



*a Peaceful Way to Solve Problems*

## BASIC MEDIATION TRAINING

BY CLARE FOWLER

### The SONAR Method

*5-day, 5-step Training*

*Teaches participants how to*

*Conduct a mediation, draft mediation forms, and*

*Understand basic mediation principles.*

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**SONAR:** A 5-step mediation process for communicating with parties and moving toward resolution.

Sonar uses sound to determine roadblocks, clear paths, and potential destinations.

**Statement:** A Mediator's statement, covering confidentiality and ground rules.

**Opening:** Parties' Opening Statements, covering history and current argument.

**Negotiation:** Determining scope of mediation, negotiating, & brainstorming options.

**Agreement:** Drafting the parties' mediated agreement.

**Resolution:** Closing the mediation for all involved.

Sonar uses sound to communicate, send and receive information, and understand the situation around us (*Statement and Opening*).

Sonar provides information about of clear paths, potential roadblocks to explore, and paints a picture of potential destinations (*Negotiation*).

Sonar investigates undiscovered objectives (*Agreement and Resolution*).



## Day 1: Statements

### 8:30: Set-up

### 8:45: Orientation

Ice-Breaker: Name Trivia

Being a successful mediator is a mixture of understanding yourself and understanding your clients. Knowing your skills and knowing what mediation process you are successful with, helps you to be a better mediator. Throughout this training we are going to learn more about you—what is your conflict resolution style, what mediation tools, are you comfortable with, what types of conflict make you uncomfortable, what ground rules do you need in place to be effective.

Resources: I have printed many resources for you to take. Larger and video resources are available at my website: [www.ClareFowler.com](http://www.ClareFowler.com)

**Contact me at [Clare@Mediate.com](mailto:Clare@Mediate.com)**

### Name Game

Name:

1. Close to God.
2. Was poor and diseased, God has helped
3. Young. Praised. Jewess.
4. Youthful. Soft-haired. Vivacious.
5. Follower of Christ. Classy.
6. Wise and dependable.
7. Beautiful
8. Graced.
9. Hard ruler.
10. Flourishing.
11. Graced.
12. The Lady/Ruler of the Home.
13. Courteous.
14. Bright Fame.

Meaning:

Bob \_\_\_\_\_  
 Cedar \_\_\_\_\_  
 Christine \_\_\_\_\_  
 Curt \_\_\_\_\_  
 Donna \_\_\_\_\_  
 John \_\_\_\_\_  
 John \_\_\_\_\_  
 Judy \_\_\_\_\_  
 Julie \_\_\_\_\_  
 Lazarina \_\_\_\_\_  
 Lunell \_\_\_\_\_  
 Belinda \_\_\_\_\_  
 Michelle \_\_\_\_\_  
 Richard \_\_\_\_\_

**My Personal Conflict page**

*Use this page to jot down information about your personal conflict. We will use this conflict throughout the week as an example to help us understand conflict theories. It does not need to be complex, just something simple.*

Begin by jotting a few sentences about your conflict:

**SONAR**

S: Statement to the parties about mediation. My definition of mediation:

O: Openings by the parties. My key phrases:

N: Negotiation. My negotiation tools:

A: Agreement. My agreement will include:

R: Resolution. Key elements I will discuss in resolution:



# SONAR

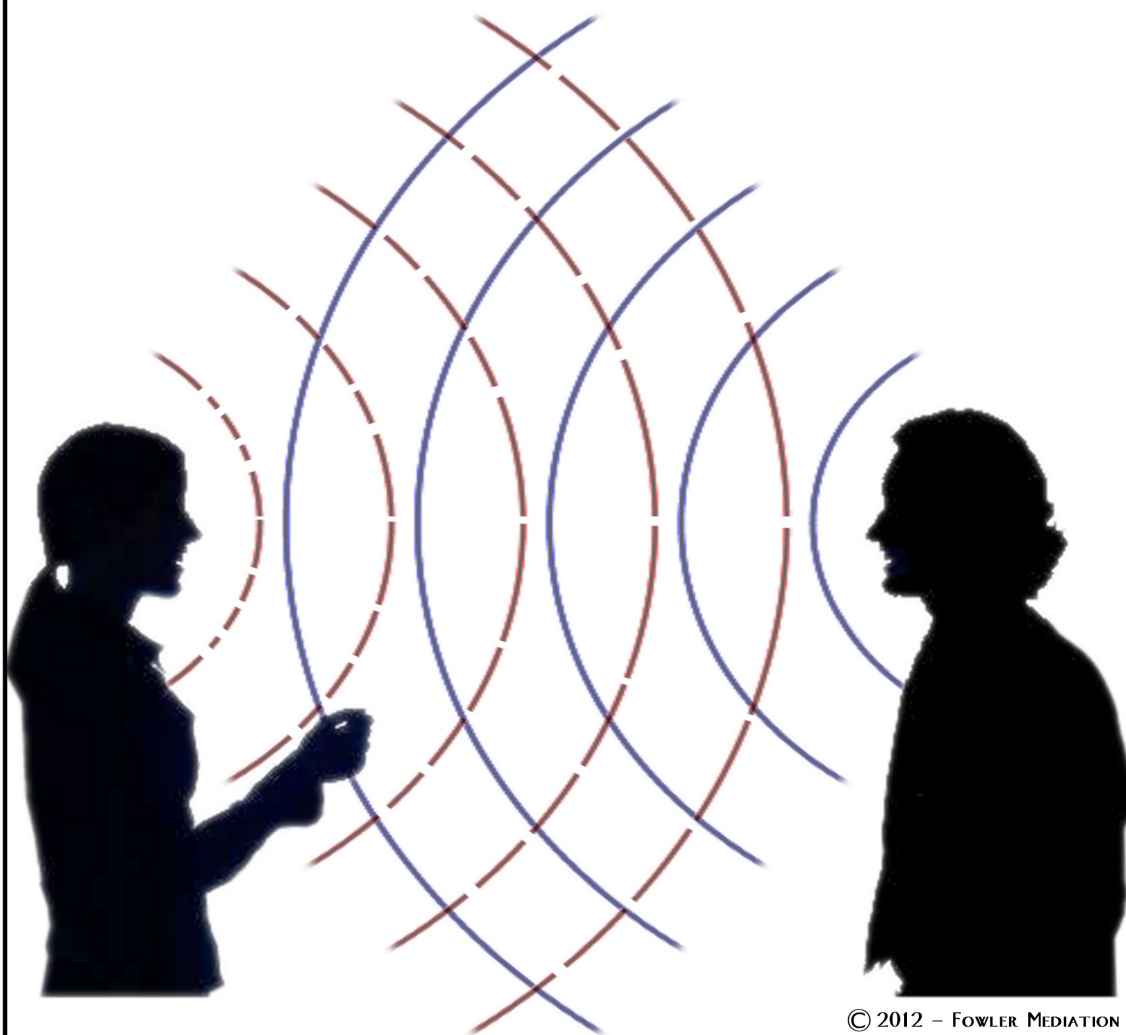
STATEMENT

OPENING

NEGOTIATION

AGREEMENT

RESOLUTION



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**9:15-9:30: Break****9:30-10:15: Schedule Review****Schedule: Learn in the morning, practice in the afternoon**

**SONAR:** Our guide. Each day we will focus on one step (Statement, Opening, Negotiation, Agreement, Resolution). Today is Statement: we will examine the key pieces of a mediator statement, define the terms, write our own, and practice it. The point of this training is to become very familiar with each of these five steps. On the final day we will have a full-length role play where you can review these 5 steps and make sure you are very comfortable with each of the 5 steps.

**Review:**

- Binder

- Dudley Keys

- Schedule (breaks every 1-1.5 hours; learn in morning and practice in afternoon)

- Lunch is on your own. It is 45 minutes, assuming that you will eat for 30 and spend 15 minutes reviewing concepts from the morning, asking me questions, or reviewing the Dudley Keys we will use in the afternoon.

- Make notes in back

- Refine each step/become comfortable

**Set-up for the week/Ground Rules**

You will also find your plan for your role plays—some of this is secret information so please do not share it.

You will also see your toolbox. Keep this one handy as we will be filling it out during the week.

**1. Form Review**

*Agreement to Mediate:* this is what parties will sign indicating that they are mediating of their own free will.

