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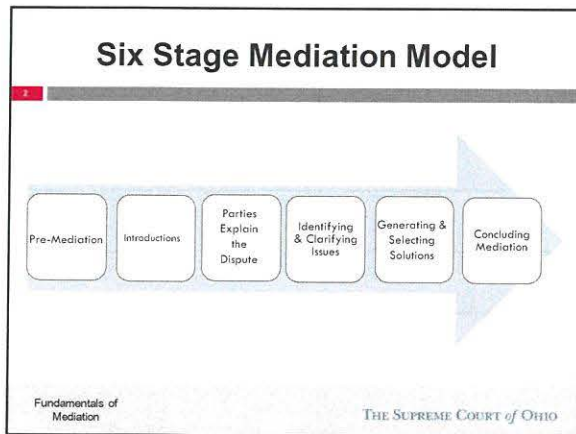
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- ### Stages of Mediation
1. Pre-Mediation
  2. Opening Statement
  3. **Gather Party Perspectives**
  4. Set the Agenda
  5. Brainstorm & Develop Options
  6. Prioritize and Select Options
  7. Closure

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## Positions vs. Interests

### Position

- ❑ One person's solution to an issue
- ❑ Typically expressed as a demand

### Interest

- ❑ One person's concern about an issue
- ❑ What each party needs for satisfaction or resolution
- ❑ Reasons behind positions: needs, concerns, hopes, fears

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## Why Should a Mediator Explore the Interests of the Parties?

- ❑ Foundation for parties to find resolution that addresses interests on both sides
- ❑ Understanding one's own interests can lead to new ideas
- ❑ Understanding the interests of the other party may lead to recognition of the other party's basic needs
- ❑ Parties may discover that they share common interests
- ❑ Helps parties prioritize (interests) and analyze (proposals)

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## Transforming Positions to Interests

*The sooner parties declare their positions, the more likely they are to argue for them and the more difficult it becomes for them to change their minds without losing face.*

*For that reason, mediators may avoid asking parties to express positions until after the opening presentations....*

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### Strategies for Exploring **Interests**

- Active Listening
- Engaging with Genuine Curiosity




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### First Communication Exercise

- Find a partner you don't know
- Review ROLE #1
  - Don't read ROLE #2
- Have a three minute conversation with your partner

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### Watch for assumptions that can skew listening

Your own:

- About the parties
- About the situation
- About the best way to reach an agreement

Unconscious bias  
Incomplete facts

The parties':

- About each other
- About the situation
- About the only way to solve the dispute

Unconscious bias  
Incomplete facts

Process

Position

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### Process Assumptions

#### Unhelpful

- ☐ Judging – The solution is obvious. I just need to convince them to adopt it.
- ☐ Multitasking – I can listen while I think about something else.
- ☐ Preparing to respond
- ☐ Daydreaming

#### Helpful

- ☐ The best agreement will come from the parties.
- ☐ Listening is hard work that requires concentration.
- ☐ If I listen well, I can satisfy their need to be understood.

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### Effective Listening Behaviors

- ☐ Convince yourself to stay curiously engaged
  - ☐ Be authentic
- ☐ Resist the urge to argue, advise, judge, daydream and defend
- ☐ Avoid questionable listening behaviors
  - ☐ Taking notes throughout a conversation
  - ☐ Simply stating I understand

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### Second Communication Exercise

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### Third Communication Exercise

- When you are speaking, consider the following:
  - How the "listener" is listening – what concrete strategies do they use?
  - How it feels to be heard / to know you have not been heard

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### What Do They Look Like?

#### Poor Listeners

Glance at their watch, tap their feet, and drum their fingers.  
 Finish people's sentences and make assumptions.  
 Interrupt to disagree and rush to correct the speaker.  
 Focus on the speaker's delivery or mannerisms.  
 React emotionally.  
 Ignore non-verbal cues.  
 Tell others how they should feel.  
 Control others' feelings.  
 Talk more than they listen.

#### Active Listeners

Make eye contact, nod occasionally, and say words of encouragement.  
 Paraphrase the speaker's words, clarify, and summarize.  
 Be patient and calmly state their views when appropriate.  
 Focus on the content of the message.  
 Remain non-defensive.  
 Pay attention to non-verbal cues.  
 Reflect others' feelings.  
 Listen more than they talk.

THE SUPREME COURT of OHIO

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### Active Listening Strategies

- Encourage
- Elicit
- Restate
- Clarify
- Empathize
- Summarize
- Reframe

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## FRED & MARY Interests

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## Negotiation is...

- ☐ A basic means of getting what you want from others
- ☐ It is a back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.

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## What Is Negotiable?

### **Negotiable Issue =**

A behavior (or lack of behavior) of one party which frustrates the need of another party.

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## Negotiable Issues for Mediation

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> Behaviors           <ul style="list-style-type: none"> <li><input type="checkbox"/> How people treat each other</li> <li><input type="checkbox"/> Sharing space</li> <li><input type="checkbox"/> Respecting boundaries</li> <li><input type="checkbox"/> Communication about problems</li> <li><input type="checkbox"/> Following through on promises</li> <li><input type="checkbox"/> Ways people do their work</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Structures &amp; Systems           <ul style="list-style-type: none"> <li><input type="checkbox"/> How decisions are made</li> <li><input type="checkbox"/> Rules &amp; regulations</li> <li><input type="checkbox"/> Procedures</li> <li><input type="checkbox"/> Schedules</li> <li><input type="checkbox"/> Job responsibilities</li> </ul> </li> <li><input type="checkbox"/> Objects &amp; Money           <ul style="list-style-type: none"> <li><input type="checkbox"/> Treatment of property</li> <li><input type="checkbox"/> Reimbursement</li> </ul> </li> </ul> |
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## Can Be Discussed (But Not Negotiated or Mediated)

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> Beliefs</li> <li><input type="checkbox"/> Principles, values</li> <li><input type="checkbox"/> Attitudes</li> <li><input type="checkbox"/> Anger</li> <li><input type="checkbox"/> Personal Style</li> <li><input type="checkbox"/> What Happened</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Perceptions</li> <li><input type="checkbox"/> Management Style</li> <li><input type="checkbox"/> Interpretations</li> <li><input type="checkbox"/> Prejudices</li> <li><input type="checkbox"/> Blame/fault</li> <li><input type="checkbox"/> Rights</li> </ul> |
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## Mediator's Goals in Framing Issues

- ☐ Separate the people from the problem.
- ☐ Reflect parties' interests not legal issues.
- ☐ Framed in neutral terms.
- ☐ Forward-looking, not about past actions or blame.

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## FRED & MARY Issues

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## The Agenda

- ☐ Structures the mediation.
- ☐ But *not* set in stone.
- ☐ Each discussion item relates to a separate issue.
- ☐ Encompasses issues raised by *both* parties.
- ☐ Items are negotiable.
- ☐ Don't be afraid to *reset* and *add* to the agenda

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## Principles for Ordering the Agenda

- ☐ Threshold issues (if any) first.
- ☐ Start with "easy" issues to establish momentum and find common ground.
- ☐ Alternate between each individual's issues to encourage tradeoffs.

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