of information | Agree on process to collect data. Agree on what data are important. |
| Interests & Expectations Goals, needs | Focus on interests, not positions. Expand Options. |
| Relationships Poor communication Repetitive Negative Behaviour Misperceptions, stereotypes Distrust History of conflicts | Establish ground rules. Clarify perceptions. Improve communications. Agree on processes & procedures. Keep your words. Think for future/ learn from past. |
| Structural Conflicts Resources Power Time constraints | Reallocate ownership & control. Establish fair, mutually acceptable decision making process. Clearly define, change role. |
| Values Different criteria for evaluating ideas. Different ways of life ideology & religion. | Search for super- ordinary goals. Allow parties to agree & to disagree. Build common loyalty. |

C. DEFENCE MECHANISM

- i) Denial**
Do not acknowledge existence of any conflict. If not thought, it doesn't exist or will go away.
- ii) Avoidance**
Conflict is there, but don't want to deal with it, and make or find excuses to not deal with it.
- iii) Projection**
To deny our faults by projecting these faults onto others.
- iv) Reaction Formation**
A person might respond by adopting the traits or mannerisms of the person with whom they are engaged in conflict.
- v) Displacement**
Take emotional reaction such as anger out on another person rather than on the person in dissent with.
- vi) Counter phobic**
It entails denying the anxiety felt about the conflict, by becoming aggressive, confrontational.
- vii) Escalation of the importance of the conflict**
A person may respond to the conflict by blowing it out of proportion, or expressing own needs, by acting overly melodramatic, and appearing too needy for attention.

The vertical axis represents the degree of “concern for self” exhibited by a person trying to resolve a conflict in which he or she is involved.

The horizontal axis exhibits the degree of “concern for others” in the conflict.

E. CONFLICT STYLES

i) Avoidance “Conflict? What Conflict?”

*Strategies : Flee, deny, ignore,

*Appropriate when :

The issue is trivial, time is

*Inappropriate when :

negative feelings may linger,

ii) Accommodation “Whatever you want is OK

*Strategies : agree, appease,

*Appropriate when :

Issue is not important, you

*Inappropriate when :

you are likely to resent it, used

iii) Competition “My way or the highway.”

*Strategies : Compete, control, outwit,
coerce, fight.

*Appropriate when :

an emergency looms others

*Inappropriate when :

Cooperation from others is important,

iv)Compromise: “Let's split the difference.”

*Strategies : bargain, reduce expectations, a little something for everyone.

*Appropriate when :

a finding some solution is better than stalemate, cooperation is important but time & resources are limited.

*Inappropriate when :

finding the most creative solution is essential.

v)Collaboration:“How can we solve this problem.”

*Strategies : gather information, look for alternatives, dialogue, welcome disagreement.

*Appropriate when :

the issues & relationship are both significant, cooperation is important, reasonable hope to address all concerns.

*Inappropriate when :

time is short, issues are unimportant.

STEPS FOR CONFLICT RESOLUTION

i) Cooperation

The resolution cannot be imposed on someone who is in a defensive pose. The other person must become part of the solution by being included, through a cooperative effort by both parties to find a mutual resolution.

ii) Two Way Street

For a mutually agreed solution to be found, the other party must be shown, they cannot impose their own proposal to resolve the matter. They too must adopt a measure of mutual cooperation.

iii) Both Parties Must Believe

Parties must believe in resolving conflict.

iv) Trust the Resolution

Both parties should abide by the agreement. If there is a lack of trust, the agreement will become shaky or not sustainable.

ALTERNATIVE DISPUTE RESOLUTION AND ITS RELEVANCE

In recent times, the communities world over have become more and more aware about their human and legal rights and seek redressal frequently through litigation in courts in case of infringement. The resources at the common of judicial system are inadequate to meet the growing litigation resulted in backlog of cases and delay in the administration of justice. It was reported in the Hindustan Times (24th June, 2008) that about 3 crore cases are pending in various courts across the country and India is facing unprecedented “litigation explosion”. It was further reported that around 10 crore Indians are awaiting justice with each case involving an average of three litigants. As per the latest figure released by the Supreme Court of India, over 2.92 crore cases are pending in hundred of subordinate courts, 21 High Courts and the Supreme Court. This figure does not include the cases pending in various tribunals and quasi judicial bodies. Out of total 2.92 crore cases, over 2.54 cases are pending in subordinate courts.

It has become necessary to resort to rapid and effective methods of dispute settlement between litigants other than traditional judicial methods i.e. Courts through Alternative Dispute Resolution (ADR) which is not a substitute for courts but a complementary mechanism to shed

off the work load of the courts. The need of the ADR is real and urgent. It is a mechanism to mitigate the existing deficiency in the judicial system. The Chief Justice Tan Hun Hoe in his

article, “Alternative Methods of Dispute Settlement in Malaysia” has declared that the judiciary has to devise new methods, new tools and new stratagem for the purpose of providing social justice to the common man which can respond to the urges of the large masses of people for social justice by adopting creative and activist approach.

Chief Justice William H Rehnquists has commented that our Government should be expected to provide a system of dispute adjudication that is tailored to the needs of most potential litigants and who can make use of the system.

The alternative mechanism are not intended to supplant court adjudication but rather to supplement it. It provides an opportunity to resolve the differences, conflicts or the disputes creatively, efficiently, effectively and amicably. The Supreme Court in **Salem Advocate Bar Association, TN Vs. Union of India (2003) 1 SCC 499** has observed that in certain countries of the world over 90 per cent of the cases, have been settled out of the court.

Mediation is one of the accepted mode of alternative dispute resolution globally. It is a relatively recent arrival on the legal scene and having its origin in the United States in the later

half of 20th century. In United States, there are various reasons for resolving disputes without recourse to litigation. It has been enthusiastically embraced by a number of States, often making it a mandatory stage of the court process. The Centre for Effective Dispute Resolution (CEDR) published definition of mediation as “A flexible

process conducted confidentially in which a neutral person assist the parties in working towards a negotiating agreement of dispute or differences, with the parties in ultimate control of the decision to settle all the terms of the resolution”. In language of a layman, “mediation is a process of amicable/ synergistic solution to a dispute/ conflict arrived by optimization leading to a win win situation”. It is a boon to the social framework leading to higher returns and is satisfying.

In India, Section 89 of Code of Civil Procedure Courts, 1908 provides mediation as one of the method of alternative dispute resolution. It is necessary to infuse “Indianness” in the concept of mediation particularly when it is originated in western countries.

MEDIATION AND ITS GOVERNANCE

It is claimed that the mediation is in practice in India since long time. India has a long history of resolving disputes without formal trials. A vast diversity of ancient dispute resolution processes is used, informally, in various regions and sub-culture throughout India such as settlement of dispute with the involvement of Sarparch in petty disputes. These settlement processes were having elements of direct participation, prompt resolution and affordability. However, such resolution processes lacked standard, systematic approach to dispute resolution.

MEDIATION AND OTHER FORMS OF ADR

Alternative dispute resolution (ADR) is gaining popularity throughout the world. The reason being that ADR is private, affordable and prompt. By contrast, the adversarial process is public, expensive and time-consuming. Studies show that in United States, less than 5% of the cases actually go to trial and 95% of the cases are resolved through some form of ADR.

Although in Western countries, the prelitigative negotiations are also prevalent. But in India by virtue of Section 89 Code of Civil Procedure, the focus is mainly on Court annexed mediation as a form of ADR. In *third-party ADR processes*, a neutral person is engaged for resolving a dispute between the parties.

WHY MEDIATION

Mediation. Mediation is a non-binding negotiation process, in which a neutral third person facilitates the disputants in arriving at a mutually acceptable settlement. To assist the parties, the Mediator uses specialized negotiation and communication techniques to arrive at dispute resolution. The mediation process is structured and informal. Parties control the outcome of the dispute which is in the form of an agreement/ settlement. The mediator controls the process through which parties arrive at their settlement. The entire process is confidential.

MODELS OF MEDIATION

Mainly three types of mediation models are being followed in India :-

1. **Commercial Mediation** (business disputes, legal disputes, insurance disputes);
2. **Community Mediation** (community disputes, neighbor / neighbor disputes, relationship disputes);
3. **Family Mediation** (family disputes, divorce, custody, child support, visitation);

TYPES OF MEDIATION

Private Mediation :Private mediation services are available from a broad range of private mediation providers, including :

Professional, private, independent mediators
(attorneys and non attorneys)

Retired Judges

Non-profit agencies

For profit organizations

In private mediations, independent mediators may that be advocates, Retd. Judges, professionals.

Court-Annexed Mediation: By virtue of Section 89 Code of Civil Procedure, the model of Court annexed mediation is being followed. The Courts have mediation centres in which the cases are referred by different Courts. After a preliminary inquiry, these are marked to experienced & trained mediators from the panel of mediation which is available with mediation centres.

FORMS OF ADR PREVALENT IN WESTERN COUNTRIES

Other forms of ADR which are prevalent in Western Countries are :-

Arbitration: Arbitration is an adjudication process, in which the parties present their disputes to a neutral arbitrator for a decision. Arbitration can be binding or non binding. The arbitration process is akin to the litigation process in its procedure. Arbitration is used in commercial disputes.

