

## Preparing for Mediation by Tom Sebok, UC Boulder

It is likely that you asked for or agreed to mediation because the strategies you have already tried have not helped you resolve your dispute. Also, your most likely alternatives to mediation may be undesirable. For example, you could decide to just live with the conflict, quit your job, try to transfer to another position, make an informal complaint against the person with whom you are in conflict, file a grievance (if you are a classified staff member), initiate disciplinary action (if you have the authority to do so), or try to work things out in a one-on-one conversation with the person with whom you are in conflict. In comparison with these options, mediation may look like your best alternative.

To effectively manage or resolve problems, the discussion that takes place in mediation needs to be different from previous discussions. But how can it be different if the same people are talking about the same issues? The mediator(s) can help by establishing ground rules, slowing down the conversation, clarifying, and asking questions to promote understanding. But, having a mediator is no guarantee that you will have a successful outcome. Ultimately the success of mediation depends on you and the person with whom you'll be mediating. The purpose of this article is to help you think - before your mediation - about what you can do as a participant to give your mediation the best chance to succeed.

### **THE GOAL OF MEDIATION . . .**

Mediation helps people resolve or better manage disputes by reaching agreements about what both people will do differently in the future. For you to reach an agreement with the other person requires that you obtain her/his cooperation to find mutually agreeable solutions. As you consider what you will say in your mediation, keep this goal in mind.

### **WHAT MEDIATION IS NOT**

Mediation is not debating. It does not require you to prove that you are right and the other person is wrong or convince her/him to give up what s/he thinks is important. Unlike debating, mediation is not intended to have a "win-lose" outcome. In fact, it is often the failure of "debating" that leads people to seek the help of mediators!

Mediation is not capable of changing anyone's personality or values.

Unlike the justice system, the mediation process is not intended to find fault, assign blame, or punish anyone.

Finally, mediation is not something people are likely to do successfully if they are mandated to participate in it against their will. It needs to be voluntary.

### **WHAT MEDIATORS DO . . .**

Mediators will play a neutral role as they attempt to help you resolve or better manage your dispute. They do not "take sides with either party." Their job is to assist you in understanding one another and in reaching agreements. To do this, they establish ground rules and ask questions (usually to one person at a time). They will help you identify the issues and interests in need of resolution. Once issues and interests are identified, they will encourage

you to brainstorm solutions. After the mediation, they will write drafts of agreements and, after gaining your approval, give them to you to sign, date, and exchange.

### **WHAT MEDIATORS DON'T DO . . .**

Mediator(s) do not:

- make decisions for you and/or the other person about how your dispute will be resolved.
- talk with others without your permission about how the mediation went. This also includes your boss and/or other stakeholders. Even people who refer you to mediation do not hear from the mediator about how the mediation went, who said what in the mediation, etc.
- determine who is "right" or "wrong." There is no value in trying to persuade the mediator of the "merits of your case."

### **A DIFFERENT KIND OF CONVERSATION . . .**

In mediation, the conversation occurs, at least initially, between the mediator and one disputant at a time. While the mediator talks with one person, the other is expected to listen. This may feel awkward initially but it interrupts the communication pattern in which you and the other person have been engaged. It also allows the mediator to ask questions that will help her/him understand the perspective of each disputant. And it allows the person not speaking to hear the perspective of the other person. To make sure understanding is occurring between you, the mediator may ask each of you to repeat the essence of what you heard.

### **SEEKING MUTUAL BENEFIT**

Imagine how you would feel if the only solutions mediation produced were those acceptable to the other person. You would not agree to them. Similarly, if the only solutions produced were those acceptable to you, the other person is unlikely to agree. For many people in a dispute (especially after it has become "heated"), it does not feel "natural" to focus on finding solutions acceptable to the other person involved. However, the reason you are involved in a dispute with the other person is that s/he disagrees with you or dislikes something you have said or done. Finding ways to address those concerns as well as your concerns will help resolve the problem more quickly.

