

Mediation Training Proposal & Syllabus

40-60 Hour Course

The Mediation Agency
Training Program

2010 - 2011

The Mediation Agency

Professional Mediation Services & Training

Overview of The Mediation Agency's Mediation Training Course

Introduction

We hope that this document provides the information you need to form a good basic understanding of both our training structure as well as of our instructors. Our most recent training took place for the City of Phoenix where we instructed two consecutive classes. We felt the classes were a tremendous success and produced 37 highly trained mediators for the city. See what a few of the students said about their experience by clicking the below link;

<http://www.mediationagency.com/pdf/phoenix2010evaluations.pdf>

If you have any questions about us or our training please do not hesitate to call us.

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Teaching Style

The essence of great mediation training is born from instructors who have had the benefit of real-world mediation experience. Due to The Mediation Agency's instructors combined mediation experience throughout America and Europe, with experience ranging from private cases, discriminatory issues through the EEOC, Supreme Court and Justice Departments, to various community programs in Arizona and New York - our trainers have been afforded a wealth of experience that shows throughout the comprehensive mediation training we provide students.

Our training is unique in that we pay respect to the natural skills of our students from the first day and have specifically designed our curriculum to create an optimum learning experience that appeals to a wide variety of students with a diverse career background and education. It is our belief that all people come built-in with their own unique abilities and people skills, as we say on the first day, "Hands up everyone who has done okay in life so far?" That is our way of acknowledging everyone's natural, built-in mediation talent. When those natural skills are combined with great training, a superior mediator is created. Our students have told us that the way we "pay respect" to their life-skills is one of the reasons the course makes such a profound impact and makes the skills we teach readily absorbed.

Training Sessions

The Mediation Agency's Mediation Training course has been described as "life-changing." Obviously any experience described as such can be intense and emotionally draining. Our late afternoon to early evening schedule provides several benefits; the time of 4:00 - 8:30 p.m. is intended to accommodate students who are unable to take off too much time from their work, additionally this time frame presents less of a problem for students with families and finally we believe the reduced daily class time will give students time to absorb and reflect more fully on each day's lessons.

Coursework Materials

Our coursework material are extensive which includes our 170 page manual, various hand-outs to accompany sessions within our course, and a copy of Frank Hanna's book, Conflict Resolution and Mediation in the Real World. The course and manual are designed to make note taking unnecessary as we want our student's full attention during lectures. To facilitate this process, we use a very advanced outline system called MindMapping as a structure for each session, and the daily lesson is displayed on the overhead screen. This allows for following along by students very simple, and enables them to listen completely.

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Knowledge Based Instruction

Experienced Trainers

The Mediation Agency training program is primarily instructed by Dr. Frank Hanna, and Nancy Peterson, M.Med. Additionally Alona Gottfried, JD Esq. and David Damron, Esq. periodically drop in to assist with teaching and coaching. We have been teaching people the skills needed to become great mediators for many years, and have graduated slightly in excess of 700 mediators from all over the world with students coming from all walks of life, levels of education and professional background.

...we have been teaching mediation skills for approximately 10 years and, to date, we have graduated slightly in excess of 600 mediators.

At the conclusion of each teaching program we ask each student to complete a detailed evaluation of their experience in our class, and the testimonials they provided speak for themselves. [See a few of our student testimonials; <http://www.mediationagency.com/pdf/testimonials.pdf>]

Our mediation training program has evolved into its present form over time and it is constantly improved and added to following each class. We are realistic in our understanding that we are always learning and like to instill in students that this course represents a start to their learning - not the end of it. This is vitally important as we have seen many mediators who think that having finished a 40 or 60 hour training program there is nothing more to learn. We emphatically disagree with this as we believe training continues throughout our lives both professionally and personally. It is worth explaining how this teaching philosophy evolved.

Someone reviewing the experience Dr. Hanna gained from his many years practicing law as a solicitor in the UK, or the mediation education he acquired from attending Harvard and Pepperdine Universities, might deem him formally educated and well equipped to practice as a mediator, but it took over 50 actual mediations before he learned how little he knew. Frank has been learning ever since just as all good mediators should from each and every new experience.