Med-Arb. Med-Arb is a hybrid ADR process. Initially, the parties begin with mediation and when they are unable to reach to a negotiated settlement then it is converted to arbitration. Med-Arb is used in disputes where the parties need a guarantee of finality, but they wish to attempt to negotiate an agreement.

Judicial Settlement Conferences: The referral courts designate one or more judges to preside over settlement conferences with parties and their advocates. Judicial Settlement is generally brief process wherein a judge discusses the prospects for settlement in a meeting with the parties and their advocates. Section 89 CPC also provides for judicial settlements. It can be voluntary or mandatory.

Settlement Panels. Courts will often use settlement panels consisting of a judge and two Advocates, One plaintiff advocate and the other defense advocate to resolve disputes. It is utilizing the volunteer services of experienced advocates along with judges. It is basically a negotiation process and is used in pending Court cases.

Early Neutral Evaluation: Neutral evaluation is an evaluation process conducted in early stages of a case. In this process, the neutral evaluator provides the parties with an evaluation and determination about a case's value in order to facilitate settlement. The parties exchange information and make oral representations and statements to the evaluator. Neutral evaluation can be binding or non-binding. It is usually done in cases involving technical and scientific issues.

Special Master: It is an adjudicative process, in which usually an advocate or a retired judge designated by a court acts as a special master. He presides over pre-trial and/or trial issues. It is used in cases of intellectual property, environment, construction defects which require a high degree of expertise or where there are numerous parties. The special master in some cases preside as the trial judge.

Neutral Fact Finding: Neutral fact finding is an investigation process. It can be used to investigate employment disputes such as harassment, discrimination, or wrongful termination. The process can be advisory. This ADR process is used by companies, government agencies, and other organizations when an internal investigation of a complaint is not feasible.

Litigants have a range of ADR methods to select an appropriate mode for redressal of their disputes. The disputants reserve their right to adhere to litigation while choosing the ADR method which is non-binding. People are to be extensively educated about ADR mechanism so that they may benefit and choose appropriate method for resolution of their disputes.

MEDIATION

WHAT IS MEDIATION

A. DEFINITION

Mediation is a process in which an impartial third party- a mediator- facilitates the resolution of a dispute by promoting amicable agreement by the parties to the dispute.

A mediator :- facilitates communication, promotes understanding, assists parties to identify interests, uses creative problem solving techniques enables parties to reach their own agreement.

B. MEDIATION IS :-

A structured negotiation process

Neutral mediator

Facilitate communication and negotiation

Assist the parties in resolving their dispute.

Flexible and informal process.

Allows creative remedies.

Process is economical and confidential.

C. COMPONENTS OF MEDIATION

i) Impartiality

Mediator must act impartially and even-handed. Neutrality, impartiality and independence are assets of a mediator.

A Mediator must avoid:

- a. Partiality or prejudice; and
- b. Conduct that gives appearance of partiality or prejudice.

ii) Competence

Mediator should have necessary competence to do mediation and to satisfy the reasonable expectations of the parties.

iii) Confidentiality

Confidentiality is the essence of mediation process. It must be maintained during the mediation proceedings.

iv) **Quality of Process**

The conduct of mediator should not be influenced by a desire to achieve a high settlement rate.

A mediator must conduct the mediation proceedings diligently and with understanding that outcome should be due to free will of the parties.

v) **Settlement**

If the mediation results in a settlement between the parties, the mediator should encourage the parties to record the exact terms of settlement in writing.

vi) **Self-determination**

Mediation is based on principle of self-determination by the parties.

Parties be allowed to reach a voluntary and uncoerced agreement.

Any party may withdraw from mediation at any time.

CHARACTERISTICS OF NEGOTIATION, MEDIATION AND LITIGATION

| <i>Negotiation</i> | <i>Mediation</i> | <i>Litigation</i> |
|---|---|---|
| Voluntary | Voluntary | Involuntary |
| If agreement, enforceable as contract | If agreement, enforceable as contract | Binding, subject to appeal |
| No third party | No third party | Imposed facilitator |
| Informal | Informal | Formal, rigid rules |
| Unbounded presentation of evidence and interests focused on past. | Unbounded presentation of evidence and interests focused on past. | Opportunity for each party proofs, focused on past events |
| Outcome: mutually acceptable agreement sought | Outcome: mutually acceptable agreement sought | Outcome: imposed decision |
| Private | Private | Public |

CHARACTERISTICS OF MEDIATION AND ARBITRATION

| | <i>MEDIATION</i> | <i>ARBITRATION</i> |
|-----------------------------------|---|---|
| Structure of Process | Introduction Joint Session, Caucus, Agreement | Claims/ counter claims, Examination of witnesses, Arguments |
| Nature of Process | Negotiatory, Collaborative | Adjudicatory, Directive |
| Procedure | Non-procedural | Procedural rules and rules of evidence |
| Neutral third party | Facilitator | Adjudicator |
| Role of Parties/ advocates | Active and direct | Active only during evidence |
| Level of formality | Informal | Formal |

CHARACTERISTICS OF LOK ADALAT AND MEDIATION

| | MEDIATION | LOK ADALAT |
|----------------------------------|--------------------------------------|-----------------------------------|
| Forum | Private Conference Room | Court premises |
| Morphology | Structured process | Persuasion and discussion. |
| Who Controls the process | Mediator controls structured process | Presiding Officer. Process is not |
| Selection of neutral third party | Generally parties | Parties do not enjoy any say in |
| Time | Reasonable time | Time constraints |
| Who Controls the outcome | Parties | Presiding Officer |
| Confidentiality | Private | Public |
| Depth of Analysis | Detailed analysis discussion | Casual on facts and law |
| Types of disputes settled | All types of disputes | Recovery/ claims disputes |
| Role of parties/ advocates | Active and direct | Not active and direct |
| Role of neutral | Work in partnership with parties. | Persuasion |

MEDIATION AND CONCILIATION

Mediation and Conciliation

Mediation as seen in the western world and conciliation recognized in India are the same. In order to understand that mediation and conciliation are synonyms, the following meanings attached thereto in Black's Law Dictionary are reproduced below:-

Mediation

A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution—Also termed conciliation.

(Black's Law Dictionary Seventh Edition Page 96).

Conciliation

a. A settlement of a dispute in an agreeable manner.

b. A process in which a neutral person meets with the parties to a dispute (often labor) and explores how, the dispute might be resolved.

(Black's Law Dictionary Seventh Edition P.284).

The distinction between MEDIATION AND CONCILIATION is widely debated among those interested in ADR, arbitration and international diplomacy,

some suggest that conciliation is a 'non binding arbitration', whereas mediation is merely 'assisted negotiation'. Others put it this way : conciliation involves a third party's trying to bring together disputing parties to help them reconcile their difference, whereas mediation goes further by allowing the third party to suggest terms on which dispute might be resolved. Still other reject these attempts at differentiation and contend that there is no consensus about what the two words mean – that they are generally interchangeable. Though a distinction would be convenient, those who argue that usage indicates a broad synonymy are most accurate.

Bryan A. Garner. A dictionary of
Modern Legal Usage. P.5554 (2nd
Edn.1995)

DIMENSIONS OF A DISPUTE

- i. Facts**
- ii. Positions**
- iii. Claims/
Defenses**
- iv. Arguments**
- v. Law
(Traditional rights
and remedies).**

STAGES AT WHICH THE CASES MAY BE REFERRED FOR MEDIATION

Every stage of the trial is fit for mediation.

Cases which are fixed at framing of issues, miscellaneous proceedings, evidence, arguments are being settled through mediation.

Cases which are pending before the appellate court, writ petitions, transfer petitions can also be settled through Mediation.

DISPUTES WHERE MEDIATION IS NOT APPROPRIATE

Mediation may not be appropriate in following conditions :-

- i) Parties refuses to negotiate or not ready for
- ii) Parties want a judicial determination.
- lii) Public airing of a dispute or dispute deserves
- iv) Power imbalance which makes fair agreem
- v) Parties want a legal precedent.
- vi) Delay in resolution benefits party.
- vii) Parties do not have sufficient informa
- viii) Complicated and complex cases involvin
- ix) One party suspect that other party intends

DISPUTES WHERE MEDIATION IS APPROPRIATE

Mediation may be effective in following conditions :-

- i) Parties desire a negotiated outcome
- ii) Parties want to maintain future relationship
- iii) Avoid unfavourable judgment
- iv) Litigant does not want to appear as a witness on
- v) Cost of trial exceeds projected value
- vi) Parties want prompt resolution
- vii) Parties want control over outcome
- viii) Complicated case
- ix) Confidentiality desired by parties
- x) Opportunity to develop creative non-traditional remedies

QUALITIES OF A GOOD MEDIATOR

| | | |
|---------------|----------------------|----------------|
| Speed | Flexible | Non-Judgmental |
| Active, Alert | Options Generator | Optimistic |
| Analyst | Communicator | Patience |
| Accommodative | Facilitator | Positive |
| Catalyst | Listener | Polite |
| Communicator | Guide | Persuasive |
| Convincing | Honest | Reality Tester |
| Co-operative | Humble | Reasonable |
| Compassionate | Humorous | Time Manager |
| Experienced | Impartial | Unbiased |
| Fair | Integrity | Vigilant |
| Faithful | Neutral | |
| Fearless | Non-Egoistic | |

WHY MEDIATE

Relationships are strained but must continue.