### **TACTFUL HONESTY . . .**

While honesty is very important, tact is also important in mediation. Some people say, "I was just being honest" or "I was just being direct" to justify saying insulting or tactless things to the person with whom they mediate. This person tells her/himself, "I was honest. If the other person couldn't take it, that's her/his problem." Just because you think something, you don't have to say it. You do not have to choose between "being honest" or "being tactful." Obviously, if you are going to seriously address an issue, you need to be honest about what the issue is. But there are numerous ways to say the same thing. A tactful approach is more likely to help you get the other person's cooperation than a tactless one.

### **UNDERSTANDING THE OTHER PERSON'S POINT OF VIEW . . .**

You probably know how you feel about the dispute and what problems you think need to be resolved. You could probably describe how the other person has acted and how her/his behavior has affected you. And, you could probably name the most important issues to you in the dispute. All of that is good because you will need to discuss these things in mediation. But, you may know a lot less about how the other person has been affected by the dispute and how s/he sees it. In fact, many people make the mistake of assuming that the other person wants her/him to be miserable, is not bothered by the conflict, or even enjoys it. This is almost never true! Most people engage in conflict because they have genuinely different interests, expectations, information, or values. How would you answer the following questions?

- How does the other person feel about the dispute?
- How would s/he define the problem(s) that need to be resolved?
- How would s/he describe my behavior in this dispute?
- How has my behavior in the dispute affected her/him ?
- What are most the most important issues to her/him ?

If you cannot confidently answer the above questions, you have just discovered a potentially important clue for unlocking the dispute! You may believe that understanding and solving the other person's problem is "the other person's problem," but here's the problem with that belief: The concerns of the other person are why s/he is in conflict with you! If you don't really understand these concerns - from her/his point of view, you cannot do anything to address them. And if you can't address them, the conflict will remain unresolved. Try to understand the problems expressed by the other party exactly as s/he sees them. This does not mean you have to agree with what the other person says or abandon your own concerns. It only means you must understand her/his concerns. To accomplish this during the mediation, this means you will need to listen carefully to what the other person says. If/when the mediator asks you to do so, repeat what you heard the other person say as accurately as you can without dismissing, discounting, or interpreting it. If you see things differently, you will have an opportunity to explain that. But disagreeing before the other person knows you understand exactly what s/he has said tends to discourage her cooperation to work with you to resolve the problem. The mediator(s) will guide the discussion so you both will have the opportunity to hear the concerns of the other person. While it may be difficult to listen to a point of view with which you disagree, what is said may reveal important and helpful information for you.

### **AN EFFECTIVE STRATEGY . . .**

Use the mediation to find out what the other person would like you to do differently in the future. Why? What you agree to do is all that is within your control. S/he is more likely to do things you would like her/him to do IF you agree to do things differently yourself. There is, of course, no guarantee s/he will do this, but the odds are greater that if you agree to make changes, s/he will too.

### **COMMON MISTAKES . . .**

#### **Making Insulting Comments:**

Even if you believe the other person acted like a "jerk" or "moron," insulting her/him by calling her names is not likely to be an effective strategy to get her/his cooperation to make agreements with you. This applies to almost any other negative assumption or attribution you

may make about the other person, (e.g., "He's crazy as a loon") as well. If you say things to or about her/him in mediation that s/he finds insulting, you probably won't get what you want.

Perhaps the most destructive comments in mediation are those in which one person makes evaluative pronouncements about the other person's character (e.g., "He is lazy, dishonest, and worthless."). Even if the speaker believes this with all her/his heart, it is not likely to help her/him gain the other person's cooperation in finding mutually agreeable solutions.

### **Negative Labels for the Other's Behavior:**

Some people don't recognize that their choice of words may be offensive to the other person. For example:

"He has been harassing me for weeks!"