*Confidentiality Form:* this protects you and the clients. We will cover confidentiality more on day 5. The main thing is you want everyone to feel protected—know that whatever is said is confined to the mediation room. This means that you can't call the press and neither can they.

*Mediator Statement:* this is what we will be creating today. Your mediator statement is what you will say at the beginning of the mediation to explain the process to your clients.

*Ground Rules:* this covers your expectations of behavior and communication during the mediation.

*Toolbox:* a mediator's tools are what she is comfortable with, her techniques and phrases that keep things progressing.

*Mediation Agreement:* After the mediation, this is where you will write up the agreement that the parties have created.

*Evaluation Form:* helps to know what worked and where to improve.

*Center Forms:* supplied by Northwest Mediation Center.

## **10:15-11:15: Mediation Prep**

### **2. Prepare for Mediation**

#### **Class Conflict: Justin v. Julie**

Justin claimed he loaned Julie \$1,500. Justin had filed a claim against Julie in Small Claims Court. The case was mandated to mediation, to try to settle without going to court.

**Mediation:** Process for dispute resolution in which an impartial person facilitates discussion and an agreement between parties.

**Write Definition of Mediation:** 30-second elevator speech about mediation.

## **11:15-11:20 Break**

### **11:20-12: Review Mediation Process**

#### **Mediation Process**

Invite people in and get settled

Welcome, Sign forms, Ground Rules, Mediator Statement, Opening by Parties,

Negotiate, Agreement, Resolution

Seating arrangement: start looking at parties, then have them look at each other

Observe, Co-Mediate, Solo Mediate

Review Forms: Agreement to Mediate and Confidentiality

Notes: Write down names—everyone's, including yours

Review SONAR Process

## **12-12:45 Lunch**

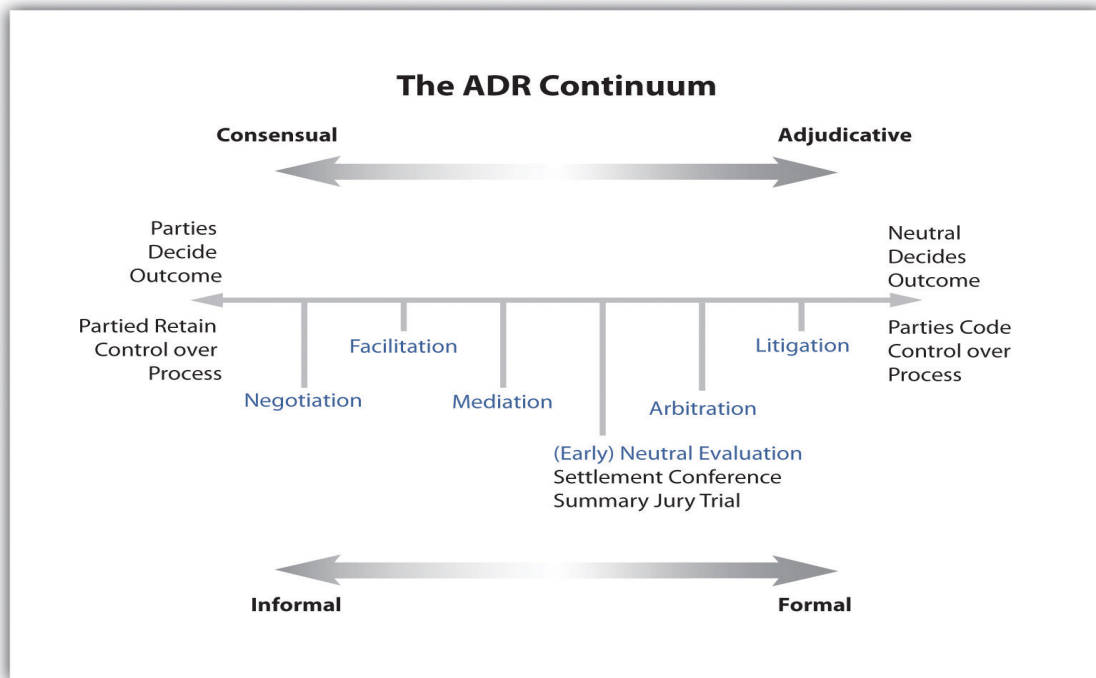
### **12:45-1: Review Questions**

### **1-1:15 Conflict Continuum and Conflict Path**

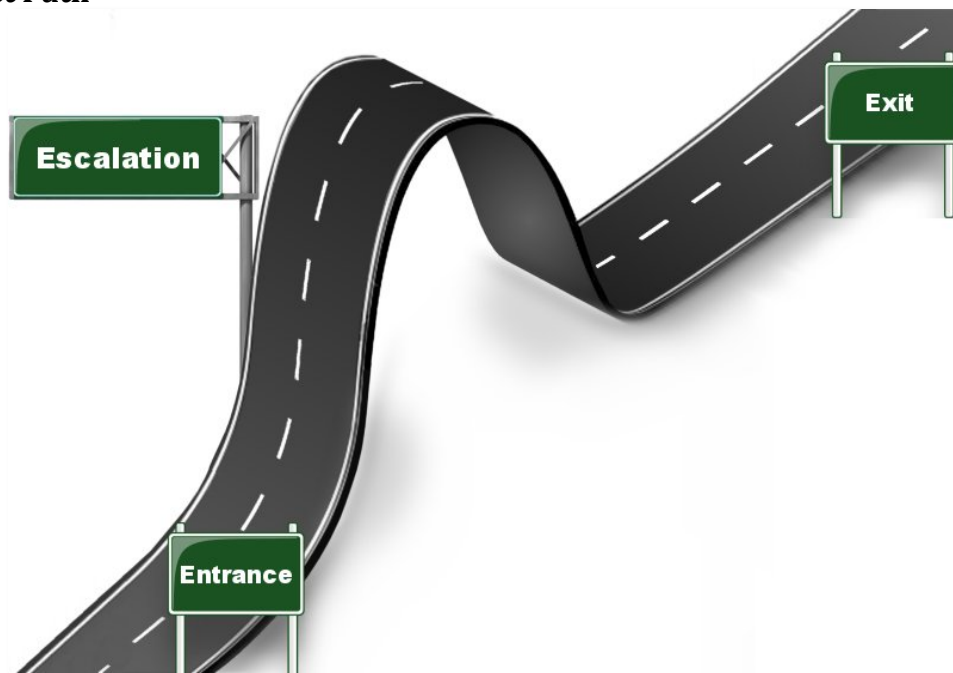
### Conflict Continuum:

Where does mediation stand in relation to other ways to resolve conflict?

(Image from Flat World Knowledge)



### Conflict Path





## **Agreement to Mediate blank template and Confidentiality Form**

### **Fowler Mediation AGREEMENT TO MEDIATE**

This is an Agreement to enter into mediation with the intent of resolving workplace issues.

The participants and the mediator understand and agree as follows:

#### **1. Nature of Mediation**

The participants hereby appoint and retain Clare Fowler as mediator for their negotiations. The participants understand that mediation is an agreement-reaching process in which the mediator assists participants to reach agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the participants. The participants understand that the mediator's objective is to facilitate the participants themselves reaching their best agreement. The participants also understand that the mediator has an obligation to work on behalf of all participants and that the mediator cannot render individual legal advice to any participant and will not render therapy nor arbitrate within the mediation.

The participants also understand that mediation is not a substitute for independent legal advice. The participants are encouraged to secure independent legal advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated Agreement before signing that Agreement. The mediator may come to require one or both participants to have their agreement reviewed by legal counsel to ensure that a participant is reaching a reasonably informed agreement. The participants agree that, even if the mediator is an attorney, the mediator will not serve any participant, nor all participants, as legal counsel, nor render individual legal advice in this mediation.

#### **2. Scope of Mediation**

The participants understand that it is for them, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

#### **3. Mediation is Voluntary**

All participants here state their good faith intention to complete their mediation by an agreement. It is, however, understood that any participant may withdraw from or suspend the mediation process at any time, for any reason or no reason.

The participants also understand that the mediator may suspend or terminate the mediation, if the mediator feels that the mediation will lead to an unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that he or she can no longer effectively perform his or her facilitative role.