Miscommunication is apparent and a skilled neutral would facilitate communications.

The presence of a third party would change dynamics.

The parties may be willing to settle or re-evaluate their positions.

Confidentiality is important.

Parties are interested in retaining control of outcome.

Time factors may be a consideration.

BENEFITS OF MEDIATION

Private, prompt and affordable.

Provides an opportunity to the parties
claims.

A forum for parties to develop creative

- i) Free**
No cost.
Less expensive than litigation.
- ii) Fair and Neutral**
Parties decide settlement terms.
No determination of guilt or innocence.
- iii) Saves Time**
May complete in one meeting.
Legal or other representation optional.
Fast resolution of disputes.
- iv) Confidential**
Information disclosed not revealed to anyone.
- v) Avoids Litigation**
Lengthy litigation avoided.
Resolution of disputes.

vi) Improves Communication

Parties openly discuss underlying dispute.

Enhanced communication lead to mutually satisfactory resolutions.

Parties share information leading to a better understanding of issues.

vii) Win-Win position

Win-win situation in contrast to judicial decision.

viii) Parties control outcome

Outcome always within control of the parties.

Parties avoid the uncertainty and dissatisfaction experienced in court.

ix) Voluntary

Any party may withdraw at anytime.

x) No Appeal /Revision.

xi) Refund of Court Fee

xii) Convenient

Arranged at a convenience of parties.
May be held at any place at any time.
Not limited to ordinary working
days or hours.

xiii) Preserves relationship.

Preserves relationship which
may be destroyed by court
litigation.

ROLE OF PARTIES/ ATTORNEYS

Active

Direct

MEDIATION IS NOT.....

a)Mediation is not a bar to litigation or arbitration

- i)Do not preclude use of other methods of dispute resolution.
- ii)Right to litigate or arbitrate not lost merely by participating in mediation.

b)Mediation is not toothless

- i)Parties control settlement.
- ii)Settlement can be enforced.

c) Mediation is not mere Compromise

- i)Not splitting the difference down the middle.
- ii)Creative options developed.

d) Mediation is not what lawyers, managers or judges do all the time.

- i) A party or lawyer cannot play the role of a neutral even they are reasonable or friendly.
- ii) A neutral is detached from the problem, emotion and the commercial pressures.
- iii) Unlike a judge, a mediator derives authority only from the parties.

e) Mediation is not a waste of time and money if it fails

- i) Helps to narrow down the gap, tempers aspirations with realism.

f) Mediation is not yet another cost to the unfortunate parties.

- i) Mediation is always with no cost or minimum cost.
- ii) Less expensive than the fee of the lawyers, experts.

g) Mediation is not a sign of weakness

- i) A route to client satisfaction.
- ii) No soft option.
- iii) Tough, demanding and rewarding process.
- iv) Involves intense negotiation that requires quickness of mind, flexibility and imagination.

h) Mediation need not be risky

- i) Greatest risk perceived is that the other party would learn more about their case.
- ii) Release of information and terms of settlement within the control of parties.

j) Mediation is not Counselling.

| MEDIATION | COUNSELLING |
|--|---|
| Neutral Relationship preserved with parties. | Intense relationship develops with individual clients. |
| Facilitate negotiation for a specific disputes. | Free ranging discussion on any topic. |
| Problems solving techniques used | Psychological analysis. |

STATGES OF MEDIATION

INTRODUCTION

JOINT SESSION

SINGLE SESSION
(CAUCUS)

AGREEMENT

INTRODUCTION

It sets a positive tone, develop confidence for agreement and create relaxed atmosphere. It should be completed within 2-3 minutes.

A. MEDIATOR'S TASKS

i). Welcome the parties.

Escorts the parties into the room and to their seats.

Make proper seating arrangement.

Assign specific seats to the parties.

ii). Introduce himself; parties/ counsels and other participants.

Give brief introduction of self e.g. Your expertise, experience etc.

Ask parties/counsels/ other participants to introduce themselves.

Make parties to agree to use their first names.

iii). Describe Mediation Process.

Explain purpose of Mediation to the parties.

Explain & describe the different stages of the process i.e. "road map".

Non-adjudicatory process.

Mediation is voluntary & based on the consent of the parties.

Use plain language.

iv). Describe Role of Mediator

Neutral intervener & does not represent either party.

Non-judgmental; helps the parties to find their own resolution of dispute.

Do not propose solution.

Merely assists parties in evolving options for settlement.

Carries proposals back and forth.

Do not offer legal advice but ensures legality of the agreement.

A manager of process.

A 'sponge' to absorb parties feelings and frustration.

A catalyst for problem solving.

Information gatherer.

Types of Role Of Mediator

a) **Facilitator**

Manage interaction.

Facilitate communication.

Identify barriers to agreement.

Develop terms of settlement based upon interest of parties.

Techniques

Gathering of information about dispute.

Control Direction of communication.

Identify underlying interests of disputes.

b) **Evaluator**

Real Testing both on law and facts

Evaluation should be done at appropriate time and in appropriate manner.

Techniques

Analyse or evaluate positions adopted by parties.

Role reversal

Questioning

Identify risks and costs of legal proceedings.

v)Confidentiality

Mediator should address the confidentiality to the parties.

Essence of mediation.

Parties feel more comfortable to disclose ideas and positions if information will not be used against them subsequently.

Anything disclosed during mediation shall remain confidential.

Explain whether confidentiality is requirement of law or agreement of the parties.

vi)Explain Ground Rules

A mediation should explain following potential ground rules to the parties.

Parties/counsel shall address to the Mediator.

No interruption; direct confrontation.

Observe courtesy.

No use of foul/ unparliamentary/ abusive/ vulgar language.

Complainant may speak first, then respondent.

Parties may call for breaks when needed.

Note-taking by mediator.

No use of mobile phone/ be switched off.

Only parties or their authorised representatives to attend mediation.

If settlement is not reached then case be sent back to referral court.

vii)Address Administrative issues

estimated length.

Breaks.

Place.

order of presentation.

time limitation.

use of note pads.

No-smoking.

viii) A mediator should confirm from parties about their doubts, questions about process, confidentiality, mediator credentials and impartiality.

B. MEDIATOR'S OBJECTIVES

i) Establish Neutrality

Neutrality provides stable platform for resolution of conflict.

Convey impartiality and lack of bias.

To be accomplished by careful selection of words, use of neutral language, appropriate body language and eye contact.

Neutral location and environment.

Use of words of mutuality to all participants. eg: "everyone shall have an opportunity to talk."

No opinion or suggestions about possible solutions.

No deference to any individual.

Mediator should sit squarely without exhibiting any preference to anyone.

ii) Establish control over the process

It is achieved by calm, clear, neutral introduction.

No conversation between parties and lawyers across table.

Manage interruptions or outbursts.

No side tracking of Mediation process.

iii) Establish conducive environment

Display of calm but business like approach.

Relaxed but focused.

Adopt business like approach.

No anxiety, frustration and anger.

Generate momentum towards agreement.

JOINT SESSION

The basic object of the joint session is to gather information and to know backgrounds of a dispute. The parties or their respective counsels be allowed to speak. Ordinarily the party who files the case should be offered to speak first but with brevity. The events should be asked to present in chronological order. The main goals of a joint session can be enlisted as under :-

Gathering of information.

Organization of information.

Assumes control over the process

To listen dispute in the words of disputants.

Disputants hear what other party has to say.

i) DO'S FOR A MEDIATOR IN JOINT SESSION

Begin with broad open-ended questions.

Encourage the participation of the parties.

Listen. Ask very Few questions.

Do not alienate the other party.

Manage outbursts and interruptions.

Jot down various issues.

Take mental notes on what mediator is hearing, seeing and sensing.

Identify underlying interests of the parties.

Maintain neutrality.

Maintain environment conducive to agreement.

Allow some exchange of communication between the parties.

Parties who talk non-stop should be asked to summarize.

ii) Techniques

Active/ Effective Listening.

Body language.

Questions.

Empathy with neutrality.

SINGLE SESSION (CAUCUS)

A mediator spend much time during mediation talking with the parties together. It can be helpful to speak with each party separately. The conversation of a mediator with single party is known as single session or caucus. It is optional and is arranged after conclusion of joint session. In single session, mediator meets with each of the parties with Counsels separately. During single session, the parties interact with Mediator in confidence. The parties speak more freely in absence of other party. The broad goals of individual session are as under :-

Purpose

Allow parties to ventilate to minimize hostility.

People feel relieved after private expression of grief, anger, frustration, sadness or fear.

Reduces tension.

It is useful when impasse is reached. It allows the parties explore alternatives for resolution

Build trust. Avoid deadlock.

Explore possible solutions which parties are unwilling to discuss in joint sessions.

To explore hidden agenda.

To allow the disputants to save face.

To probe areas of flexibility.

Mediator continues to gather information.

Parties discuss confidential information.

Offers and counter offers are conveyed.

Promotes negotiating equality.

Strategies

Assure confidentiality both at the beginning and at the end of individual session.

Reinforce rapport with each party.

Explore possible solutions.

Help parties explore consequences of not arriving at an agreed upon solution (real testing).

Precautions

Keep individual session short or fix time limit.

Do not appear to favour one side.

Decide when caucus is necessary.

Decide what you want to accomplish.

Formulate agenda.