We are not alone in this concept. Roger Fisher, the author of "Getting to Yes", teaches mediation at Harvard. He is probably the finest mediator in the world. At the end of his classes he holds up a copy of his book and asks the class if they have read it, and invariably, all have. Usually the class applauds, and he then opens the book and rips it in half and throws it in a waste paper basket saying, "*It's not quite there yet*". It is his metaphor for saying to the students, "*I am not there yet so don't think you are*". Roger is in his 80s. This is an important realization for students to grasp. We allay this to our teaching which tells them that the two most important attributes of a mediator are humility and tenacity.

Psychologies Used in Mediation

The role of the mediator is to help people to formulate a lasting resolution within a safe environment and potentially create a more civil relationship for the future. In doing so, understanding the psyche of a human being in conflict helps the mediator to aid the parties to this end. Often people in the heat of conflict make life-changing decisions that may haunt them for the rest of their lives. It is part of the mediator's job to listen as an unbiased neutral and help parties make important choices in consideration of a future based upon decisions not made in haste or anger. We take our students through an examination of the psychologies of influence, persuasion and body language. We help students to listen with more than their ears – we teach them to use all their senses to understand what a person in conflict is really saying and to help parties in mediation to find a pathway forward.

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Role Plays

The most powerful learning experience for students is role playing. At the beginning of each class we ask for a show of hands "How many people here have been on a course where there have been role plays?" Invariably everyone will raise their hand. We follow that with the question, "How many times were those role plays spoiled by someone who was either too shy or who over acted?" Invariably the same hands will go up. We mention this because we have developed two specific techniques which ensure that never happens on our course and as a result the role plays become the most profound learning experience. We use role plays that are taken directly from cases mediated by our instructor's, so the experience even in the role-play is very realistic. Obviously the role-plays have been carefully altered to protect confidentiality of the actual parties, but the concepts and emotionality remains intact.

Our classes involve powerful opportunities for each individual student to look closely at their own methods of dealing with conflict.

This makes our role-plays deliberately complex with multi-party and multi-issue elements. The

...we help each student to find the style most commensurate with his or her persona with a view to producing a well rounded and confident mediator.

reasoning for this is to create an environment where all the participants in the role-play (not just the mediators) get to see how conflict plays out in actual cases. We constantly hear students identify with specific role-plays as being similar to life experiences that they have had personally or known someone to experience. It is common place for the emotions that were prevalent in the original mediation to emerge during

role-plays with the student participants. The feelings the participants experience are genuine even though the situation or conflict is not their own. It is the level of this type of role-play that sets this training apart from many others as the experience gained from these "mock" mediations are actually quite real giving students a genuine understanding of the entire process of mediation and all its emotion.

Our classes involve powerful opportunities for each individual student to look closely at their own methods of dealing with conflict. We involve them in exercises in consensus building designed to compel them to look at their own biases and prejudices so that they can rationalize the need to set these aside in coming to terms with their understanding of true neutrality.

Understanding Neutrality

It is commonplace for students to approach mediation training with a belief that neutrality means even-handedness or fairness. Students are taught to understand that neutrality depends on the perception of the parties with whom you are working, and not necessarily your perception of your own neutrality and fairness.

The mark of a great mediator is one who understands that neutrality requires constant diligence to maintain its integrity. It is a necessary part of successful mediation training and is a cornerstone of our program.

Strategies and Techniques

Mediation Styles – the toolbox of a good mediator

We have included a complete course outline within this document and you will notice that we are painstaking in our approach to ensure that each student understands the different styles and techniques that can be used in mediation. As stated above, we help each student to find the style most commensurate with his or her persona with a view to producing a well rounded and confident mediator. It is our firm belief that students approaching mediation will not be sufficiently aware of the skill sets to fully understand the nature of mediation and the type of mediator that they will become.

Our course does not solely impart knowledge of any particular model of mediation as we believe that such would be restrictive and limiting to the future of the mediator.

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How Mediators Deal with Lawyers

We teach our students that all parties within a conflict not only have the right to bring their lawyer to their mediation, but that having legal counsel present is often a great benefit to the success of a mediation. Many mediation training courses sadly do not teach this openly nor pay respect to the value of the presence of lawyers representing parties. We believe this is a mistake as we believe the parties must feel secure in the mediation process and confident that any agreement is in their best interest. Of course, all people who are present within the confines of the mediation must sign the confidentiality agreement – this assures any information learned during the mediation may not be subsequently used in a legal action. (See an example of a confidentiality agreement: <http://www.mediationagency.com/pdf/confidentiality.pdf>)

Our objective is to train and prepare serious students for the complex skills of mediation.