#### 4. Confidentiality

It is understood between the participants and the mediator that all mediation communications will be strictly confidential. Mediation discussions, be they in person, on the phone, by email, text or by any other communication modality, any draft resolutions and any unsigned mediated Agreements shall not be admissible in any court, administrative or other contested proceeding. Only a mediated Agreement signed by any participants may be so admissible. The participants further agree to not call the mediator to testify concerning the mediation nor to provide any materials from the mediation in any court or other contested proceeding between the participants. The mediation is considered by the participants and the mediator as settlement negotiations. All participants also understand and agree that the mediator may have private caucus meetings and discussions with any individual participant, in which case all such meetings and discussions shall be confidential between the mediator and the caucusing participant.

#### 5. Mediator Impartiality and Neutrality

The participants understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator will not champion the interests of any participant over another in the mediation nor in any court or other proceeding. The mediator is to be so "impartial" as to participant and "neutral" as to the results of the mediation. The mediator will seek to affirmatively reveal any operative biases and will disclose any and all prior contacts with the participants and their legal counsel.

#### 6. Mediation Fees

The participants and the mediator agree that the fee for the mediator shall be \$\_\_\_\_\_ per hour for time spent with the participants and for time required to study documents, research issues, correspond, telephone call, prepare draft and final Agreements and do such other things as may be reasonably necessary to facilitate the participants reaching full Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013

**Sample Mediator Statement**

My name is Clare Fowler and I am your mediator. Thank you for participating in mediation. Mediation is a process where a neutral person guides you through a conversation to hopefully reach an agreement.

Mediation is a voluntary process. You are here of your own free will because you are taking control to make this conflict better.

Mediation is confidential. That means when we are done mediating, I will not and by law cannot discuss the details of this mediation. It means that you are held to those same rules.

Mediation assumes you are acting in good faith. You are telling the truth, including all pertinent information, and you are negotiating to try to reach an agreement.

Mediation is a neutral process, meaning I do not take sides. I try to listen to both sides and advocate for both of your interests.

Mediation is a party-driven process—I have a template I like to follow, but if you need to go back and review something or move ahead then you both are the boss.

Mediation is an informal process, meaning we are currently resolving a dispute outside of the court's eye.

Mediation can be a binding process if you choose. If you reach an agreement today, then that agreement will be binding in a court of law.

Mediation means that you are open to compromise and that you agree to our ground rules.

Mediation is a 5 step process: it begins with this explanation, then I'll want an explanation from each of you, then we will discuss those explanations, and then hopefully reach an agreement.

**Signed**\_\_\_\_\_

**Dated**\_\_\_\_\_



## Keys for S: Mediator Statement

This is a process in which the two of you have come together to present and discuss a problem or dispute that's going on. Then you'll have the opportunity to present and discuss solutions for resolving the matter."

"A few ground rules are important to help the process flow smoothly: One person at a time speaking, no interrupting, no name-calling, no making faces or emitting rude sounds of disgust or disbelief. Basic common courtesy will help a lot. Agreed?"

"We'll make progress more quickly if we take care to avoid 'linguistic irritators'. OK?"

"Do you want to achieve an out-of-court settlement?"

"Do I have your commitment to listen to each other; work hard toward a resolution; and bargain in good faith? Good faith includes keeping to the truth about the facts."

"Check whether you have whatever information you need to settle the case."

"The final money terms and your success depends on taking into account the way the other party feels about how they've been treated during negotiation."

"Although tangibles like the money settlement are important; intangibles such as pride, reputation and good will are very real and very important as you craft a resolution together."

"You're both competent to come to an agreement."

"Today we're not going to conduct this as a "contest" to be won or lost. That's not what we're about. Instead, we're going to discover the "best voluntary solution".

"Today is the day to look forward, not dwell on the past."

"You work creatively toward finding a resolution that feels good or at least workable and lets both parties leave satisfied or with an appealing solution."

"I'm not going to try to solve your dispute or your problems. Your job is to figure out how to sufficiently take into account each other's interests so you can craft a mutually satisfactory agreement."

"Part of my role is to help you avoid common mistakes, such as:

- Insensitive or pugnacious remarks

- Guessing what the other party will do or find acceptable
- Getting too competitive toward winning instead of compromise
- Giving up too soon."

"I'll guide the process and you're welcome to suggest process changes at any time."

"I'll be neutral but not passive. Hopefully I can point out things neither of you have thought much about."

"What kinds of things do you want to happen or not happen in this process?"

"How would you like this to go?"

"We all want to be heard with complete attention. I encourage you to really listen to each other and avoid the temptation to anticipate the speaker's endings. Keep up your focus on the speaker's words, not on what you're going to say next."

"It's particularly useful to ratchet up your active listening skills and listen intently to what's beneath the words."

"Listen for anything new; for something you didn't know before."

"Patience, flexibility, and self-determination are the keys of this process."

"My job is not to tell you the answer. That's for someone wearing a long black robe. I just help people figure out the puzzle pieces and how they might line up."

"What works is: Courage and Compassion; Humor and Humility; Tolerance and Understanding."

"We have the best chance of a good resolution if you both are able to talk together constructively, exploring and understanding each other's interests and needs."

"The way you get a solution is to cooperate with each other as you explore what might work for both of you."

"Sharing interests and needs will assist you two in brainstorming options together."

"The solution you create together doesn't have to be what a judge would order."

"I'm going to ask you to reflect back what interests and needs the other side expresses."

"Conversation is a learning process where new helpful information will surface and be considered thoughtfully."

"You may be adamant on one issue, but other issues may not be simply black or white."

"You may be at an end point, but the other party may see things in a new way based on the discussion we're going to have."

"The more information you get, the wider your frame of reference and therefore the more possibilities you can see."

"I think we can achieve a mutually satisfactory agreement efficiently and in a friendly way. As I see it, in order for us to do this we have to be willing to listen carefully to each other, share information about interests, and brainstorm for value creation ideas, not just dividing up a given amount. "

"At some point later it might be useful to spend some time looking at best and worst possible outcomes and probabilities."

"It's helpful to try to let go of the past in favor of concentrating on the present and the options available to you right now."

"We're going to experiment, try things, adjust until a workable combination shows up."

"[When joint session is resisted] The other party is offended. They don't want a joint session. I want you to meet them. I don't see any disadvantage at all in having a joint session. It doesn't have to be contentious. What is there to talk about? I told them \_\_\_\_."

"Lincoln famously said: 'If you would win a man to your cause, first convince him of your sincere friendliness.'"

"What do you consider "fair play" in these negotiations?"

"This is not an easy case. It's a case that could be lost in court. Correct me if I'm wrong."

"Let's review the strengths and weaknesses as you see them."

"What do you think the other side needs to worry about the most in this case?"

"What could the other party say or do that would address or alleviate your concerns about \_\_\_\_\_?"

"Just to be sure I understand, if we reach a "Best Voluntary Solution" is there any reason you wouldn't make a decision in this session?"

"How does \_\_\_\_\_ help or hurt the goal and purpose of resolving this disagreement?"

“If they’re not willing to go for some of your conditions, think about where you’d go from there while I’m off talking to them.”

“When you get ready to make the first offer, keep your credibility.

If the first offer is outside the range of plausibility:

- It can appear foolish, greedy, arrogant or inexperienced
- It sends a message of disrespect at them
- Gives the other side no incentive to negotiate or take you seriously
- It can inspire anger and revenge that derails the whole thing.”

“These things usually involve some back and forth. You might expect them to start low/high.”

“It’s like inviting people to an art gallery showing. You can’t have just one painting on the wall. They’ll lose interest and go away.”

“Before we communicate, let me ask you: Do you have any room to move? It’s important to protect the future of the bargaining process.”

Role-Play 2: Pair-up, review JAMS conflict. Discuss the entrance, escalation, and exit.  
Review Forms

### 1:15-2:15: Develop Mediator Statement

### 3. Write Mediator Statement

#### Definition of Mediation:

#### Choose Metaphor

War – Cease fire

Poker – Bluff

Sports – Level playing field

Dance – Cooperative

Chasm – Bridge

Broken – Repair

**Voluntary:** Something done with free will, self-determination, because being here is better than avoiding this, you can leave if you need to, you have veto power

**Confidential:** A secret, entrusted with confidence, don't share information with anyone outside of this room, "like Vegas—what happens in mediation stays in mediation", protection so that you can trust me with your interests.