One party is asked/ requested to leave the mediation room with assurance of grant of sufficient time.

SUB-CAUCUS

Mediator may meet either with parties or attorneys separately to facilitate negotiations. It is helpful in matrimonial disputes.

AGREEMENT

Agreement is last phase of Mediation.

Agreement should be reduced in writing.

Statement about parties future relationship.

Parties are responsible for substance of agreement.

Describe responsibility of each party in resolution of disputes.

i)PURPOSES

- a) Specify solutions of each identified issues.
- b) Specify future relationship of disputants.
- c) Test whether agreement is working.

ii) Guidelines for a Mediator

a) Specific

Avoid ambiguous words such as “reasonable”, “soon”, “frequent”, “Co-operative”, “practicable” etc.

State clearly WHO will do WHAT, WHEN, WHERE, HOW, HOW MUCH and HOW LONG.

Avoid legal jargon. Use plain and simple language preferably disputants language.

b) Realistic

Deal with all issues in dispute.

Minimize

Workable and satisfies parties.

Parties should have control over

agreement

c). Positive

No blame assessment.

Use non-judgmental words.

Use positive language.

d) Balanced

Agreement should reflect each party gaining something.

One party should not do all of compromising.

e) Procedural

Oral recital of terms of agreement.

Clarify terms of settlement.

Confirm settlement.

Decide who should write agreement.

Refer the parties by names as well as status

Use active voice.

Make a copy of agreement for each party.

Make closing remarks.

Agreement should be signed by each party.

If no settlement is reached, keep the door

f) Characteristics

Clear

Concise

Complete

Concrete

COMMUNICATION

COMMUNICATION

Effective Mediation requires the mediator to build trust & understanding. Communication is the core of Mediation. A Mediator needs to communicate with concerned parties effectively. A good mediator needs to encourage the parties to communicate with each other and with mediator himself. Good communication skills require a high level of self-awareness. Communication is best achieved through simple planning and control. To ensure efficient & effective communication, a mediator must i) make his message understood; ii) must receive/understand the intended message sent to mediator; and iii) mediator should exert control over the flow of the communication.

Being a good communicator, a mediator must learn to listen as well as to speak. A mediator plays a final role in communication process as he acts both as a receiver and a sender.

1. BASIC ATTRIBUTES OF COMMUNICATION

The following are basic attributes of a communication :-

A mediator needs to encourage and foster communication.

Essential for effective mediation.

“Communication” covers a multitude of skills and processes.

Mediation involves demonstration of communication skills.

A mediator should develop sound skills in communications i.e.the giving and receiving the message.

A mediator should be clear, caring, empathetic and impartial in communication.

Effective communication creates an open, unthreatening and constructive environment leading the parties to greater understanding and flexibility for satisfactory resolution of disputes.

2. How to ensure meaningful communication.

- a). Use Simple, plain, clear language.
- b). Avoid unnecessary or difficult words.
- c). Avoid repetition.
- d). Be precise, cogent and logical in use of words.
- e). Formulate message.
- f). Respond with empathy.
- g). Ensure proper eye contact.
- h). Be attentive & courteous during listening.
- i). No interruptions.

3. Characteristics of a mediator as communicator

a) Activity Initiator

Start discussions; define problems; explore new ways to organize information.

b) Information seeker

Gather factual information data, ideas.

c) Opinion seeker

Seek opinions, beliefs and personal evaluations from disputants.

d) Encourager

Develop and maintain a warm, friendly, and relaxed atmosphere; facilitate easy communication; praise others and their ideas; encourage the expression of feelings. (without necessarily agreeing or disagreeing with the specific idea)

e) Gate Keeper

Keep communication channels open; helps each party to contribute, participate, and get in the discussion.

f) Harmonizer

Reduce tensions and relieve negative feelings; put situations into perspective.

g) Clarifier-

Give examples and illustrations;

h) Elaborator

paraphrase; develop meanings by trying to envision how

i) Echo and Mirror

Sense and feed back what mediator is seeing, hearing and feeling.

j) Standard Setter

Express, clarify and apply the ground rules for mediation.

k) Evaluator

Submit group decisions and make sure they are considered in light of goals and objectives.

l) Summarizer

Restate information, opinions or suggestions in concise form after they have been discussed.

m) Reality Tester

Clarify perceptions, assumptions and feelings by helping each party to express them and test them out with the other; reflect the potential consequences of suggested solutions; be an agent of reality.

4. TYPES OF COMMUNICATION

Non-Verbal Communication

Verbal Communication

NON-VERBAL COMMUNICATION

Many times non verbal behaviour of parties conveys a different messages. Words can conceal as well as reveal. Non-verbal communication is more spontaneous and under less conscious control and therefore can provide a more accurate portrayal of disputants than verbal communication alone. It is important to recognize that verbal and non-verbal communication interact either in congruent or incongruent ways. Some of the important aspects of non-verbal communication are as under :-

Half of the human communication is non verbal.

People communicate strongly without words.

Feelings, thoughts and attitudes can be commu

Reveals emotions, feelings without giving informatio

Relevant for gathering essential information beyond the content of what is being sa

Awareness of non verbal communication helps to understand others bet

Types of Non Verbal Communication

- A. Active Listening.
- B. Body Language.
- C. Questioning.
- D. Silence.
- E. Empathy with

A ACTIVE/EFFECTIVE LISTENING

The basic purpose of a mediator is to act like a facilitator of communicator between disputants. A mediator can guide the process in appropriate direction by careful & accurate listening. A mediator needs to be highly effective listener. The basic attributes of active listening are as under :-

Involves long discussions from speaker but brief, calm responses from the listener.

No interference with speakers thought.

Quality to be a good listener is fundamental.

Listening to hear, not to answer.

To understand meaning behind words.

i) PURPOSE

It creates a safe environment.

It facilitates rapport with the parties.

It facilitates focus on relevant issues.

It demonstrates unconditional acceptance regardless of the beliefs, ideas and conduct of the parties.

It identifies and summarizes each person's ideas, perceptions and issues.

It clarifies the basic problems and issues.

ii) GUIDELINES FOR A MEDIATOR

Look at the speaker. Keep the other persons in view to observe their reactions. But maintain eye contact with the speaker.

Exhibit interest in what speaker is saying. Draw the speaker out.

Lean slightly toward the speaker.

Physical movement to a minimum.

Listen for what is NOT being said.

Observe HOW things are said.

Don't jump to the conclusion.

Don't rush to find a solution.

No mind chattering.

iii) BARRIERS TO ACTIVE LISTENING

a). Distractions

Noise, discomfort, interruptions, tiredness, boredom, preoccupation with own problems, impatience.

b). Pre-judging

Someone as foolish, unqualified or unhelpful.

c).Blaming

d).Dreaming

e).Advising

f).Disagreeing/Arguing

g).Being Directive

B. BODY LANGUAGE

Appropriate body language indicates that the listener is attentive.

It conveys to the speaker that

“ I am listening ”

“ I am interested ”

“ You are important ”

“ I care ”

SOLER

SOLER is key element of non-verbal communication indicating to the speaker that listener is giving full attention.

S

Face party with

shoulders square -

Show full concentrate to the speaker.

O

Adopt an

Open posture -

Show you are open to hear and accept what the party wants to say.

L

Sometimes

Lean gently towards

A sign of being involved.

E

Maintain

Eye contact -

Shows continuing attention and

R

Be relatively

Relaxed -

Because your attention is genuine.

POSITIVE AND INHIBITING BEHAVIOURS

| | POSITIVE | NEGATIVE |
|-------------------------------|------------------------------------|---|
| Posture and Body movements | relaxed; Upright; Well-balanced | Stiff; Tense; Turning away from speaker |
| Eye Contact | Comfortable, being | Evasive; staring at |
| Gestures | Open; relaxed and | Waving arms;nervous; |
| Facial expressions | Pleasant; Jaw loose; | Tense |
| Voice | Low and medium | Loud; High Pitch; |
| Special Relationship | Proper distance | hesitant too close; too far. |

C. QUESTIONS

Used to elicit the crucial facts and to uncover emotional currents.

Appropriate use of questions is essential in mediation.

To be used sensitively.

Timing and context are important.

i) Basic purpose

Show Mediator is listening;

Gather and organize information;

Encourage parties to talk;

Show empathy and support.

ii) Questions should not be :-

Indicate partiality, judgment, criticism

Irrelevant

Interrogative

iii) Types of Questions

a). Open questions

Encourage the speaker to talk and to open up.
Allow the parties to control direction of discussion.

Allow the parties to present views and ideas from their own perspective.

Facilitate options generation.

examples: "Tell me more about subject"

"What happen next"

"What suggestion do you have"

b). Closed questions

Seek specific and precious information.

Encourage the speaker to stop talking.

Response will be either "yes" or "no" or a very short response.

Useful for checking or clarifying.

Examples: "What date did you agree for the delivery"

"Where did you meet last

"How much was the

c).Hypothetical Questions

Allow parties to explore ideas and options.

Example: “What would happen if”

“What could it look like if you could....”

d). Leading questions

Less appropriate as indicative of mediator’s prospective.

Lead the party towards mediator’s own answer.

Mediator must be cautious about injecting his opinion.

Example: “A right solution here is to do x, isn’t

“Don’t you think it might be better

it?”

to...?

e) Multiple Questions

Pose more than one question at a time.