Understanding Impasse

Our section on methods of breaking impasse reveals many sophisticated techniques in helping people to navigate round the many hurdles the parties often place in their own path thus preventing any possibility of resolution. These obstacles are often not easily overcome as parties sometimes are not even aware they have created them. Mediators often become entangled in the complexity of impasse and are therefore unable to “move” the parties toward resolution. Our training provides tried and true techniques for paving the way forward away from impasse and towards resolution.

Mediation Applications

We think it is important to point out that the skills and techniques of mediation are much more complex than is generally thought, and most people who choose to practice mediation do so within a specialized arena – one where they already have some competence and expertise. Our training program spans the totality of the mediation experience with applications in; family, workplace, community, corporate, environment, land use and many others.

Professional Standards & Certification

A World-wide Dilemma – Professional Standards and Ethical Issues in Mediation

The concept of certifying people who practice mediation is an ongoing issue throughout the world. Many organizations have stepped up to the plate to position themselves as the “keepers of the gate” to try and ascribe some professionalism to mediation and to protect the public from unskilled practitioners.

Be wary of organizations who present themselves as a “certifying body” with control over a practitioner’s rights or ability to practice without their recommendation. Their “certification” will come at a high cost and will offer very little, if anything, in actual value to the practitioner’s business. Instead look for academic qualifications and accredited coursework that will add to a student’s CV or résumé and thereby assure any clients of his or her qualifications. (View The Mediation Agency’s Academic Qualification by visiting this link: <http://www.mediationagency.com/faq.html>)

To date, the practice of mediation is unregulated in most jurisdictions which means virtually anyone can set up shop as a mediator with a little training and even less actual experience. Much has been written, and many people and organizations have tackled the issues of what professional standards should be applied to mediators, and what are the resulting ethical issues of mediation in general.

In America it is a constant topic of debate, and indeed, Nancy Peterson, Director of The Mediation Agency and past Director of Education for NY State Dispute Resolution, spent the better part of two

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years dealing with mediator certification, including training requirements, testing, and continuing education for mediators, all intended to raise the standards of mediation offered in New York State. Nancy brings that level of global understanding to our training, instilling in students the necessity for working with high professional standards and adopting strong ethical guidelines for the practice of mediation.

Mediator Professionalism

In our course we talk at great length about “paying respect” to mediation and to the people who choose to use it instead of the more adversarial choices for the resolution of conflict. It is important to keep students aware of the importance of their role as mediator, and the serious impact of that position upon the parties. No matter how trivial or simple the issues may appear to an outsider, *each and every mediation* should be approached with respect and professionalism.

Many of our role-plays are used to test a student's perception of sex, race, religion...

During this section of the class we say, “*You must assume that on a scale of one to ten in stress levels, that the parties are hovering around the 10 mark – and that one of the reasons for their anxiety is that this may be the most important day in their life.*” We need to make students aware that even though it is our neutrality that makes us able to act as a mediator, we are only able to do so because we are not *personally* involved in the problem – but that does not excuse us from realizing the gravity of the occasion, and indeed empathizing with and acknowledging the parties feelings and stress levels. We want our students to know that mediators have respect at the onset of mediation – and it is theirs to lose if they behave unprofessionally or callously.

Keeping a Mediators Neutrality Intact

We also deal with the challenges often presented to mediators in keeping their personal bias and prejudice out of the mediation. We teach students to be prepared, if necessary, to recuse themselves if unable deal with their own personal feelings about an issue or a party. It is an insidious danger that often sneaks up on mediators during mediations and making students aware of this is a crucial part of their training. Many of our role-plays are used to test a student's perception of sex, race, religion and other similar issues to make them aware that everyone comes built-in with some bias and good mediators need to form methods to overcome those inclinations.

Joining Mediation Organizations

Towards the end of the course, we discuss the various options of joining alternative dispute resolution organizations. Joining a professional organization is a method to subscribe formally to a code of conduct and ethical boundaries for mediators. This allows a mediator to, by association, publically state his or her subscription to a formally established set of standards of ethics and practice.

Advanced Role-Plays and Competency Assessments

Real-world Role Plays

We have commented earlier in this document on the nature of role-plays and the quality of the role-plays used in our training program.

Each role-play is complex with many different issues and different parties involved. They are designed to highlight that which was learned in the previous session so that there is a direct connection between the academic and practical aspects of our training. As stated above all of the role-plays are real and are actual cases in which either one or other of our instructors has been involved.