While the speaker may very well feel "harassed," the person about whom the remark is made is unlikely to perceive her/his own behavior as "harassing." This term is likely to evoke defensiveness. If you say something like this, a defensive reaction is NOT going to help you to get her cooperation. She may feel the need to assert that the behavior in question was not, in fact, "harassing." And debating whether behavior is or isn't "harassment" is unlikely gain cooperation of either party. A more productive discussion would probably evolve from mediator questions like, "Given the other person's concerns, how would you have preferred for her to have responded?" or "If she has those concerns in the future, how would you prefer for her to respond?" or "How were you affected when she said X to you?"

### **Impulsive Comments**

Some of the things you may be most tempted to say or do will not be helpful. These are things that might feel "good" in the moment, but, in the long run, will interfere with your reaching your goal. If you feel mad or hurt as a result of something the other person says, you may be tempted to say things or act in ways that will harden the conflict. Resist this temptation to the best of your ability. This does not mean "keep it to yourself." It means "discuss whatever concerns you in ways the other person will be able to hear." If nothing else, if/when such a critical moment occurs, ask for a "time out" or don't say anything until you are able to avoid the impulse to lash out. The silence may be uncomfortable, but it is far less damaging to the goal of getting the other person's cooperation to work with you to resolve the dispute than giving in to the urge to "respond in kind."

### **"Mind-reading"**

"Mind-reading" is another common mistake made by disputants. This occurs when people observe the actions of another person and attribute motives to her/him. People can also get pretty creative in making multiple negative attributions. Notice in the examples that follow how each one adds yet another assumption or attribution:

- "You are trying to fire me."
- "Why don't you just come out and admit that you're trying to fire me?"
- "Why don't you just admit that you want to fire me because of I'm gay?"

In the third example, the speaker assumes that the person s/he is talking to:

- is trying to hide something,
- has the intention to terminate the employment of the speaker, and
- wants to terminate her/his employment because s/he does not like gay people.

### **"Always" and Never" "Statements:**

"Always" or "never" statements often lead to an unproductive discussion about examples that contradict the statement. For example, if you say, "You always miss those meetings," the other person may feel compelled to point out all the times s/he attended the meetings. Similarly, if you say, "You NEVER get to our meetings on time," you may find yourself in a conversation about the time(s) when the person DID get to the meeting on time. Simply avoiding these statements allows you to spend your mediation time more productively.

If you make any of the above mistakes, try to stop, take a breath, and, if necessary, apologize. After you've done something that insults the other person, that's really all you can do. Pretending as if nothing happened when you know that you have acted in a disrespectful or hurtful way toward the other person will not promote respect, trust, or cooperation. Owning up to these things gives you a much better chance of achieving getting back on track.

### **WHAT WORKS BETTER?**

Use "I Statements and Ask Open-Ended Questions:"

Making "I" statements and asking open-ended questions work much better than making "you" statements. For example:

"I didn't like it that you asked me four times about my progress in completing the report last Tuesday. I don't understand why you did that."

"I don't remember these events in the way you described them. What I remember is . . ."

"Why do you think X?"

"I'm confused because earlier you said X and now, it sounds like you're saying Y. Can you clarify this for me?"

Making the last statement above, rather than, "No, that's untrue," or (worse) "You're a liar!" (even if you know it is untrue), allows the other party to "save face" because the speaker does not force the issue as a "right" or "wrong" issue and, instead, makes an honest "I" statement. Also, sometimes people have different information and are not intentionally lying. If this is the case, questions or "I statements" will allow you to avoid inflaming the conflict and deal with the facts. While the other party is free to disagree, she is less likely to feel insulted than she would if she were called "a liar" and she is less likely to disagree about the facts than she would be if she were told, "No, you're wrong!" (even if she is wrong).

### **Neutral Language:**

Use language that describes what the other person has done in a neutral way - without evaluating her/him. For example, rather than labeling someone's behavior as "harassing," (see "Negative Labels For the Other's Behavior" above) here's another option:

"She called me four times last Tuesday to ask if the report was done."