Lead to confusion.

Example: “What did you think when she first

‘p

D. SILENCE

A mediator is required to understand the relevance of pauses and silences of the parties during mediation. Sometimes an important piece of information is revealed after a period of silence.

Silence can be helpful to the speaker because it:

- Allows the speaker to dictate the pace of
- Gives time for thinking before speaking
- Enables the speaker to choose whether or not to go on.

Silence can be helpful to the listener because it : -

- Demonstrates interest, respect and patience
- Gives an opportunity to observe the speaker and pick up non-verbal clues

E. EMPATHY WITH NEUTRALITY

A capacity to understand a situation from another person's point of view and conveying that understanding without expressing agreement or disagreement with that person.

No sympathy.

Be consistent in gestures to both parties.

Do not draw into emotions of the story.

Non-judgmental acknowledgement

“I understand your position”

“I see what you are saying”

“I hear your point”

Words and phrases not to be used

“Yes”

“Oh-Oh”

“Okay”

“Nodding head up and down”

VERBAL COMMUNICATION

Consolidate, draw together and demonstrate understanding of what has been said.

*Establish a foundation for moving forward.

Types of Verbal Communication

a) Acknowledgment

Reflect back a person's statement or position.

Convey that the mediator has accurately heard and understood statement/ position

b) Restatement

It is restatement of facts what a party has said by a mediator. It allows a mediator to check his own understanding. It let the parties to know that a mediator has heard them.

Frequently used to ensure that mediator has accurately heard statements of parties.

Mediators may use same or similar words.

c) Summarizing

It is a summary which brings the crux of what a person has said. It is always required for a mediator to summarize at the end of each session i.e. private and joint session. The summary is not mediator's interpretation of what a party has said. The basic attributes of summarizing are as under:-

Restate essence of statement of a party regarding issues, positions, or proposed terms of settlement. Briefly, clearly and accurately.

A mediator must be accurate, brief, neutral, complete.

It links and brings some order to confused and fragmented thoughts and feelings.

Not interpretation of mediator about what had been said by the parties.

Express active listening of mediator.

d). Neutral Re-framing

It is an important and specialized communication skill. It is changing the words used by a speaker in a different complexion so as to allow the situation to be viewed differently and more positively. It is a technique that opens up possibilities for progress. It enables the parties to see things differently. It encourages a shift in position with flexibility leading to breakthrough for settlement.

Restatement of comments expressed by a party in neutral words leaving out inflammatory or highly charged words.

Steer disputants away from blaming others, or each other.

Removes negative overtones and move the process forward.

Use positive language rather than negative language.

Used when a party makes adversarial statement; uses inflammatory words; or engages in a personal attack.

Use statements which help the parties focus on the future.

Ease communication.

Identify issues objectively. Describe the problem as mutual rather than the fault of one party or the other.

e) Setting An Agenda

It is necessary for a mediator after summarizing the prospective of each party to help the parties to create a list of problems and issues which need resolution.

Use to establish the order in which issues, positions, claims, defences or proposed term will be addressed.

Determine which issue need to be addressed first so to provide ground work for later decision making.

When tensions are high, select the easy issue to work on first.

Separate short- term from long- term issues.

*use to organize information; to determine priority of issues of a party.

f) Deferring

It is used to postpone a response to a question or statement by a party. It may be used in the following situations:-

Where a party or advocate requests a premature evaluation. (it is too early, yet to get full facts).

To follow an agenda established by Mediator.

To gather additional information.

To de-fuse hostile, inflammatory, or highly adversarial statements.

g) Re-Directing

It is a communication technique used by a mediator to shift the focus of party from one subject to another. Re-directing may be used to:-

Re-focus on general issues, party expectations or goals.

Respond to a hostile, inflammatory or highly adversarial statement by a party or attorney.

h) Changing the Messenger

In conflictual relationships suggestions by one party are usually discounted by other party.

If same suggestion is comes from a third party than it is more readily accepted.

A mediator can solicit ideas from one side and communicate ideas/ suggestions to the other.

It should be done in caucus.

5. MANAGING FLOW OF COMMUNICATION

Stick to the speaker's subject. Give the speaker time to finish even if mediator wants to say something else.

A mediator should not be too quick to move even when the speaker repeats things. Subject may be/is very important to the speaker and feel that mediator really heard him on subject.

Be comfortable with silence.

Barriers of Communications

Ordering, directing, commanding

Warning, Threatening, Promising

Moralising Preaching, Shoulds and Oughts

Advising, Giving Solutions or Suggestions

Teaching, Lecturing, Giving Logical Arguments

Judging, Criticizing, Disagreeing, Blaming

Praising, Agreeing

Shaming, Ridiculing, Chastising

Interpreting, Analyzing, Diagnosing

Reassuring, Sympathizing, Consoling, Supporting

Probing, Questioning, Interrogating

Withdrawing, Distracting, Humoring, Diverting

BARGAININGS

In mediation, the parties work towards a negotiated agreement assisted by the mediator. It is important for a Mediator to understand different types of Bargainings involved in negotiation. In every negotiation different types of bargainings are involved either individually or in combination with other types of bargaining. It is a technique to handle conflicts. It starts when the parties are ready to discuss settlement terms. Due to appropriate bargaining, broad ideas and structures turn into potential solutions.

DIFFERENT TYPES OF BARGAININGS

i. Rights Based Bargaining

Customary and traditional.

Focus on right and wrong. Parties refer their legal rights as basis for resolving their disputes. (eg. who breached the contract, who was negligent)

Blame oriented analysis.

Factual and legal analyses based upon assessment of fault.

ii) Positional Bargaining

It is characterized by primary focus of the parties on their positions. It is the basic pattern of negotiation and is often the first method people adopt.

Customary and traditional.

Focus on legal position and offer to settle.

iii)Distributive Bargaining

It is a customary, traditional method of bargaining. In distributive bargaining, the parties are dividing a fixed resource. It may lead to an impasse because sometimes parties do not explore creative solutions for agreement. It takes time and parties may take extreme position.

Focus on allocation of fixed limited resources between parties.

Distribution of “pie”

iv)Integrative Bargaining

It is a bargaining in which the parties 'expand the pie' by exploring additional options and possible terms of settlement. It involves creative problem solving techniques. It helps the parties to overcome an impasse by exploring the additional resources of settlement.

Exploration of resources outside those at stake in the controversy.

Resources are expanded.

Trading of additional resources outside the framework of initial negotiation.

v)Interest-based Bargaining

It is developed as mutually beneficial agreement based on the facts, law and interests of the parties. It is a collaborative negotiation strategy leading to mutual gain for all parties. It preserves or enhances relationships.

Focus on underlying interests of the parties.

Parties consider various interests such as timing, finality, control over the outcome of negotiation, relationships, costs, privacy etc. for mutual gains.

a) Benefits

Parties are more satisfied about fairness of process.

Parties tend to become more committed for agreement.

Parties develop greater understanding and respect for each other.

Agreement set as a precedent for future conflict.

b) Mediator Tasks

i) Raise issue

'Issues' are problems. 'Positions' are unilateral solutions of the problems.

To solve problem raise issue.

ii) Discover underlying interests of parties.

Ask questions to find out underlying interests.

Listening.

Identify from experience and context.

iii) Prioritize interests of parties

Identify important and urgent interests of parties.

Ask parties to rank their interests.

Ask about reasons of underlying interests.

It helps to shift balance from "win-lose" position to "win-win" interest based problem solving.

iv) Invent options for mutual gains

Develop options as many as possible

Build on each option

Generate possible solutions which could satisfy underlying interests of parties.

v) Develop agreements based on underlying interests of parties

Evaluate options as potential solutions being workable, equitable for both parties.

Focus the parties on their highest priority interests.

NEGOTIATION

i)NORMS OF HUMAN BEHAVIOUR

People rarely make a decision if there is any way to avoid it.

People usually act out of self-interest.

When two people have a dispute, it can't be resolved until both parties decide to resolve it.

When two people have a dispute, they can't resolve it until some of the mistrust has been eliminated.

People tend to carry out decisions which they formulate.

People do not like to be told what to do.

Disputes are not resolved by dwelling on the negative. They are resolved by discovering preliminary areas of agreement, accentuating the positive, and expanding small agreements into larger ones.

No settlement is entered into without some doubt or reservation.

ii) DEFINITION

Process of bargaining between two (or more) interests.

Defined as the process of reciprocal communications between the participants for the purpose of achieving or satisfying a participants claims, need or interests in the face of competing, claims, needs or interests.

It helps the parties to arrive at an agreement which is as satisfactory as possible to both parties.

It involves a complex set of human behavior requiring an understanding of communications, persuasions, marketing, decision making and behavioral theories, psychology, economics, assertiveness, conflict resolution methods and above all flexibility and creativity.

Any negotiation based on merits & interests of the parties are principles of negotiation. The necessary elements of principles of negotiation are as under :-

- a). Separate people from the problem.
- b). Be hard on the issues and soft on the people.
- c). Focus on interests.
- d). Create variety of options.
- e). Rely on objective criteria.

iii) APPROACHES TO NEGOTIATIONS

There are two types of approaches to negotiations.

1. Competitive
2. Co-operative

Co-operative negotiator is accommodating, straight forward, courteous and civil

Competitive negotiator is aggressive, hostile and uncompromising.