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Co Mediation Experience in Role-Play

Our course also includes an understanding of and practice with co-mediation and both are instructors have very considerable experience in this and all over forms and styles of mediation. During the course each student will have the opportunity of mediating on a minimum of three occasions.

Post Course Mentoring

It is worth pointing out, at this point, that we take our responsibility as instructors extremely seriously. Our objective is to train and prepare serious students for the complex skills of mediation. Many students take readily to the experience while others need more encouragement with their self confidence and belief. We remain in contact with our students for as long as it takes to get them to the point where they can do justice to the skills they have acquired.

We are always available by telephone or e-mail to deal with questions and we encourage students to meet together on a regular basis to practice with new role-plays. We will happily provide many sample role-plays for their ongoing study.

We are also happy to provide online real time coaching long after the class has ended. This is something we have done for previous students in the past. The purpose of this is to re-emphasize the need for students to understand that acquiring mediation skills is not something that ends at the conclusion of the course but rather is an ongoing experience.

Outline of Manual (Coursework Materials)

Below you will find the table of contents from our 2010 July / August course held for the City of Phoenix. Within it you will see the headings of topics we cover during our course.

Outline of the table of contents from The Mediation Agency 2010 Mediation Training Course:

- 1 Introductions And Course Overview
 - 1.1 Informality rules and questions are allowed at any time
 - 1.2 The Workplace Experience
 - 1.3 Types of cases where workplace mediation can be helpful
 - 1.3.1 Suspected discrimination
 - 1.3.2 Disputes about terms and conditions
 - 1.3.3 Harassment problems
 - 1.3.4 Perceived unfairness by a supervisor
 - 1.3.5 Insubordination
 - 1.3.6 Team building
 - 1.3.7 Interpersonal issues that impact the productivity of staff

1.3.8 Issues of policy

1.3.9 Issues relating to perceived abuses of policy, e.g. excessive sick leave, poor time keeping

1.3.10 Communication problems

1.4 What should I expect from the course?

1.4.1 A clear understanding of the principles of mediation

1.4.2 An understanding and experience of "real world" mediation

1.4.3 A brand new mediators toolbox

1.4.4 An ability to make a difference in the home, school, workplace or community

1.4.5 An ability to use new skills in day-to-day situations

1.4.6 An awareness of connecting solutions with relationships

1.4.7 An understanding of conflict and an appreciation of its subtleties

1.4.8 That we will help you to gain a clear understanding of yourself

1.4.9 Our experiences as mediators

1.4.10 To discover that you already are a mediator

1.4.11 How to acquire new mediation skills but remain yourself

1.5 The use of "silly breaks"

2 What Is Mediation And How Did It Evolve?

2.1 The range of dispute resolution options

2.1.1 Litigation

2.1.2 Arbitration

2.1.3 Mediation

2.1.4 The hybrids

2.2 The Orange and the Two Sisters

2.2.1 Group discussion: Why and how could a good mediator have easily resolved the sister's dispute?

2.3 Types of mediation

2.3.1 Facilitative

2.3.2 Evaluative

2.3.3 Transformative

2.3.4 Discussion on the differences

2.4 Are there cases for which mediation is not appropriate?

3 Understanding Perception

3.1 Is there a way to identify if misperception exists?

3.2 Simple Addition

3.3 Their Bark Was Worse Than Their Bite

4 Positions And Interests: What's The Difference?

4.1 Understanding positions

4.2 Understanding interests

4.3 Ask questions that get to the interests

4.3.1 What's most important to you?

4.3.2 What bothers you about this?

4.3.3 This seems to affect you deeply; can you help me to understand why?

4.3.4 What is your particular problem with all of this?

4.3.5 It's important for me to understand all of this, so would you please tell me your view of it?

4.3.6 Or even: What's really going on here?

5 Consensus Building

5.1 A class exercise in consensus building

5.2 Class discussion

6 A Mediator's Responsibility

6.1 The importance of confidentiality and the agreement to mediate

6.2 Workplace mediation and confidentiality

6.3 The truth: How important is it?

6.4 Should a mediator "get to the bottom" of a dispute?

6.5 Understand the power of "Yes, but..."

6.5.1 Point it out

6.5.2 Explain it

6.5.3 It helps to focus parties

7 The Opening Statement

7.1 The greeting

7.1.1 Words of welcome

7.1.2 Introduce yourself

7.1.3 Express your preference for first names and check if that is acceptable with all parties

7.1.4 Explain that most cases are resolved but some, a small percentage, will not be resolved during one mediation session, or not at all.