Focus on How Events Have Affected you:

Focus on how it affected you when the other person did X. For example:

"When she called me for the fourth time, I was very frustrated and irritated."

Follow the Ground Rules:

The ground rules established by the mediator are designed to help you have a productive conversation. Breaking them will decrease your chances of this occurring. Typical mediation ground rules include:

- Don't interrupt when the other person is speaking
- No deliberate "button-pushing" (personal attacks or insults)

These simple ground rules help avoid unproductive discussion and give you the best opportunity for reaching agreements.

### **Agree to Confidentiality:**

While you can expect your mediator(s) to keep the conversation that occurs in mediation confidential, if you can agree to keep it confidential, as well, it will increase the chances that your mediation will be an honest discussion of the issues. While your agreeing to keep confidential what is discussed in mediation is not mandatory, if you do not agree to keep it confidential, think about how that will affect the other person. This refusal may cause her to decide not to mediate at all. Or, if she continues to mediate, she may limit what she is willing to discuss. So, if at all possible, agree to keep what is discussed in mediation confidential.

There may be another "stakeholder" in the situation who cares about the outcome (e.g., your boss). If this is the case, you and the other party can, if you like, agree to share any agreements developed in mediation with your boss. Sharing the agreements, however, does not mean discussing the content of "who said what." It means only providing a copy of the mediation agreement for the boss to read.

### **ABOUT ANGER . . .**

People involved in disputes often get angry. In order for the conversation to address real issues, if you are angry, this is a part of what may need to be discussed. However, the suggestion about making "I statements" and "asking open-ended questions" is very important to remember. For example, if someone were angry with you, to which of the following would you respond better?

- "I am angry that I have not received your response to my memo" or
- "You jerk. Who do you think you are ignoring me when I take the time to write you a memo?"

No doubt, you'd prefer not to be called offensive names or asked insulting questions. Your anger is real and it may very well need to be expressed. Again, to the best of your ability, do

so tactfully. It will not help your mediation succeed if you express it in ways that leaves the other person feeling insulted, threatened, or angry.

If the other person expresses anger in the mediation, listen. Try to understand what the person's anger is about. A common reaction, especially when anger is expressed in inappropriate ways, is to respond defensively and "strike back" (e.g., "You're just too sensitive!"). Even if you believe this to be true, it will not encourage the other person to make agreements with you. If nothing else, sit and allow the other person to "vent." Above all, do not interrupt her/him while s/he is expressing anger. This usually prolongs the length of time an individual feels the need to "vent."

### **ABOUT FEAR . . .**

When people engage in conflict one or both may feel fear. Some people feel fearful when others express anger toward them. Some people (and this often applies to men more often than it applies to women), have learned to mask their fear by expressing anger or making threats. If you feel fearful during your mediation, you may be tempted to engage in this type of behavior. Or, you may be tempted to admit to things you did not do or agree to things to which you do want to agree just to make the fear subside. Don't do either of these things! You have a number of other choices. One is to use an "I Statement" (e.g., "I feel afraid when you say X."). Another is to ask questions ("Why do you say that?"). If you can't think of anything else to do, ask for a "time out" or sit quietly until you feel composed enough to speak.

### **SOME OTHER THINGS TO AVOID:**

Try not to minimize the other person's feelings (e.g., "What are you whining about? That's not so bad.").

Do not make negative judgments about what the other person has said, even if you believe what the person has said deserves a negative judgment (e.g., "These are just a bunch of lame excuses.").

Do not misrepresent or omit relevant facts. This can damage trust immeasurably if the other person catches - or even suspects - you are doing this.

Do not speak in a condescending or sarcastic way to the other person (e.g., "Well, so nice that you could take time away from your busy schedule to meet with me today!").

Do not demand that the other party apologize or admit to "wrong-doing." Most people won't apologize unless or until they believe what they did was wrong. Demands usually cause further resistance.