A good negotiator mixes both approaches according to the circumstances of the negotiation.

Both are not mutually exclusive alternatives.

Neither approach is inherently more effective than the other.

iv) CHARACTERISTICS OF A NEGOTIATOR

CO-OPERATIVE

1. Maximizing settlement for client
2. Getting a fair settlement
3. Avoid litigation
4. Maintain good relationship with opponent
5. Assess the case accurately
6. Adopt realistic position
7. Listen and evaluate opponent position
8. Understand interests of opponent
9. Forth right
10. Share information
11. Reasonable, logical
12. Tactful and sincere
13. Courteous and friendly
14. Constructive, well organized, wise careful, facilitative
15. Offered creative option

COMPETITIVE

1. Maximizing settlement for client
2. Tough
3. Dominant, forceful, aggressive
4. Ambitious, egotist, arrogant, clever
5. Made a high opening demand.
6. Took unreasonable opening
7. Not interested in the needs of opposite parties.
8. Willing to stretch the facts.
9. Reveal information gradually.
10. Rigid
11. Careful about the

v) Comparison between effective and ineffective Negotiator.

EFFECTIVE NEGOTIATOR

1. Experienced
2. Realistic
3. Ethical
4. Rational
5. Perceptive
6. Analytical
7. Skillful
8. Prepared on law and facts
9. Creative

INEFFECTIVE NEGOTIATOR

1. Inexperienced
2. Lacking in analytical skills
3. Unrealistic
4. Non convincing
5. Non cooperative
6. Out of control
7. Discourteous and unfair
8. Non perceptive
9. Irrational

vi) ESSENTIALS FOR A NEGOTIATOR

A negotiator must know the strengths and

A negotiator should examine the interests,

A negotiator should know the underlying

A negotiator enters into the negotiations with

A negotiator should demonstrate the reasonableness and acceptability of the proposals.

A negotiator demonstrate why last proposal is

A negotiator tries to achieve better result for

A negotiator maintains the future relations with

A negotiator reduces the risks and liabilities.

A negotiator know how to close the gap between proposal and counter proposal.

weaknesse

needs and

interests an

confidence

in th

the parties

the opposit

A negotiator know how and when to present

A negotiator should understand the negotiati

Listening is the most powerful negotiation skill.

Prepare options for mutual gains.

vii) BARRIERS TO NEGOTIATIONS

Despite best efforts sometimes negotiations reach at impasse resulting into substantial and avoidable costs of the parties.

The parties realise that the resolution of disputes can serve them better but still they do not reach to the settlement.

A negotiator should examine why the negotiations failed and then he should try to overcome barriers to resolve disputes.

Different Types of Barriers

- a). Strategic barriers**
- b). Principal-agent barriers**
- c). Cognitive barriers**
- d). Psychological barriers**

a). Strategic Barriers

When one party takes calculated steps to maximize one sided gains.

It arises from the tension between the self interests and the joint gains- how will the parties divide a fixed pie.

Many times intentional use of secrecy and deception to gain advantage may have the opposite effect.

2.Principal and Agent Barriers

An agent negotiating for the principle may induce behavior that fails to serve interests of the principal.

It is due to conflict of interests between the agents goal and objectives and those of his principles.

A mediator helps the parties in overcoming strategic barriers by inducing the parties to reveal information about their underlying interests, needs, priorities and expectations.

A mediator helps the parties in overcoming Principal-Agent barrier by bringing real decision maker (Principal) to the table and help him understand his own interests.

3.Cognitive Barriers

Some times parties create a barrier to dispute resolution because their risk assessment do not factor in the reasoning court decision. The parties tend to be averse to risk regarding gain and would rather have a certain gain than an uncertain larger gain. The people are ready to bear risk with regard to loss. They would avoid a certain loss and take a risk of greater loss if there is some chance of avoiding that greater loss. **Some parties would rather postpone a certain loss (Settlement) for an uncertain result in the future (Trial).** A good negotiator will assist the parties and opponents in addressing these realities. A mediator helps in overcoming cognitive barrier by emphasizing potential gains and de-emphasizing or dampening the losses.

4. Psychological Barriers

Many times unwarranted assumptions about the motives and intentions of the other parties can create a barrier.

Due to this reason decision about accepting an offer is made with uncertainty and risk.

A mediator helps in overcoming psychological barriers by owning the source of the proposal.

viii) Mediator as Negotiator

Mediator is a neutral person. However mediator can utilize negotiation experience and skill for benefit of parties in following manner:-

- a) Understand negotiation tactics being used by parties.
- b) Manage parties expectations.
- c) Use creative problem solving techniques.
- d) Exchange information tactically, to maximum effect.
- e) Helps the parties past hurdles to make first offer.

ix) Overcoming common problem in negotiation

| Reason For Negotiation Failure or Breakdown | Mediator - techniques & approaches |
|--|---|
| i) Poor negotiation skills | Help parties with framing |
| ii) Unrealistic Expectations | Reality testing |
| iii) Issues of Principles | Focus parties on practical considerations |
| iv) Emotions, ego, pride | Acknowledge and allow |
| v) Failure of communications | Act as a conduit for clear |
| vi) Poor decision making | Shape the agreement |
| vii) Settlement panic | help parties to visualizes a future beyond dispute |

x) Questions Not Conducive To Constructive Negotiation

What's your side of story?

I want to know your
version of it?

What is your explanation?

What are you claiming?

You are alleging what....?

What do you want...?

What you are thinking...?

Words Not Conducive To Constructive Negotiation

Fault

Blame

Delay

Take it or leave it

Expressions of frustration

Dead end statements
(e.g., “That won’t do it”)

Reactive statements.

IMPASSE

IMPASSE

Impasse means and include stalemate, stand off, deadlock, bottleneck, barrier or hindrance.

Sometimes parties fail to reach an agreement resulting in deadlock.

Impasse may not be due to overt conflict but rather due to resistance to workable solutions or exhaustion of creativity.

Parties are free to stick with a position.

There may be legitimate reason for impasse.

Mediator not to pressure the parties for a settlement.

There may be a tactical deadlock. It may be used to create pressure on opposite party.

Parties may think that dispute is irresolvable in mediation but mediator believes that a workable agreement is still possible.

Goal is to help the parties analyse and negotiate constructively.

1). TYPES OF IMPASSE

a). Emotional

- Personal animosity
- Mistrust
- Pride
- Ego
- Fear of losing face
- Vengeance

b). Substantive

- Lack of knowledge of facts and law
- Limited resources
- Lack of bargaining powers
- Incompetence
- Third Parties
- Standing on principles
- Adamant attitude

c). Procedural

- Lack of authority
- Power imbalance
- Mistrust of Mediator

ii) Stages when an impasse could be created :-

a). At the time of opening statement

It may be due to refusal of party to participate in mediation or by causing interruptions or due to other reasons.

b). In a Joint Session.

It may be due to accusations made by parties against each other.

It may be due to use of abusive language or by making inflammatory or provocative statements.

c). In a private session or caucus

It may be due to proposal offered by a party which is entirely in his favour and interests.

d). At the time of arriving at or drawing up of the settlement.

It may be due to either or both parties being adamant about the wording, format and content of the settlement.

iii) TECHNIQUES TO BREAK IMPASSE

A) Substantive

a) Lateral Thinking

Creative, innovative, intuitive, non-linear and non-traditional.

Shifting of thinking pattern away from predictable thinking which is logical, linear, traditional, rational to new or unexpected ideas.

Used when parties want to move from one known idea to creating new ideas.

b) Brainstorming

Invent/generate new options giving more satisfactory response to the interests of parties/mutual satisfaction or gain.

Evaluate options for agreement.

Methods to Create Options

Separate problems into smaller segments. Found simpler solutions for each segment.

Encourage a 'tentative' approach to proposed solutions.

Separate inventing from deciding. Invent first, decide later.

Expand most promising ideas.

Look for mutual gain by expanding pie.

c) Real Testing/ Reality Check

Many often parties believe that litigation is the only and best option to secure their interests

Mediator compares settlement offers both monetary and non-monetary to possible outcome at trial. It is examination of the specific consequences that will result for each party in the even of the non-settlement.

To be done in private caucus.

Introduce real testing when parties are in difficulties while negotiating and mediator anticipates hard bargaining or adamant stand.

It helps a party to reassess their position and emotion and seen in a cool and dispassionate light.

It involves a party to make full assessment of future risks – time, money, other – if the dispute is not settled.

It helps parties to take a realistic approach to the negotiations.

Methods

BATNA (Best alternative to a negotiated agreement)

Whether settlement offer is close to, equals, or exceeds the best outcome at trial, after adjusting for litigation expenses of trial, the risk of losing and the delay in resolving a dispute.

BATNA permits far greater flexibility and allows much more room for innovation than a predetermined line.

WATNA (Worst alternative to a negotiated settlement)

Comparison of pending settlement offer to the worst projected outcome at trial.

Important to determine whether a settlement offer exceeds a party's worst possible outcome at trial.

MLATNA (Most likely alternative to a negotiated agreement)

It reflects most probable outcome at trial.

Benefits of Real Testing

It assists the parties in making a balanced and systematic evaluation of their alternatives to settlement.