7.2 The mediator's role: I am here to help you reach an agreement. I stress I am:

7.2.1 Going to try to uncomplicate things

7.2.2 Not trying to find right and wrong

7.2.3 Not being judgmental

7.2.4 Not going to favor one side or the other

7.3 What will happen?

7.3.1 Each side should take a few minutes to outline their case

7.3.2 Explain the open meeting and caucus options (Note: The use of caucus a judgment you will have to make based on reactions, tensions, hostility and many other factors. Rely on your observations and intuition.)

7.4 Confidentiality

7.4.1 Explain the mediation process and, if applicable, the agreement

7.4.2 If there is something that a party wants to relay privately, identify it

7.4.3 No cell phones, pagers, tape recorders, etc.

7.4.4 There may come the time when I need to ask tough questions. Don't interpret them as bias

7.4.5 We are talking about emotional matters. Do your best to properly articulate these.

7.4.6 Our target is agreement, so keep your eyes on the goal!

8 The Structure Of A Mediation

8.1 The welcome

8.1.1 Introductions

8.1.2 Seating

8.1.3 The Opening Statement

8.2 Opening addresses by the parties

8.3 Separate positions & identify interests

8.4 A mediator's list of to-do's:

8.4.1 Ask open-ended questions

8.4.2 Seek areas of common interest

8.4.3 Deflect personal attacks as being attacks on the problem

8.5 Test and expand the areas of consensus

8.5.1 Exude optimism

8.5.2 Constantly restate elements where there is progress and agreement

8.6 Move towards agreement

8.6.1 Carefully recap every item of agreement thus far

8.6.2 Write it and recap again

8.6.3 Complete the agreement

8.6.4 If appropriate, allow for the parties to interact

8.7 The finale

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8.7.1 Circulate the agreement

8.7.2 Congratulate the parties

8.7.3 Terminate the session

8.7.4 If working with a co-mediator, take time to exchange valuable feedback privately

9 S.W.O.T.

10 Humor, The Most Effective Tool

11 The Mediator And What S/he Should Be Thinking

11.1 What is a mediator's authority?

11.2 Exude trust

11.3 Formal versus informal

11.4 Seating arrangements

11.4.1 Is seating important in the mediation process?

11.4.2 Could some carefully planned seating neutralize a perceived power imbalance?

11.4.3 Would allowing parties to seat themselves make the parties feel involved in a way a courtroom cannot?

11.4.4 Tables have corners, would using them create a less severe atmosphere?

11.5 Am I really a judge?

11.5.1 You are never a judge. Ensure that everyone knows you are neutral.

11.5.2 Avoid pomposity at all cost – nothing is more unpleasant than a know-all or a person whose opinion of their own prowess is inflated – be humble but confident.

11.5.3 When the opening merges into the first joint session

11.5.4 TIP: In questioning and conversing with parties during mediation, remember, a mediator has 2 ears and 1 mouth: Use them in that proportion! You will learn more by listening than by talking!

11.6 Class discussion on mediator's role, seating and tactics

12 Body Language

12.1 Four types of body language

12.1.1 RESPONSIVE

12.1.2 REFLECTIVE

12.1.3 FUGITIVE

12.1.4 COMBATIVE

12.2 Congruency

12.3 When do we start working?

12.4 Body language can always cancel words but never vice versa

12.5 Be careful not to use time restricting words like "only"

12.6 Examples:

12.6.1 I only have a few minutes"

12.6.2 "I can only talk for 30 minutes"

12.7 Remember intonation of the voice is part of your body language and NOT part of the spoken words

12.8 How to react to someone who has "shut down

12.8.1 If necessary, confront the elephant in the room

12.8.2 Be jovial, to help the parties to loosen up

12.8.3 Use a caucus, if necessary, to help you understand their problem

12.8.4 Check if they have pre-conceived views

12.8.5 Avoid parties restating the same things. Make them move on to the next point

12.9 Tell them that you understand their anger and Help them to realise you know their anger is with the problem and not directed towards you