Do not make offensive or hostile non-verbal expressions (e.g., rolling the eyes, loud sighs, laughing, groaning when the other party speaks, or obscene gestures toward the other person).

Do not make threats to the other party. Even if you really intend to carry out a threat (e.g., filing a formal grievance or taking formal disciplinary action), making this threat against her/him in mediation is not likely to get her/his cooperation. It will likely set up a power struggle.

Do not shout at the other party. This may be very natural for you when you are angry, but it is not very likely to encourage her/him to cooperate with you.

### **OTHER SUGGESTIONS . . .**

Acknowledge responsibility for any part of the problem you can. Note: Do this **ONLY** if it is genuine (e.g., "You know, I hadn't seen it before, but I can see why the way I approached you felt disrespectful to you.").

Allow the other person to "let off steam" without giving in to the natural inclination to defend or "fight back." Although this requires extreme self-control, if she has not expressed herself previously, it can be extremely valuable. Above all, do not interrupt her if she is "letting off steam." This will only lengthen the length of time she feels the need to vent.

Demonstrate appreciation for offers made by the other person to genuinely address your concerns (e.g., "I appreciate your agreeing to refrain from criticizing me in public in the future.")

If the other person suggests that she would like you to do something that you are willing to do, offer to do it! This builds trust because it may be seen as a demonstration of respect and good faith.

Demonstrate **RESPECT** for the dignity of the other person - even if you are angry or mistrustful toward her/him, and believe that the entire problem is her/his fault. Speaking to the other party in a disrespectful way could give her/him an opportunity to avoid the content of what you are saying - and a desire to shift the focus to **YOUR** disrespectful behavior. Don't give her/him this opportunity.

Apologize sincerely for anything you did or said to the other person that you now regret.

### **WHAT IF YOU THINK THE AGREEMENT HAS BEEN VIOLATED?**

It is probably a good idea to "reality test" your agreement while you are developing it by discussing what you will do if either you or the other person believes, at some point in the future, that the agreement has been violated. Three options favored by many disputants are:

- Talk with one another privately about the perception (while adhering to all the other items in the agreement about how and when to talk with one another).
- Agree that you will return to mediation for further discussion.
- Agree that you will speak with your supervisor about the perception that the agreement has been violated. (This makes the most sense if your supervisor referred you to mediation.)

### **SAMPLE MEDIATION AGREEMENTS ITEMS**

You might find it helpful to review the list below. These are common agreements made by a number of different people who participated in actual mediations . . .

X agrees that if he has concerns, suggestions, or questions about an issue related to Y, he will talk with Y privately within 24 hours.

Y agrees that he will make time to speak with X within 24 hours whenever X asks to speak with him.

Y agrees that if he has a concern about something X has allegedly said or done, he will avoid making assumptions and, instead, ask X about his concern.

X and Y agree that, during their discussions, if either indicates the need for "time out," the other will honor it and the person who requests a "time out" will initiate discussion of the issue within 24 hours.

X agrees that if he has concerns, suggestions, or questions about an issue discussed by Y in a meeting but believes it would be best for him not to speak about it during the meeting, he will talk with Y privately within 24 hours.

X and Y agree that they will talk to each other first about problems and/or concerns they have with each other before speaking with Z. If they are unable to resolve an issue between them, if either plans to speak to Z about the issue, he will tell the other prior to speaking to Z.

X agrees to raise any concerns s/he has about Y directly with Y and not to raise these concerns with others.

#### **A FINAL NOTE:**

You may be unwilling to implement the suggestions in this document, or you may believe that you "shouldn't have to change" any of your own behaviors in order to be treated differently by the other person. You are, of course, free to do - or not do - whatever you believe is in your best interests. If you demonstrate in mediation that you are unwilling to make any changes, mediation is likely to be an unsatisfactory experience for you. A more formal disciplinary or grievance process might be another option to consider. If, however, you are willing to implement these suggestions, you will be doing a great deal to increase the chances of having a successful mediation experience.