It acts as a measurement scale for parties to evaluate settlement offers.

d) Reactive devaluation

A psychological factor that occurs when a person reacts negatively to offers or counter offers suggested by the opposite party.

Technique to handle

Take ownership with consent of the party

Suggest a possible offer or counter offer without attributing it to any particular person.

e) Integrative Bargaining

Investment of resources outside those at stake in the controversy explore.

Resources are expanded.

Possibility of trading additional resources outside the framework of initial negotiation.

f) Deferring

Use to postpone a response to a question or statement by a party. It may be used in the following situations:-

Where a party or advocate requests a premature evaluation. (it is too early, yet to get full facts).

To follow an agenda established by Mediator.

To gather additional information.

To de-fuse hostile, inflammatory, or highly adversarial statements.

g) Re-Directing

It is a communication technique used by a mediator to shift the focus of party from one subject to another. Re-directing may be used to:-

Re-focus on general issues, party expectations or goals.

Respond to a hostile, inflammatory, or highly adversarial statement by a party or attorney.

h) Changing the Messenger

In conflictual relationships suggestions by one party are usually discounted by other party.

If same suggestion is comes from a third party than it is more readily accepted.

A mediator can solicit ideas from one side and communicate ideas/ suggestions to the other.

It should be done in caucus.

B) Procedural

A mediator can also take recourse to any or all of the following procedural techniques to break an impasse.

Joint Session

Warn the participants/ bring the parties together to acknowledge the situation

Solicit any `last ditch' efforts

Changed atmosphere/use humour to relax atmosphere

Revisit issues, or areas of agreement.

Proceed with preferably an easier issue

Ask parties about cause of an impasse.

Ask parties to suggest options to overcome the deadlock.

Praise work and accomplishments of parties.

Ask parties to have a conference by themselves without intervention of any person including mediator.

Be a catalyst

Change the subject and move to other topics.

Try role-reversal

Propose hypothetical offers.

Suggest (or threaten) ending the mediation.

Suggest third party/ expert intervention.

Allow emotions to emerge.

Use humour.

Take a break.

Assure the parties that if no settlement is reached then case would be referred back to the court for trial.

BARRIERS TO DISPUTE RESOLUTION

There are barriers to dispute resolution, the recognition of which helps to move the mediation process forward in a positive way. It also helps a negotiator to break the impasse.

Inadequate Planning and Preparation.

False First Impressions and Perceptions.

Grief.

Systemic Distrust.

Failure to Communicate and Listen.

Insufficient Focus on Underlying Interests.

Partisan Perception, Judgmental Overconfidence,
and Wrong Baselines.

Reactive Devaluation.

Misunderstanding the Loss/Risk Analysis.

Failure to give Opponents Face, Respect, and
Dignity.

EFFECTIVE MEDIATOR

Listens and responds courteously with understanding

Acknowledge parties issues and positions

Encourage parties to make their own decisions

Analyse parties presentation

Ask relevant and insightful questions

Probes for clarification

Keep track of new information and changing positions

Relaxed, Alert

Demonstrate skill and confidence

Effective Mediator – During the Mediation

| Area of Competence | Overall approach | Detailed work |
|--------------------|---|--|
| Relationship | Creates an environment conducive to mediation | Develop Communication & interaction with parties |
| Process | Establishes & maintains an effective working structure | Manages the process & phases of mediation |
| Content | Facilitates the parties in creating solutions and moving towards settlement | Facilitates momentum & progress through active engagement with the |

INEFFECTIVE MEDIATOR

Allow interruptions

Fail to handle interruptions

Allow parties to cross talk

Failed to hold caucus at appropriate time

Rushing through process

Fail to follow stages of mediation

Joint session at wrong time.

Fail to communicate with parties.

SOME DO'S FOR EFFECTIVE MEDIATION

Believe in the process and believe in the people.

Be familiar with the facts and the issues.

Develop a suitable opening that covers the role of the mediator, the principles of mediation.

Be brief, confident, positive and flexible

Show empathy, build rapport, reinforce neutrality, and do so equally with the parties

Encourage parties to make an effective opening statement

Spend time clarifying the issues in dispute

Acknowledge emotions and allow feelings to be vented

Encourage all to contribute to the proceedings

Check if there have been previous settlement offers

Have patience, let the parties own the problem and the solution

Listen a lot

Build momentum

Encourage the parties to communicate with each other

Devote time and patience to the drafting stage

Keep the door open if the mediation does not settle

Maintain your energy; take breaks; look after yourself, physically and emotionally

SOME DON'TS FOR EFFECTIVE MEDIATION

Don't be fazed, and if you are don't let it show

Don't get swamped by detail

Don't appear to be a judge or arbitrator

Don't suggest

Don't impose your solution

Don't take lots of notes

Don't make assumptions about parties, causes, merits or fairness

Don't criticize poor preparation, presentation or negotiation by parties

Don't interrupt

Don't play devil's advocate

Don't put a party into a corner with no exit

Don't give up

Don't press for settlement at any cost

Don't be too hard on yourself if the mediation does not se

QUESTIONS MOST COMMONLY ASKED ABOUT MEDIATION BY ADVOCATES.

Question 1. If both the lawyers are settlement minded then why the case should be sent to another professional i.e. mediator for settlement?

If the parties or lawyers can work together and settle the case quickly, amicably and inexpensively in that case, they arrive at their own agreement.

Question 2. With all the economic pressure on my practice, will the growth of mediation cut into my income?

The quick settlement of dispute in a mediation can add new clients and help the lawyer to accept new brief. It is noticed that advocates are not paid for approximately 30% of their litigated work. Even the advocates can get fee while working as a negotiator.

Question 3. I know mediator should not give legal advice.

How can the p

It is correct that a neutral mediator should not give advice i.e. to tell the client what to do or what decisions to make. Even if a mediator does give legal information, most clients benefit from individual legal information.

Question 4. I just got myself first mediation case. What should I do?

If you had sufficient training and feel comfortable as a

mediator the

ROLE OF LAWYERS IN MEDIATION

The role of lawyers in mediation has become increasingly important as society views mediation as an effective alternative dispute resolution mechanism to litigation. The lawyer is a well informed champion of the client, advising on the law and procedure, articulating the clients' views to others, and above all, pursuing the clients' best interests at all times. It is a common belief that in mediation, the participation of advocates is optional and/or that they have no role to play. The advocates play an active role during the entire mediation process. Mediation cannot be successful without active participation of the advocates. The parties going into the mediation process both need and expect, their lawyers to understand the dynamics of conflict and the process itself. The lawyers have a central role in making mediation work for their client in a constructive, creative and productive way.

The participation of a lawyer is required in mediation in following ways :-

1) Client preparation and participation.

A lawyer should prepare his client for participation in mediation. A well prepared client can participate in mediation effectively.

2) Interests and positions.

A mediation session is not a trial based on legal and factual positions. It is facilitated negotiation. A lawyer should use active listening skills; pay attention to body language; use information divulged by other party to assist his client. A lawyer should act as a problem solver. A lawyer should move the parties from positions to interests.

3) Reality Test

A lawyer should know the BATNA and WATNA of the client. It will help the client to decide about the proposed parameters of a negotiated settlement.

4) Prepare the Case

A lawyer should explain the mediation process including stages of mediation to the client. A lawyer should prepare client for participation in the mediation process. He should talk about possible settlement options before the mediation.

5) Plan the Strategy

A lawyer should devise a strategy regarding what client want to achieve by way of settlement and how it is to be achieved.

6) Opening statement is important.

A lawyer should understand the practice and dynamics of negotiations and use every opportunity to promote resolution. A lawyer should be firm but not inflexible.

7) Use private session effectively

A lawyer should work with the mediator in private session to explore possible options for settlement and to divulge confidential information for settlement of dispute.

8) Be part of the solution and part of the problem

A lawyer should translate clients' position into interests so as to generate novel options to settlement. A lawyer can work to build consensus around an option which best addresses the goals and interests of a client or the involved participants.

USE OF APOLOGY IN MEDIATION

Use of apology plays an important role in resolution of disputes. The plaintiff may be heard on account of an unreasonable conduct of the defendant.

Apology is to acknowledge and express regret for a fault without defense. It is called for when the person has attempted to degrade or insult someone. There is a moral injury and our moral relationship provide for a symbolic ritual of apology so that the wrong doer may bring himself low that is begging for forgiveness. So there must be acknowledgment i.e. Recognition of an injury by a wrong doer.

There should be regret and shame.

An Apology is not offered with defense. It involves vulnerability.

The emphasis is on that the act done cannot be undone but it should not go unnoticed.

Apology involves Role Reversal. The person apologizing relinquishes power & puts himself at the mercy of the offended party.

In mediation for securing apology, the Role of a Mediator is very important. The party (offender) is always defensive as there is a fear of blame. So, apology does not come up readily and willingly.

With the help of mediator, in caucus, the parties can prepare themselves to tender apology.

Time and sincerity of the apology is crucial.

Mediator to make positive assessment whether apology would be helpful for settlement of dispute.

VINDICATION AND SELF SACRIFICE

Dictionary meaning – clear of blame/suspicion – show to be justified.

Sometimes a party or their counsel may accept a settlement package if it can be presented by the mediator as being symbolic of a large victory. But this should be done only when the mediator has an intuition that there is a small difference between the two sides and by telling the plaintiff that it is more a vindication of his or her stand than the money value and that it was nice for the plaintiff to have accepted the settlement without bothering much for the monetary value.