13 What About Co-mediation?

13.1 Class discussion on co-mediation

13.1.1 How should co-mediators prepare?

13.1.2 Should they agree a subdivision of the mediation ahead of time?

13.1.3 Should they decide that one is the "leader"?

13.1.4 Should someone be in charge?

13.1.5 Who decides who the lead mediator is?

13.1.6 Who goes first?

13.1.7 Should they have pre-arranged signals?

13.1.8 What happens if the co-mediator hogs the show?

13.1.9 Should they split the caucuses so that a mediator is speaking to each party at the same time?

13.1.10 How do we ensure that two mediators don't confuse the parties?

13.1.11 How do you know what your co-mediator might do?

13.1.12 Should mediators ever split up?

14 Listening

14.1 Let's talk about listening

14.1.1 You must want to be a good listener

14.1.2 Concentration

14.1.3 Listening is an action, not a reaction

14.1.4 Give the party your absolute attention

14.1.5 Don't finish their sentences

14.1.6 Don't jump to conclusions

14.1.7 Use minimal encouragers

14.1.8 Mirroring and parroting

14.2 The main faults of bad listeners

14.2.1 Failing to concentrate or losing concentration

14.2.2 Jumping to conclusions

14.2.3 Not actively thinking

14.2.4 Are we social snobs?

14.3 You know you aren't listening and hearing if you...

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- 14.3.1 Are waiting for a suitable opening to enable you to say what you want
- 14.3.2 Are thinking about the next question to ask
- 14.3.3 Already know the information
- 14.3.4 Are thinking that the person isn't expressing their point very well
- 14.3.5 Are trying to write down everything the speaker is trying to say
- 14.3.6 Are waiting to talk about yourself
- 14.3.7 Are thinking of a great piece of advice to pass on
- 14.3.8 Are thinking about tonight's dinner
- 14.3.9 Are worrying whether you remembered to put money in the parking meter
- 15 The Caucus
 - 15.1 Why split up? So you can...
 - 15.1.1 Gather information
 - 15.1.2 Elicit sensitive facts
 - 15.1.3 Identify interests
 - 15.1.4 Begin seeking options
 - 15.2 When do you do it?
 - 15.3 The mediator's role summarized
 - 15.3.1 Start with interests important to that party
 - 15.3.2 Ask open-ended questions
 - 15.3.3 Show empathy
 - 15.3.4 Always translate and clarify
 - 15.3.5 Constantly refresh: "Let's be sure I understand what you want to happen"
 - 15.4 Confidentiality within a caucus
 - 15.5 Understand the need to "test drive" solutions
 - 15.5.1 Get them to believe it's their idea!

15.5.2 Use hypotheses

15.5.3 Try to get several solutions before you try any with the parties

15.5.4 Ask them what they feel a good solution might be

15.5.5 Don't try to enforce your idea(s)

15.5.6 Say, "It occurs to me, have you thought about XYZ with the other party?" Watch the answer -- it will tell you a lot. If it is not an absolute rejection then try it on the other party

15.5.7 Try not to act as if you are claiming the solution, if it doesn't work it will be perceived as your fault

15.5.8 Even if a solution seems close do not stop listening

15.5.9 Other techniques for test driving, try these styles:

15.5.9.1 "I haven't spoken to the other side so I don't know what they will say. Let's say they suggested something like...what way would you react?"

15.5.9.2 "May I be the devil's advocate here...What if..."

15.5.9.3 "You strike me as the sort of person who might just favor...am I reading you correctly?"

15.6 Constantly direct the parties to remember their true interests, then to possible solutions, and finally, painstakingly, to agreement

16 Question Asking Techniques

16.1 Open-ended question tips

16.1.1 Don't suggest an answer, or rush to fill an awkward pause, let them take as long as they want as they think about their reply

16.1.2 Won't leave the party feeling as though they have been steered towards an answer

16.1.3 Won't impose the mediator's views on the discussion

16.1.4 Provide an opportunity for the party to be expansive

16.1.5 Help to focus the party on new ground

16.2 Examples:

16.3 Closed-ended questions...

16.3.1 Are the exact opposite to open-ended questions

16.3.2 Are designed to elicit a yes or no answer

16.3.2.1 Example: "Do you have a good relationship with Mr. Smith?"

16.3.3 Are designed to focus a party on a specific point. Consider this sequence:

16.3.3.1 The party starts to ramble or continuously restates ground already covered:

16.3.3.2 Mediator asks a closed-ended question: "Would you say your employer has treated you badly?" The answer forces the party to a yes or no answer, then the mediator asks an open-ended question: "Maybe you could tell me more about that?" Thus, the mediator has controlled the moment

16.3.4 Close-ended questions can also divert a rambling party back on track

16.4 Mistakes in questioning

16.4.1 Don't cross the line between presenting possibilities and suggesting or controlling

16.4.1.1 A skeptical or sarcastic tone of voice can cause as much damage as anything else (e.g., "I don't think so!")

16.4.2 Stop yourself from losing control and saying things like:

16.4.2.1 "You're not making any sense!"