**Good Faith:** comes from latin for Bona Fide—meaning in good faith, that parties will deal each other honestly, presuming they can fulfill their end of the bargain, supporting the other's right to trust in the agreement, that no important information is held back, that you aren't going to use this information to harm the other person.

**Neutrality:** I am not an advocate/attorney/therapist/executioner. I am a guide, an **omnipartial** guide.

**Party-Driven:** you are large and in charge. I guide the process, you determine the agenda, you determine the agreement. I am a cheerleader, a coach, a trainer, referee, go-between, trouble-shooter

**Formal/Informal:** A formal process: if there is any law, criminal, or legal implication. Informal: fact-finding, see where people stand.

**Binding/Non-binding:** will this go on record with the courts or not? Technically a contract is binding if two people sign it, so some people argue that the process is always binding. I tell people that yes, it is a contract and so the courts can enforce it if need be. But if you need to bring the courts in then maybe the agreement wasn't right to begin with anyway.

**Open to Compromise:** willing to consider a thought that you didn't walk in here with.

**Mediation Process:** SONAR method—I will guide you through this process and help you to develop your agreement.

**Agree to Ground Rules:** Seek a comfortable environment. Speak Respectfully and Listen Respectfully.

### **2:15-2:30: Break/Refine Statement**

#### **Statement:**

Describe these elements with your vocabulary.  
Dudley Braun's statements: a compilation by Dudley Braun of 50 pages of the most powerful and effective mediator statements. I have provided many of them so that you may pick what statements you want to incorporate into your toolbox. The rest are available on my site: [www.ClareFowler.com](http://www.ClareFowler.com)

### **2:30-3: Role Play 3 Mediator Statement**

Practice with your partner. Pretend that you are the mediator and that the other person coming into your office is Justin or Julie and you are giving them your Mediator Statement.

### **3-3:05: Break**

### **3:05-3:40: Ground Rules**

Develop Ground Rules. This is what makes the room comfortable enough to be helpful.

#### **Comfortable Environment:**

- No cell phones unless emergency
- Heat
- Bio breaks/bathrooms
- First break
- Parking meters

#### **Speak Respectfully:**

- Don't thunder (thunder and turtle)
- Don't name call (because it hurts, thus is counterproductive)
- Don't overpower (through intimidation or silence)
- Be willing to compromise (hang the meat low enough so the dog can bite)

#### **Listen Respectfully:**

Don't interrupt (Some people remember events as a ball of string. Interrupt and they need to start over. Confusing for the mediator. Hurtful. Builds walls.)

### **Additional Ground Rule Examples**

Don't character assassinate/ No put-downs  
 Don't interrupt  
 We agree to call each other by first names  
 We agree to consider ideas that we didn't come in here with  
 We agree to listen  
 We might need to try something new if we want to see a change  
 We will say if we disagree with something  
 We will request a break if we need it  
 We will request to speak to mediator privately if we have a question  
 If mediation does not produce an agreement, we will leave whatever offers and knowledge gained in mediation.  
 We agree to pause the conversation when anyone requests it.  
 After we have discussed past, we agree to move to focusing on future.  
 We will attack the problem not the person.

### **3:40-3:45: Break**

### **3:45-4:30: Mediator Statements Review**

Why do we need a mediator statement?  
 Build rapport  
 Puts people at ease (mirror neurons)  
 Reinforces equality/diminishes power imbalances  
 Gain parties' attention  
 Re-draft Mediator Statement

## **JJ Role-Play 4 Mediator Statement and Ground Rules**

### **4:30-5: Day 1 Review**

#### **Toolbox**

Every mediator has a toolbox.  
 Today we added:  
     Mediator Statement  
     Ground Rules  
     What else will you add?

### **Day 1 Tools Developed:**

Review Forms (Agreement to Mediate)  
 Prepare for Mediation (understanding what caused conflict)  
 Write Mediator Statement (30. Sec Definition of Mediation, Basics of Process, Ground Rules)





## Day 2: Openings

### 8:30-8:45: Opening Statements

SONAR uses sound to communicate, send and receive information, and understand the situation around us. Letting people communicate shows us what paths we need to go down.

### Review S

S—Statement.

O—Opening.

### Opening Statement

Today we are going to use communication to receive information about our clients.

*Allowing people to vent and express what really upsets them shows us what hurts.*

### 8:45-9:05: Day 2 Job Ice-Breaker Communication

Ice-Breaker: Job

### 9:05-9:15: Personal Conflict and Break

#### Personal Conflict: (Form)

Write down your personal conflict on the form. A few sentences. Your side, the other person's side, and how it has been resolved.

### 9:15-9:40: Parties' Opening

#### Parties' Opening

History

Catch-up to speed

Chronological

Argument Opening

**9:40-9:45: Break**      Review Dudley Braun's keys for listening/opening.

### 9:45-10: Opening Role-Play

Taking Opening Notes—minimal, jot down issues.

Role-Play 5: Partners pair up to listen to JJ opening statements and take brief notes.

**Role-Play: JJ Opening and Negotiation****Julie's Opening**

The fact that he is complaining about a transmission now is ridiculous. If he goes through with this suit, I am going to countersue. This is embarrassing. It is a waste of my time. He might still be mad at me—but that doesn't mean you sue someone! This all just goes to show how immature he is.

**Julie Negotiation:**

I have given him so much money!

The whole time we were dating I paid for everything. His tires, most of our dinners, and I always bought him new clothes.

I don't know why he said he kept calling me—I don't think he ever did.

I miss his parents. We became pretty close

**10-10:30: Active Listening****1. Listening**

To understand parties, we listen closely and ask careful questions.

**Active Listening**

- Open-ended questions
- Reading Between the Lines
- Different than agreeing
- Different than providing personal examples
- Sorting Information

**10:30-11: Practice Active Listening**

Partner exercise 6: One partner shares their side of their personal conflict. Switch.

**11-11:05: Break****11:05 – 11:30: Note-Taking During Opening****Taking Notes During Opening:**

Only identify interests through levels of feeling and messages

Note-taking form—brief intro – Form Circled I

*These “I’s” will create their Negotiation Agenda.*

**Note-Taking Form**  
**Parties' Opening Statement Notes**

Alex Interests		Clare Notes	Susan Interests	
I	Thinks she's doesn't work hard enough		?	Hasn't received any management support
?	Wishes she would do more work		I	Applied for trainings, but always told she was needed in her current position
	Wishes she could work faster		C	Doesn't like her secretary
	Wants to have her move up be a boss	A		She wants to move up to be a boss
?	She was hired to move into management			Admits she got frustrated and "gave up"
O	Willing to give her paid time-off for a 2-day mngmt seminar		O	Would like to try to be a Project Manager to show them she's ready to recommit

I: Interest or Issue

?: Review this

O: Offer

A: Potential Agreement

C: Clipboard

**Mediation Agenda**

(Adjust agenda as necessary)

1) Clarifying original job responsibilities and goals

4) Discussing roadblocks to past trainings

2) Understanding Susan's potential as a manager

3) Acknowledgement of mis-steps

6) Future plans:

Trainings

Project Manager

Promotion?

5) Increased workload

## **Instructor-led Role Play 7: Practice—students take notes**

### **11:30-12: JJ Role-Play 7 and Break**

JJ Role-Play w/ new partner: Review Statement, Opening, Active Listen, with notes

### **12-12:45 Lunch**

### **12:45-1: Opening/Reframing Review**

#### **1-2: Communication**

#### **2. Communication Triangle**

“Taking Out the Garbage”

Interests v. Issues (and position on that issue) (Fisher & Ury)

**3 Levels of Messages** (Ken Cloke)

**3 Roles of Messages**

**Communication Tips**

#### **2-2:15: Break and review reframing keys**

#### **2:15-3: Reframing**

#### **3. Reframing**

Listen for emotions: He never called me.

Listen for hidden messages: He is so lazy.

Increases common ground: He never thinks about what the kids want. She never considers the kids’ summer vacation plans.

Detoxifies: I don’t ever want to do business with him again!

Move from positions to interests: I will not work with someone who is so forceful and disrespectful.