The mediator can help the parties to arrive at a settlement that promote a greater good than mere individual sacrifice. The intuition of mediator, based on facts learnt by him during process will guide the mediator that to whom & how such vindicative & self sacrificing discussion be made.

SAVING FACE

Fear of losing face is a powerful emotion. Parties stick to their positions as they see no escape without loss of face.

They continue with litigation many a times for saving face.

Some defendants are reluctant to settle because they feel it reflects an admission of the weakness of their case or of their wrongdoing. In such cases, a defendant would prefer to fight to the end to protect his name than to settle. In fact such defendants would pay more by paying an advocate's fee than the damages asked by plaintiff. In such cases a mediator may use his intuition to help the defendant to understand as to where his true interest lies and he may not make the litigation a prestige issue.

The mediator can help them look at the suit more objectively and explore settlement options that save rather than lose face.

ROLE OF A REFERRAL JUDGE

ROLE OF A REFERRAL JUDGE

In Court based mediation, a neutral third party facilitates negotiation and communication among the parties to assist them in finding a mutually acceptable resolution of the case. The goal of the mediator, who may meet with the parties jointly and separately, is to help them identify their underlying interest, improve communications, and generate settlement options. Mediation sessions are informal, confidential, generally attended by both attorneys and clients, and may occur at any point in the litigation. In court based mediation, it is necessary for a referral judge to know when and how to select appropriate cases for mediation and how to manage cases referred to mediation. The role of a referral judge is very important in successful implementation of mediation. It is necessary for mediation management. It is necessary for a referral judge to make an objective assessment of facts of case to ascertain whether case is fit for mediation or not.

Role of Referral Judge is crucial in Mediation management.

In Delhi, at Mediation Centre, Tis Hazari Courts, 13.10% cases and at Mediation Centre, karkardooma Courts 9.49% cases as on 30.09.2008 are found not fit for mediation. It reflects relevance of role of referral judges in implementation of mediation.

Role of referral judges is of utmost importance. It should not be underestimated.

Success of Mediation depends upon selection of suitable cases.

A referral judge should make an objective assessment of a case before referral to ascertain whether the case is fit for mediation or not. It affects the entire mediation process. It is an important exercise and should not be done in casual manner.

Appropriate referrals reduce the work load of a judge. A referral for the mediation may be made when the parties are willing for settlement; or when the parties are not willing for settlement but they are ready to explore the possibility of settlement; or when a referral judge satisfies about the existence of element of settlement.

TYPES OF DISPUTES MAY BE REFERRED FOR MEDIATION

Business and Commercial Disputes

Insurance Disputes

Accident claims cases

Matrimonial Disputes including Divorce, Custody, Dowry cases

Community Disputes.

Intellectual Property cases.

Labour and Management Disputes.

Property Disputes such as Suits for injunctions, possession, partition etc.

Recovery Suits including the claims of damages.

Guidelines for Referral Judges

1. Power of a referral judge

Section 89 read with Order X Rule 1A,1B and 1C of the Code of Civil Procedure, 1908 incorporated by way of Code of Civil Procedure (Amendment) Act, 1999 and implemented w.e.f.01.07.2002

2. Stage of Reference

Section 89 does not prescribe any particular stage of a trial for referral of a case.

As per section 89 read with Order X Rule 1A a case may be referred after recoding of admission and denial of the parties.

A case may be referred at any stage of the trial.

3. Consent

A referral judge should ascertain from litigants about their willingness and are consenting.

Consent should be free, voluntary and not under force or pressure.

4. Conference with the parties

A brief interaction with the parties is always beneficial.

A referral judge should highlight the process and benefits of mediation to parties/advocates

A referral judge should ascertain whether previous attempts have been made for the settlement.

If the parties have decided against the mediation then a referral judge should ascertain the cause of the decision.

A referral judge should encourage the lawyers who are not keen for mediation, to participate in mediation.

A mediator should address **confidentiality** and **right of self determination** to parties.

5. Schedule Set For The Trial.

Mediation not a tool for delay of the trial.

Overall schedule set for the trial should not be

disturbed.

A referral judge should fix the case for further

proceeding

It will provide definite time limit for a mediator and the parties will not be encouraged to delay the trial.

6. Categories of the Cases

Some categories of the cases are more suitable for mediation in comparison to other categories.

A referral judge should identify the categories which are more suitable for mediation.

7. Selection of the Mediator

Quality of a mediator must be ensured. It influences effectiveness of mediation.

Good reputation and personal characteristics.

Trained and experience mediator.

8. Selection of the Cases

Cost and time spent in mediation should not exceed cost and time spent in litigation.

The parties wish to maintain future relationship either personal or business.

In case where one of the litigant is Government or its agency then a referral judge should ascertain whether the official/officer appearing is having authority to take the decision.

No interpretation of statutory rules, regulations, bye-laws.

Whether case involves disclosure of sensitive information which can only be disclosed to a mediator.

Whether case involves complex legal issues, ambiguous precedent, constitutional issues or disclosure of public policy which require judicial determination. Would a judgment constitute to development of the laws.

Whether case involves multiple parties and issues.

Whether parties have already attempted settlement and its result.

9. COMMUNICATION BETWEEN A REFERRAL JUDGE AND A MEDIATOR

No ex parte communication on merits of case with mediator.

A mediator only communicates final outcome of case to a referral judge.

If any communication is necessary, then it should be in writing and approved by the parties.

Mediation Rules also prohibit direct communication between mediator and a referral court.

Referral Order

The referral order is an important document that sets the ground rules for the mediation process. A good referral order should include sufficient details about how the process will proceed to ensure that parties have clarity on fundamentals, such as confidentiality, road map etc.

It sets the tone for mediation. It should not be pass with a casual approach.

Should contain sufficient details about the mediation process.

Components of a Referral Order

Identification of ADR

A referral order should identify what type of ADR process will be used. It is necessary for a referral judge to cite the appropriate ADR selected for a particular case.

Authorisation

A referral order should generally cite the statute or rule that authorizes the court to refer parties to mediation.

Administrative matters

A referral order should address administrative matters such as who is authorised to appear before a mediator; whether parties are permitted to submit documents; time limit, etc.

Fee

If the parties are to pay for mediation, then a referral order should state the amount of fee to be payable to mediator and by whom.

Good faith participation.

If a referral judge requires good faith or meaningful participation in mediation, referral judge may note this requirement in the referral order.

Time limit

The referral judge should prescribe a time limit or frame for mediation process. It will not allow any party to delay the mediation proceedings. It will also prevent to use mediation as a tool for delay the trial of the case.

Confidentiality

The referral order should convey to the parties that mediation proceedings are confidential in nature and no party should be permitted to divulge or disclose before court or any other forum about what was transpired during mediation.

Some Do's for Referral Judges

Ensure presence of parties before referral.

Assess relevant facts of case.

Interact with litigants at time of referral.

Ascertain willingness of parties/ Advocates.

Obtain free consent of parties.

Find reasons if parties not ready for mediation.

Explain benefits.

Pass appropriate referral order.

Obtain signatures of parties on referral order.

Fix date and time for appearance before Mediator.

Fix schedule of trial.

Explain Role of Mediator.

Explain right to Self determination and confidentiality.

Ensure that only parties or authorized representatives should appear.

Select appropriate cases depending upon case chara

Encourage advocates and litigants for mediation.

Ensure authority of officials appearing for Governmen

Some Don'ts for Referral Judges

Do not refer a case if defendants or one of defendants

Do not refer cases involving complex legal issues
Do not allow mediation for delay of trial.

Do not refer a case only for sake of reference.

Do not refer a case without making objective assessment.

Do not refer a case expressly barred by statutory provisions.

Do not establish communication with mediator.

Principles of Code of Ethics for Mediator

Mediation provides a forum for consensual dispute resolution.

Mediator to honour right of self determination of parties, act with impartiality, avoid coercion, improper influence, conflict of interest and maintain confidentiality.

A mediator should follow Statutes, Court Rules, and Administrative Orders applicable to mediation.

Standards of conduct for mediation perform three major functions:-

1.To serve as a guide for conduct of mediators.

2.To inform mediating parties;
and

3.To promote public confidence.

Ethical Principles for Mediators

Right of Self determination

Impartiality

Conflict of Interest

Competence

Confidentiality

Quality of process

No deceptive publicity and

Advertising

Termination of proceedings

Recording of Settlement

Fee

No legal advice

Duties to third parties

Common Ethical Principles for Judicial and Advocate Mediators.

Observe ethical principles strictly.

Maintain fairness.

Be non-judgmental.

Acquire adequate competence.

Maintain impartiality.

No communication with parties.

Maintain confidentiality.

No assurance or guarantee of result.

Ethical principles for Judicial Mediators

Do not act as a mediator in a pending case.

No ex parte communication with a referral judge.

No contact with parties during or after conclusion of mediation.

Do not allow parties to delay trial.

No preference to any party .

Maintain neutrality.

Respect right of parties of self determination.

Ethical principles for Advocate Mediators

No relation with parties.

Do not appear as advocate for any party.

No disclosure of confidential information.

Do not solicit clientage.

Exhibit impartiality, competence, integrity.

Follow directions given in referral order.

Do not destroy or temper with judicial record.