16.4.2.2 "Do you expect anyone to really believe that?"

16.4.2.3 "What were you thinking?"

16.4.2.4 "I want to know why you did that!"

16.5 A mediator's greatest fear: What if I can't think of a decent question to ask?

17 Reframing

17.1 What exactly is reframing?

17.2 A reframing "silly break"

17.3 Some samples and exercise:

18 Hey! I See The Solution!

18.1 Solutions found quickly are Encouraging because:

18.2 Dangerous because

18.3 So the lesson is

18.4 Remember

18.5 The Three Brothers: A story with a twist

19 Breaking Impasse

19.1 What goes on in conflict?

19.2 The passage of time

19.2.1 The ten year old and the stolen car and then the wedding day

19.3 Reciprocal affection

19.4 Be sure you understand the interests of each individual party

19.5 Consider role reversal

19.6 Create value expand the scenario

19.7 Understanding the BATNA and WATNA

19.7.1 These terms are only relevant to negotiation

19.8 The Power of Yes

19.8.1 Silly Break

19.9 Remember, during every session;

19.10 Re frame to change perceptions

19.11 Considering one parties, options ask the other, "Why not?"

19.12 Exude optimism

19.13 Restate the progress made thus far, even if it is that they are still there

19.14 Be relentless and good natured

19.15 If there are more than 2 parties, focus on the most agreeable ones

19.16 Use timeouts as often as needed

19.17 Take a break

19.18 Give the parties "busy-work;" BATNA, WATNA, SWOT

19.19 Sometimes agreement is not possible...add value where possible

19.20 Identify the obstacles to a meaningful agreement

19.21 Narrow the dividing issues

19.22 Try to secure a partial agreement

19.23 Explore other processes

19.24 The Verbal Sleight of Hand

19.24.1 To summarize

19.25 Class discussion on these and other ideas for breaking impasse

20 How To React To Strong Emotions

20.1 Anger

20.1.1 Remember to:

20.1.2 Step to their side

20.1.3 Agree, as much as you can, with the parties emotion - it's difficult to argue with someone who is agreeing with you

20.1.4 Show concern and ask if they are OKAY – this will make the party want to reign in the level of their emotion so they can show the mediator that they are in control

20.2 Tears

20.2.1 Go with it. If s/he is able to carry on then, as we have learned, it can actually be productive to allow the other side to see the depth of hurt

20.2.2 Try saying nothing: pregnant pauses are very often more loquacious than babbled words

20.2.3 Suggest that s/he might feel like taking a time out if s/he is becoming overwhelmed or embarrassed by their show of emotion

20.2.4 Take a caucus if you aren't already in one

20.2.5 If the object of his/her upset is someone who is in the room, assess the pros and cons of splitting them up, or suggesting a break

20.2.6 Avoid, like the plague, the temptation to patronize. If you are beginning to sound like you are talking to a child you have gone too far

20.2.7 Don't lose your patience. Phrases like, "Come on now, grow up!" are guaranteed to ruin everything and set your professional image back considerably

20.3 The "Take it or Leave it" syndrome

20.4 Where unreasonableness becomes "a matter of principle"

20.5 The silent treatment

20.5.1 If lack of cooperation persists you may have to terminate the mediation--but don't do it peremptorily

21 Negotiation: Should I Get Involved?

21.1 The upside

21.1.1 I see an opportunity for agreement

21.2 The downside

21.2.1 I may begin to appear partisan

21.3 The reality

21.4 Understand the difference between empathy and sympathy

21.5 Summary of negotiation techniques

21.6 Three party negotiation exercise

21.7 Points for discussion

21.7.1 What techniques were used?

21.7.2 What attitudes were displayed?

21.7.3 Did someone's attitude affect the way the mediator behaved?

21.7.4 Did you want to bring them to their knees or to their senses?

21.7.5 Did you miss a better deal by being too greedy or not sufficiently assertive?

21.7.6 If you had it to do again, would you secure a better deal for your company? This is, fundamentally, the most beneficial question to focus on