Phrase as a question: Do I understand...?

Remove always and never

Change he and she pronouns to “we”

## Reframing Keys

“Let’s not rush too quickly to the numbers. Instead, let’s work through the considerations that inform the numbers.”

“What are the issues we have to address so you can feel we’ve had a cooperative exercise?”

“How would you identify what’s underlying the needs and concerns you’ve expressed?”

“What’s fundamentally holding you back from having already reached agreement?”

“We’re trying to identify as many interests as possible from each of you. Then we can see which ones are complementary, non-conflicting. And what are the shared interests in common.”

“Apply relentless curiosity about the other party’s interests to spot tradeoff opportunities.”

“What do you imagine are some non-obvious reasons why they might say ‘No’ to your offer?”

“It seems there are \_\_ (e.g. 3) \_\_ main issues here. [Give each a label; group them]”

“It sounds like these are the \_\_\_\_ # \_\_\_\_ issues you brought to the table. The first has to do with \_\_\_\_\_. Another has to do with \_\_\_\_\_”

“There’s a couple of things working here: \_\_\_\_\_; \_\_\_\_\_”

“Is that a fair description of the issues?”

“Is there another way to characterize the \_\_\_\_\_ issue?”

“If we address these issues, would that help resolve the differences between you?”

“What would you like to say to \_\_\_\_ about your willingness to seek solutions to these issues?”

[Convert ‘Positions’ to discovering ‘Interests’, including interests of their constituents and influencers. Restate whatever is said (often negative)... toward recognition of underlying fears, concerns and needs. Then explore behaviors that might meet the needs.]

“You say your demand for \$XXX is nonnegotiable.”

[Reframe:] I’m hearing that long-term financial security is important to you, correct?”

“Let’s think about some novel and attractive ways of providing financial security to you.”  
 [Strip out any insults, the negative blaming language; get agreement on the underlying interests; and direct the discussion toward alternative ways to satisfy those interests.]

[If they say something like: “You’ve always got it wrong!. This is a dumb waste of time!”  
 [Guess their concern as not being heard, understood or respected]. [Reframe:] “if I understand you correctly, it’s important to you to know your input will be taken seriously and taken into consideration if the meeting is to keep going toward discovering a resolution. Right?”

[If they say something like: “Ever since he was promoted, I don’t know how he could be so stupid to not know he’s turned into a ‘fricken tyrant.” [Guess there are some concerns about bothersome over-control behaviors.] [Reframe:] “I’m hearing that you’ve observed some specific things Ray is doing that are important to your feeling of security and autonomy.” “Do I hear you right?” “[Reframe blame as joint responsibility for tackling the problem] You both agree that a mistake was made; how do we make sure it doesn’t happen again?”

“If I get what you’re saying, it’s important to you that ....” “You value ....” “You’d like ...”

[Metaphor] “When you’re willing to ‘lay down your arms’ so-to-speak, it’ll feel good to share the resulting ‘peace dividend’.”

“It sounds like while you’re found yourself in \_(frame)\_\_\_ situation, the desired situation is more like \_\_(reframe)\_\_. [Not causes; not solutions]” “Help me understand why you think that’s reasonable.” “[Upon their statement of a hard position] We all have our aspirations, I guess. And realistically what would go a long way to serve your interests.”

“That’s very interesting, could you please tell me a little about why do you want that?”

“Help me understand the problem you are trying to solve.” [Then reframe it in a constructive way.]

“I’m not sure I quite understand why you want what you just said.”

“That seems very important to you. Could you please help me see why.”

“You must have good reasons for believing \_\_\_\_\_. I’d like to know more why you think so.”

“You seem to feel pretty strongly about this. Please give me more understanding as to why.”

“I hear what you’re saying. I’m sure that has a good purpose. Could you please explain it to me?”

“I’d like to frame the issues that have been brought up today as follows: \_\_\_\_”

Can you tell me how you met?

What was it like when you began working together?

Describe how things have changed this last year.

Can you say more about that?

Is that right?

Have I understood you?

Tell me what I'm missing:

Is this the right word?

Describe your ideal working relationship five years from now.

If this hadn't happened, what would your life be like right now?

Imagine you could go back and say what you really meant.

What would you have done if you were in her shoes?

So these three issues are the most important, and we should probably begin with this one. Is that correct?

Before we start, I'd like to check on how well each of you understand the other's point of view. So in your own words, \_\_\_\_\_, please tell us \_\_\_\_\_'s point of view." [Then: "How well does that express your POV? Any changes or additions?"]

"We want to have a discussion as fully informed as possible."

"I'm going to ask each of you to listen carefully while the other party explains the essence of the dispute to me. Let them have their say without interruption. Agreed? I'll ask clarifying questions. Try to distill it down to what you want and what is the factual and legal basis for your claim. Okay?"

"To conserve your time, I'm going to ask you to summarize your perspective concisely and get us to the heart of the matter."

"Could you please summarize the story from your viewpoint? Please tell me (briefly) what lead to this meeting?"

"How much is your claim?" [answer] "How did you arrive at that figure?"

"What are the main aspects of the claim? What problems do you want to solve?"

"What's the rationale for the claim?"

"What is the factual or legal basis for your claim?"

"What have you got to go on? What sorts of writings support the claim?"

"What have you got to back it up?"



"As they say in the legal system: "The faintest writing beats the best memory."

"Don't be discouraged as you listen to the other side or as they listen to you. Absolute truth is often an illusion because it's the first victim of a conflict."

"Do you have any more or stronger supporting statements?"

"Why should we believe that \_\_\_\_\_?"

"A court looks for a "preponderance of evidence" and then whether the evidence is "clear and convincing". Tell us what you've got."

"What documentation is there to justify \_\_\_\_\_?"

"What evidence is there that adds legitimacy to your assertions?"

"How are you going to meet certain burdens of proof?"

"Do you have any concerns, based on what you've seen and heard that you could sustain your burden of proof?"

"How does the situation look to you?"

"What is this dispute getting in the way of?"

"A commonly accepted test for evidence is: What would an unbiased critical person be likely to accept?"

"Is it okay with you that we pause here and hear from \_\_\_\_\_."

"Is there any more information you want from the other side?"

"If you took this to court, what would you realistically expect?"

"How sure are you what the court would decide?"

"What do you think would help solve this problem?"

"What is it about what you just heard that creates a problem for you?"

"[To second party] This is your opportunity to express what you want to express; you don't have to react right now to what you heard."

"Dogmatic repetition of demands may wear down and drive away a target, but it's not a

sure-fire way to persuade.”

“ [When they ramble and stray, interrupt and say:] I heard you say (summarize) and you were telling me about \_\_\_\_\_. Can you tell me more about (main issue)?”

“When people keep looking backward it’s hard to look forward.”

“The story of the past is good for one complete run through, and it’s a tempting refuge; but it can be a prison.”

“Instead of looking backward, at some point you’re best served by breaking out and focusing on taking charge of what’s within your control now.”

“We can either stay stuck in the story of the past or be open to creative thinking about how to get to a better future.”

“I understand your pain, anguish, and frustration. Let me know when you’re ready to face the issues and look forward to a better time for yourself.”

**3-3:55: Large- Group Role-Play 8****Large-Group: Personal Practice:**

Reframe

Identify Feelings, Issues, Messages, Levels

**3:55-4: Break****4-4:30: Toolbox**

Debrief

Importance of reframing

Toolbox: what will you use most?

Any changes to your Mediator Statement?

Note-Taking form

Identifying Interests

**4:30-5: Day 2 Review**

Day 2 Tools Developed

Listening

Communication Triangle

Reframing

## Day 3: Negotiation

### 8:30-9:15: Review and intro to Negotiation

*Sonar provides information about of clear paths, potential roadblocks to explore, and paints a picture of potential destinations.*

*Review Statement*

*Review Opening*

### **Negotiation**

Ice-Breaker: My role as a mediator is to \_\_\_\_\_

30 sec. Mediation Definition Review

### 9:15-10: Negotiation Agenda

#### **1. Negotiation Agenda**

Drafting an Agenda

Using an Agenda as a Tool

Decide Order of Agenda Items

Create Agenda together, then move parties to negotiate themselves

**10-10:15: Break and review your personal conflict. Write down at least one agenda item.**

### 10:15-11: Negotiation Note-Taking

#### **2. Negotiation Note-taking**

*Use the instructions from yesterday, or your own method, for taking notes during mediations today.*

After Statement and Openings, ask people to turn toward each other.