22 Things A Mediator Can Add To Negotiations

22.1 Open communication

22.2 Help parties to understand their interests

22.3 Help generate creative solutions

22.4 Help discover mutually acceptable standards

22.5 Bring closure where possible

22.6 Help attain ratification

22.7 Help to coordinate large numbers of parties

22.8 Negotiations

22.8.1 Remember the negotiation exercise

22.8.1.1 Usually, the teams that stayed most silent got the best results

22.8.1.2 The teams that opened often moved backwards

22.8.1.3 In mediation you will be in the middle of such negotiations

22.8.1.4 Preserve your neutrality

22.8.1.5 If you appear to be easy, then people will take advantage

22.8.1.6 Treat angry responses as a challenge

22.8.1.7 Try to agree as much as you can. It's hard to be angry with someone who is agreeing with you

22.8.1.8 Don't bring them to their knees, bring them to their senses

23 Understanding The Power Of Influence

23.1 Reciprocation

23.2 Scarcity

23.3 Authority

23.4 Consistency

23.5 Consensus or Social proof

23.6 The psychology of "Liking"

24 The Role Of The Apology

24.1 Apologies loom large in mediations

24.2 Beware of "I demand an apology," It may be both a position and an interest

24.3 Be wary of the need for a written apology, they are hard to get

24.4 Reference can be made to an apology, or expression of regret, in an agreement. That usually suffices

24.5 Perspectives on apology and regret

25 There Comes A Time To Quit...sometimes!

25.1 Bad faith: some mediations must be terminated and the mediator must be prepared to do so in the following scenarios;

25.1.1 It becomes apparent that all the interested parties are not present

25.1.2 A party keeps revisiting points that have already been agreed

25.1.3 A party sits in sullen silence and will not cooperate no matter what the mediator tries to do to regain their participation

25.1.4 A party either refuses, or seems unable to understand reasonable explanations or contributions towards resolution

25.1.5 A party becomes physically or emotionally abusive

25.1.6 A party makes it clear that they are using the process as a fact-finding exercise for future litigation

25.1.7 A party is only present to intimidate, humiliate or otherwise "punish" the other party with no clear intention of finding a resolution or way forward

25.1.8 One party is using the mediation to suppress information relating to other cases

26 Final Joint Session

26.1 Clarify the agreement, go through it line by line

26.2 If no agreement has been reached, Acknowledge it, and if the parties request it, commemorate it into writing

26.3 State partial agreement and clarify the outstanding issues in depth

26.4 Discuss with the parties whether an adjournment of the mediation is a good idea

26.5 Discuss with the parties, if appropriate, the potential of a subsequent mediation to continue negotiating the issues of the dispute

27 How Do I Handle Lawyers During MEDIATION?

27.1 Be wary of an imbalance of power

27.2 Remember The dispute belongs to the parties – it is their choice

27.3 Remember Techniques for respectfully sidelining lawyers

27.4 Remember, he or she is an adviser to one of the parties

27.5 A good lawyer will want to help make the mediation as positive experience as possible for everyone and will help the mediator

27.6 Class discussion on the different approaches to take to gain benefit from the presence of lawyers

28 The Agreement

28.1 Background

28.2 Is it Resolution or Agreement?

28.3 What exactly is an agreement?

28.4 Are they legally binding?

28.5 Are Agreements in Mediation any different?

28.6 What do we mean by "expanding the Agreement?"

28.7 Reciprocal agreements – a balancing act

28.8 Pay respect to mediation

28.9 Sample clauses

28.10 Agreement for discussion

28.12 A workplace problem

29 The Role Of The Mediator As A large group Facilitator

30 Ethical Considerations And Guidance

30.1 Professional indemnity insurance

30.2 Membership of professional bodies

30.2.1 ACR

30.3 Know your limitations

The Mediation Agency

Professional Mediation Services & Training

Overview of The Mediation Agency's Mediation Training Course

31 Appendices

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31.2 Getting to Yes

31.3 Getting Past No

31.4 Settling Disputes

31.5 The Gentle Art of Verbal Self Defence at Work

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31.7 Getting Disputes Resolved

31.8 Beyond Reason : Using Emotions as You Negotiate

31.9 The Psychology of Persuasion: How to Persuade Others to Your Way of Thinking

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