Taking these notes during the communication phase, helps to develop agenda items.

Look at the Interests you identified and write them down into an agenda.

Ask for confirmation.

As clients begin to negotiate, take notes.

Note-sheet: Interest, Offer, Question, Agreement, Clipboard

I, O, ?, A, C

**11-11:05: Break****11:05-12: Large-Group JJ Role-play 9**

JJ begin to negotiate. We will take notes.

**12-12:45: Lunch****12:45-1:30: Instructor-led Role-Play 10**

Instructor shows clip; class takes notes.

What issues did you see? Why? What do these issues represent?

**1:30-2:15: Negotiation Tools****3. Negotiation Tools**

Negotiation Tools are most important when you reach an Impasse: when parties appear to be stuck, loss of momentum, seemingly irreconcilable.

1. **Ask why:** (2 sisters and orange—we assume we know why something is important but we usually don't)
2. **Backatcha:** Ask a Dudley Impasse breaker/a phrase that throws the process back at them
3. **Take a break:** Conflict is emotionally draining. Taking a walk, making tea—physically doing something diminishes stress and encourages creativity.
4. **BATNA:** Best Alternative To Negotiated Agreement. If you walk out of here today without an agreement, what is your best scenario for this conflict ending?
5. **WATNA:** Worst Alternative to Negotiated Agreement: If you walk out of here today without an agreement, what is your worst scenario for this conflict ending? Court ruling against you and your credit score plummets?
6. **Caucus:** A private conversation with only one party at a time. Review what information you have permission to bring back to the other party.
7. **Brainstorming:** Carefully state that no judgment is allowed. Write down any and every idea. When momentum slows, suggest your own crazy ideas.
8. **Non-verbal tools:** Turn chairs. Cross arms. Look out the window. Hand them paper and pen for taking notes.
9. **Strategic,** decision-making process (per Robinson and Lowry): Seeing negotiation as a series of strategic compromises. What are you willing to let go of in order to gain X?
10. **Silence:** \_\_\_\_\_.
11. **Competitive v. Collaborative:** Demonstrate to people that they are being competitive and they need to make an attempt at being collaborative. This helps people to stop focusing on each other and instead on the problem. Let's move from Me versus You to Us.
12. **Expand the Pie:** Create Options. Conflict myopia.

## **2:15-2:25: Break and review Negotiation Keys**

### **2:25-4: Large Group Role-Play 11**

#### **Large Group Role-Play 11 Stop Sign**

- Mediator Welcome and forms
- Mediator Statement and Ground Rules
- Parties' Opening Statement
- Listen
- Reframe
- Take Brief Notes During Opening (I)
- Draft Agenda
- Negotiate Items on Agenda
- Take Notes During Negotiation: Note-sheet: Interest, Offer, Question, Agreement, Clipboard (I, O, ?, A, C)
- Caucus
- Identify Points of Agreement

#### **Negotiation Keys:**

- "Beside the money, what else would you like?"
- "What would you like to see happen?"
- "What are your expectations?"
- "Help us understand how this has impacted your life."
- "What would be the ideal outcome? What would work best for you?"
- "What interests would be served if you got some or all of your aspirations? Name some more."
- "How do you want things to be different? Better? Improved?"
- "What are the important things you want from this meeting?"
- "When you go home tonight, what would you like to have accomplished?"
- "What is the problem that your position solves for you?"
- "What are your goals in negotiating for that position?"
- "How does that position help you?"
- "What are the consequences of not having \_\_\_\_?"
- "What do you want to get out of this? Don't give me a number yet; just tell what other needs go with this situation."
- "In what ways will their position hinder what you're trying to accomplish?"
- "What will relief or resolution allow you to do?"
- "Beside the money, what other interests or concerns do you have?"
- "What are the values associated with \_\_\_\_\_ (object) or (action)?"
- "Beside the hard facts, what assumptions, beliefs and interpretations are at work to get from the facts to the conclusions? How do any of these hinder a solution?"
- "What background feeling goes with what you're saying?"
- "Why do you feel \_\_\_\_\_ (or) that way? "
- "What leads you to say that?"
- "What's behind that statement?"
- "Now I'd like to learn why you state a position that way."

"What is meant by that?"

"Talk about your reasoning on \_\_\_\_\_"

"Just so I have a more complete picture, please tell me \_\_\_\_\_"

"Would you like to add anything further? Anything else?"

"What else do you want to mention?"

"Is there anything you'd like to add?"

"Have I missed anything?"

"Would you say more about that?"

"Would you mind expanding on that a bit?"

"Why is \_\_\_\_\_ important to you?"

"Is that an okay spot to stop for now?"

"Let me share with you what I've heard. Please correct me if you hear anything wrong."

"You indicated \_\_\_\_\_"

"One observation you made is \_\_\_\_\_"

"You are saying \_\_\_\_\_"

"It sounds like you're telling me \_\_\_\_\_"

"You're also telling me \_\_\_\_\_"

"I'm hearing \_\_\_\_\_"

"What I'm getting is \_\_\_\_\_"

"I think what I'm understanding is \_\_\_\_\_"

"To summarize, what you both seem to be saying is \_\_\_\_\_"

"And you have some concerns about \_\_\_\_\_"

"Is that accurate?"

"Is that right?"

"Have I heard you correctly?"

"I hear you. I understand."

"Thank you \_\_\_\_\_. I think we all have a better sense of how you feel and what you are going through as \_\_\_\_\_."

## **Large Group Role Play: Stop-sign**

### **PTA**

At Warner Oaks Elementary, there have been a few complaints about children almost being hit by motorists. The elementary school is on a busy street. The stop-light is a few blocks down. When it's raining or time for school, the children often just run directly across the street instead of walking up to the stoplight.

**PTA position:** The school needs to do more. How come we don't have a traffic light for these poor kids? It is unrealistic to think that kids will walk in the rain. But they don't have enough depth perception yet to make it safely across the street, so the school needs to be protecting them.

### **School Superintendent**

At Warner Oaks Elementary, there have been a few complaints about children almost being hit by motorists. The elementary school is on a busy street. The stop-light is a few blocks down. When it's raining or time for school, the children often just run directly across the street instead of walking up to the stoplight.

### **School Superintendent**

**position:** The kids really shouldn't be running across the street, but they are. It will be tough to break that habit without someone there monitoring them. I wish the parents would tell the kids not to. I also wish the City would give us a little money so that we would have more resources for our children.

### **Your idea:**

How about someone from the PTA volunteers in the morning and afternoon and walks the kids across the street?

### **City Council**

At Warner Oaks Elementary, there have been a few complaints about children almost being hit by motorists. The elementary school is on a busy street. The stop-light is a few blocks down. When it's raining or time for school, the children often just run directly across the street instead of walking up to the stoplight.

**City Council position:** the kids are lazy. Their parents are lazy and being irresponsible by not teaching their children how to be safe, protect themselves, not walk into oncoming traffic, and maybe even walk a block or two to cross the street! The stop sign was deemed close enough when we built the school. Has that much changed in 15 years that we really need to carve this much out of our budget??



**Your idea:** The PTA should help instead of just criticize. What about a good old fashioned bake sale? We all love brownies. Then maybe we could afford some of the stuff they are talking about.

**4-4:10: Break****4:10-4:30: Debrief Role-Play**

Who had power? Why? (Position, Reward, Personality, Seniority, BATNA)

What tools did mediator use?

What other tools could mediator use?

What other questions?

Did you arrive at the same Items on Agenda?

**4:30-5: Day 3 Review**

Day 3 Tools Developed

Agenda

Note-Taking: I, O, ?, A, C

Negotiation Tools

## **Day 4: Agreement**

### **8:30-9: Review**

Sonar discovers hidden treasures.

Review Statement

Review Opening

Review Negotiation

### **9-9:15: Vacation Ice-Breaker**

#### **Agreement**

Ice-Breaker: “National Lampoon” worst vacation. (Listen to your partner)

### **9:15-10: Setting the Stage for Agreement**

#### **1. Identifying Exits**

##### **Developing Agreement Items**

After you have identified items on your negotiation agenda that appear to be agreements, begin writing them down on an agreement sheet.

##### **Conflict Path Review: Personal Conflict Exits**

Show how this is one step toward parties’ goals

Parties might be satisfied at this point, happy, relieved, nervous. They are beginning to exit the conflict. They may want an apology, a handshake, or a treatise explaining their agreement.

Ask parties for help framing clauses in agreement

Ask Confirm agreements, but don’t push or expect too much

### **10-10:15: Break and review Agreement Keys**

## Keys to A: Agreement

"It's clear you both share the common goal of reaching a mutually acceptable resolution."

"The key is to expose your needs and interests to each other and listen with an open mind. Focus on ways you can help the other person get their needs met."

"This is not a contest to be won; it's a joint problem-solving quest for a reasonable compromise solution."

"At this point it's time for both sides to begin working together to explore options toward a solution."

"Okay, now I want you to use your considerable problem-solving abilities."

"Now we're going to think about some optional ways to resolve the dispute. As many ideas as possible."

"I want to hear suggestions and tentative ideas about how you might overcome your differences and come together on some aspects of an agreement."

"What would be your suggestions?"

"What ideas do you have about how this might be solved?"

"How do you want things to be improved?"

"What would work well for you?"

"Do you see yourself in a different position in the future?"

"New options and opportunities can be discovered when you view the problem from as many perspectives as you can."

"Think about what it would take to get this resolved ... for you and for them. What are some of the ways that come to your mind?"

"Think outside the box. As Einstein famously said: 'We can't solve problems using the same thinking that created them.' Use imagination, intuition and creativity."

"From what you've learned about their interests, how would you shape the elements of a deal that would be very beneficial to them in their eyes ... while not too bad for you?"

"If there are benefits to one party that cost less to the other party ... you're enlarging the pie to be divided."

"What do you want? What would you like to see happen today? "

"What ideas do you have on how this dispute could resolve itself? [Then, to other side] Without responding to what they just said, give your own fresh answer to the same question."

"This is the open discussion period where you ask each other questions, respond to what's being said and fill in the information gaps."

"It helps a lot if you show a little appreciation for anything good they say."

"Everyone is doing the best they can to get their needs met. Each has their own set of needs and their own sense of what's fair and right."

"If you look out for their interests very likely they will look out for yours. "

"The art of compromise is the willingness to give up something in order to get something else in return. We're looking for trades."

"Instead of an outcome being imposed on you, you can help determine it and it may not come from law; it may come from goodwill."

"You can "agree-to-disagree" on past facts and think about where they want to go from here."

"I hear you taking responsibility for what you feel were some mistakes. That's often given credit by the other party. In what form would you like credit?"

"What could you have done differently to help avoid what happened?"

"Let's move to constructive problem solving. What more information from \_\_\_\_ would you like to have in hand as you begin creating steps toward a solution?"

"Rather than rehashing the past, let's focus on the future where there haven't yet been any problems."

### **Impasse**

"Sometimes virtue is its own reward. No one and no bad treatment can take it away."

"There's always a natural tendency to focus so much on their character that your tangible interests don't get enough attention."

### **Impasse Approach: What If's**

"How would you react if the other party made this suggestion? \_\_\_\_ How would you modify this suggestion?"

"What if you could design a payment plan. How would it look?"

"What if you include non-monetary compensation, such as \_\_\_\_? Any ideas?"

"How would you think about this other option? \_\_\_\_\_. I'm not trying to convince you to take it, only to make sure you know about it and can consider the advantages and disadvantages. The choice is yours."

### **Impasse Approach: Role Reversal**

"Stand in the other person's shoes for a bit and look at the issue through their eyes. How would you resolve it if you were over there?"

"If you were them, why do you think your proposal wouldn't be workable?"

"If you were them, why would you accept your proposal?"

"How would you tweak their proposal to make it better for you but still not too bad for them?"

"What are some of the criteria that would make it good for you? Bad for you? ""

"How about you being the mediator for a bit. Tell me what you heard them say."

"Be the jury for a minute. Try imagining it from a totally impartial, objective perspective."

### **Impasse Approach: Future and Future Relationships**

"I'll bet you can each make a pretty good case for why it's not your fault. But I don't think it's going to help you much to be arguing about it. You need to shift the question from "whose fault is this?" to "How might we resolve this problem ourselves?"

**10:15 -11: Develop Agreement****2. Develop Agreement****Large Group Activity: Discuss Stop-sign agreement items****11-12: Agreement Specifics****Agreement Standards**

- Use inclusive language whenever possible

- Over-specify

- Determine if contingencies are needed if agreement is not honored

- Include both practical and emotional agreements

- Track small agreements as they are made

What elements would need to be included in:

- Workplace mediation agreement

- Relationship agreement

- Landlord tenant

**12-12:45: Lunch (refine statement and note-taking sheet)****12:45-1: Review SONAR and steps****1-1:45: Small Group JJ Role-Play 12****1:45-2:45: Debrief Role-Play, Review Agreements**

Examine agreements. What elements are strong and what needs to be tightened?

**2:45-3: Break****3-3:30: Resistance to Agreement****Resistance to Agreement**

Group Brainstorm

Impasse

What to do when it falls apart (amygdala v. pre-frontal cortex—show what happens when brain goes off-line)

Agreement fails at last minute (take a break, review, discuss BATNA and WATNA)

Agreement changes: say it's fine, ask for them to reword it

Agreement enforceability: submit to court, notarize, both keep copy, mail a certified letter, have agreed upon check-ins

Agreement Options: Expanding the Pie

### 3:30-4:30: Mediator's Role

#### 3. Define Role

Neutral: Omnipartial

Remove Bias

Flexible

Navigate Impasse

What word would you use to describe mediation? Keep going around room until someone repeats a word. Write down your three favorite and add those to your Mediator Statement.

Shifts from beginning to end.

What is your style as a mediator? Holland Codes:

- John Holland developed 6 vocational codes to help people identify why they are drawn to their job and what they need from their job
- Realistic - practical, physical, hands-on, tool-oriented
- Investigative - analytical, intellectual, scientific, explorative
- Artistic - creative, original, independent, chaotic
- Social - cooperative, supporting, helping, healing/nurturing
- Enterprising - competitive environments, leadership
- Conventional - detail-oriented, organizing, clerical

### 4:30-5: Day 4 Review

Day 4 Tools Developed

Identifying Exits

Develop Agreement

Define Roles

## Day 5: Resolution

### 8:30-9:15: Review and Ice-Breaker

SONAR:

SONAR has a purpose. Each of these steps are leading us to something. We don't know in the beginning where it is leading us or how we will get there, but we know it will be better than where we are at right now.

This resolution, how we walk away from it all, sets the tone, reviews, and often brings closure.

**Ice-Breaker:** My favorite tool in my toolbox (something we've discussed or something new)

### JJ Resolution

#### 9:15-9:45: Resolution

##### 1. Bring Resolution

##### Why do we mediate?

Spiritually: People desire stability, peace, and effective communication

Emotionally: Draining to live in conflict

Economically: Mediation saves money and time when resolving a dispute

Close the mediation for all involved

Review the Agreement

Review items not discussed/clip-boarded (IF HELPFUL!)

Envision how things will change going forward

Remind them of their goals

Acknowledge the Difficulties

Congratulate them on their bravery, collaboration, etc.

Review Forms and Evals



## Keys to R: Resolution

Impasse Approach: How Confident?

"Give yourself a reality check. What's your certainty level? 90%? 80%? 50%?"

"What do you want? What are you doing to get it? Is that working? If not, what can you do differently to make it happen?"

"Consider what you have control over and what you don't:

Behavior or decision of judges -- No

Decision of juries -- No

Movements by the other side in negotiation -- No

The way the other side evaluates the case -- No

The way the other side opens with lo-ball or high-ball offers -- No

The pace the other side moves with counter-offers -- No"

"So, what's left?

Your own case evaluation -- Yes

Your own negotiating range -- Yes

Your own movement at any time -- Yes

Your own stopping point in negotiations" -- Yes"

"Take a long hard look at the reality of your situation."

"Test your perception: How much is it like dreamlike desires vs. hard reality?"

"At this point you might step back and ask yourself: "To what extent am I approaching this as an exercise in make-believe; in a fantasy of 'let's pretend' I'm going to get everything I want."

"Let's try a reality check from this standpoint. Have you considered \_\_\_\_?"

"Have you had experience with the same kind of case, same facts, same judge?"

"Ask yourself if your experience with situations just like this is sufficient to predict what the judge will do."

"What people often don't take into account is the fact that spending more time thinking about all the things in one's own case results in overconfidence.

Opposing facts, evidence, arguments and legalities don't get thought about as much, distorting one's judgment."

"You know you lack (e.g. the necessary written documentation to support your case) don't you? How would a judge or jury be convinced that you \_\_\_\_? Plus, as you may be aware, \_\_\_\_ has \_\_\_\_ (e.g. two witnesses, both prominent in their field prepared to testify on their behalf.)"

"Now I'd like each of you to be a Devil's Advocate and argue against your own position."

"May I be a Devil's advocate for a bit? Will you me permission to be blunt and direct?"

"May I give you an outsider's view of it?"

"How well do you meet the four-part legal standard of reasonableness? 1. Duty to care as a reasonable person would. 2. Breach of duty. 3. Causation with proof. 4. Damages with certainty of value."

"We could argue or dispute the legal aspects all day and night. Or, we could try to get a negotiated solution to resolve them in a manner that helps satisfy the aspirations of both parties."

**9:45-10: Break (review Dudley Resolution Keys)**

**10-10:30: Partner Role-Play 13**

**Partner Role-Play**

In partners, review personal conflict, discuss resolution, forms and closure.

**10:30-12: Mediation Styles**

## **2. Mediation Styles**

Holland Notes:

Riskin Notes:

## Holland Codes

My first code:

My second code:

My third code:

**Riskin's Grid**

**MEDIATOR TECHNIQUES**

Role of Mediator <b>EVALUATIVE</b>			
Problem Definition <b>NARROW</b>	Problem Definition <b>NARROW</b>	<p><b>Urges/pushes parties to accept narrow (position-based) settlement</b></p> <p><b>Proposes narrow (position-based) agreement</b></p> <p><b>Predicts court or other outcomes</b></p> <p><b>Assesses strengths and weaknesses of each side's case</b></p>	<p><b>Urges/pushes parties to accept broad (interest-based) settlement</b></p> <p><b>Develops and proposes broad (interest-based) agreement</b></p> <p><b>Predicts impact (on interests) of not settling</b></p> <p><b>Educates self about parties' interests</b></p>
	Problem Definition <b>BROAD</b>	<p><b>Helps parties evaluate proposals</b></p> <p><b>Helps parties develop &amp; exchange narrow (position-based) proposals</b></p> <p><b>Asks about consequences of not settling</b></p> <p><b>Asks about likely court or other outcomes</b></p> <p><b>Asks about strengths and weaknesses of each side's case</b></p>	<p><b>Helps parties evaluate proposals</b></p> <p><b>Helps parties develop &amp; exchange broad (interest-based) proposals</b></p> <p><b>Helps parties develop options that respond to interests</b></p> <p><b>Helps parties understand interests</b></p>
		Role of Mediator <b>FACILITATIVE</b>	

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**1: Facilitative Mediator: Guide.** Gently guides people through process, advising procedurally. What type of mediations would need a facilitative mediator?

**2: Transformative Mediator: Therapist.** Sees the relationship as more important than the issue. Mostly discusses forgiveness, future communication processes, and relationship repair. What type of mediations would need a transformative mediator?

**3. Evaluative Mediator: Judge.** Bordering on arbitration. Mediator gives opinion and evaluates the case. What type of mediations would need an evaluative mediator?

Based on your Holland strengths, what style do you think comes most naturally to you? What will you be the most effective at?

### **Fairly Legal clips**

What was she? Effective or not?

### **12-12:45: Lunch**

### **12:45-1:50: Large-Group Role-Play 14**

#### **Resolutions Questions to Consider:**

What do we do 6 months from now? A year from now?

How do we agree to treat each other?

Does this affect our legal actions against each other?

Do we need a check-in?

Do we need to verify that the agreement is enforced?

Who contacts who?

What did we accomplish today?

### **Large Group Role-Play HOA v. Foster Family**

Room Set-up

Mediation Styles

Note-taking

What is in your agreement?

Resolution Tools

**HOA v. Fosters Role-Play**

The Foster family lives in a ritzy, South Hill neighborhood. They are seeking a building permit to add a play house in their backyard. However, they belong to a Home Owners Association that do not want them to build the large “mini-house” in their backyard. The County has ordered them to mediation, and will not issue a permit without an agreement.

**Fosters:**

We have always been a helpful family. We can't have any kids of our own, so we decided it was our job to help other kids without a home. We are lucky that husband has a great job—can provide for kids and enables wife to stay home.

Yes, the money we receive from the state for these children is helpful, but that is secondary.

Wife gets to homeschool these kids. She takes them on exotic field trips and helps them to catch up on schooling they might have missed. She plans exciting science trips, and gets the kids involved in the community and volunteer activities.

The older kids are getting bored playing inside with the younger kids. They have been excited about building a play room—a safe place for the older kids to relax. They are flabbergasted that the HOA would step in like this.

**HOA:**

We have worked hard to develop a safe, quiet, supportive community. Many families want to live here.

Now, the Fosters are seeking to build this play house. The problem is it is huge!

They are going to cut down a beautiful tree, which makes the neighborhood beautiful but also provides shade to their neighbor.

In it's place they are putting this play house that might as well be a second home—which is not allowed in their contract—only one home per lot. The Fosters have foster kids, more and more every day it seems. And this play house would be their getaway—to play loud music, play pool, video games. Probably swear. This might even be a place that they deal drugs.

Who knows what kind of kids these are? What if they are a bad influence on our kids? They will probably break into our homes! Vandalize our cars!

**1:50-2: Break****2-3:45: Mediation Issues/ Questions****Mediation Questions**

- Ethical Considerations

- Confidentiality

- Legal Advice

- What to do when you are personally offended as a mediator?

- What to do when you are scared?

- Additional questions from notes page

**3. Next Steps**

- Advice for volunteering and gaining experience

- Careers in Mediation

- Mediate.com Newsletter

- Evaluation/Next Steps for me.

**3:45-4: Break****4-4:30: Congratulations and Certificates****Congratulations & Certificates****4:30-5: Day 5 Review**

- Day 5 Tools Developed

- Resolution

- Mediation Styles

- Next Steps



## **Toolbox**

Mediator Statement  
Caucus  
Silence  
Ground Rules  
Reframing  
Columbo  
Gentle  
Aggressive  
Clipboarding  
BATNA  
Brainstorming  
Agenda  
Apology



## **FAQs**

Do you have to be a substantive expert?

How much of this can be applied personally?

What do I do when I'm stuck?

How do I draft an agreement?

What happens if the parties start yelling?

What if we don't settle in time?

What if there is a history of domestic violence?

Are mediators mandatory reporters?

What can I say about the mediation to a reporter (Sandy Hook example) or to my best friend?

Add your questions here:

**Form Checklist:**

Agreement to Mediate and Confidentiality Form  
Mediator Statement  
Ground Rules  
Toolbox  
Mediation Agreement  
Evaluation Form  
Center Forms

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University of Oregon Conflict Resolution Center  
Mediate.com

## Glossary

**ADR:** Alternative Dispute Resolution, sometimes referred to as Appropriate Dispute Resolution

**BATNA:** Best Alternative to a Negotiated Agreement

**Caucus:** meeting with a party separately

**Ground Rules:** guidelines for communicating and behavior to support an effective conversation

**Impasse:** When a mediation feels stuck/an obstacle feels insurmountable

**Interest:** A party's underlying concern

**Mediator:** an objective third party that guides a discussion between multiple parties

**Position:** What a party says is important to them and they feel they need to defend, their stance on an issue

**Power Imbalance:** When there is a perceived imbalance of power, where one party appears to have less power than someone else in the mediation

**Toolbox:** a mediator's set of communication and process skills, used when and where a mediator feels appropriate

Avoid: Refuse to Engage

Compete: Try to win

Compromise: I get a little, you get a little

Accommodate: Engage, but then back down

Collaborate: Look for win/win