TBA Seminar
Creating and Managing Productive Relationships in Mediations-Practical and Ethical Considerations

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Trust

“Trust is the glue of life. It’s the most essential ingredient in effective communication. It’s the foundation principle that hold all relationships.”

-Stephen Covey
Relationship Is Built On Trust

• Mediation creates an expectation of trustworthiness.
• How does one go about building trust needed to form working relationships?
• And the question of building trust becomes an ethical question
It’s About Ethics

• Self Determination

• Do your “interactions” support it or undermine it.
Ethical Interventions

• Promote rational thinking
• Promote understanding of their matter
• Balanced Interventions
Brain

- Emotional Brain
  - Red Zone

- Rational Brain
  - Blue Zone

- Move from the Red Zone to the Blue Zone

- Reduce the negative emotional charge!

- Gain Clarity
Context Affects Mediator’s Actions

• Who is in the room?
  • Pro se – Pro Se
  • Attorney/Client – Pro Se
  • Attorney/Client – Attorney/Client
  • Others

• What stage of dispute?
  • Pre-lawsuit (early dispute resolution)
  • Lawsuit/Early (prior to discovery, prior to Motion for Summary Judgment)
  • Lawsuit/Late

• Relationship(s) – who will be in the room
Some Observations About Human Nature

• We are emotional

• We want to be heard

• We want it our way

• We resist being coerced or pushed

• We want to be judged by our intentions

• We don’t trust “them”

• We want an ally
Think of a conflict you are involved in or aware of. Did you seek out a third person?

WHAT DID YOU EXPECT OF THIS PERSON?
Walking the Line

| Ally | Adversary |
You Need To Build A Trust/Rapport Account
(because you will need to make withdrawals)

• Probing Questions
  • About their case
  • Cost of pursuing
  • And possibility of losing

• Being asked to take less (or pay more) than their initial goal
Overview of the Mediation Process

- Prior
- Opening
- During
- Agreement/ After
HOW DO YOU BEGIN TO BUILD RAPPORT AND TRUST?
Keys to Good Outcomes

• Procedural Interests
  • To have sufficient time to tell their story
  • To be heard/ understood
  • To be treated with respect
  • To be treated fairly

• Substantive Interests (what you “get at the end of negotiations)
  • Objective
  • Intrinsic
Procedural Interest

R-E-S-P-E-C-T
All Things Being Equal

Process Competent

Subject Matter Competent
Prior

• Send Information
• Review Pre-Mediation Statements
• Contact Attorneys
• Discuss Process and Other Important Information
• Outline Case/ Review the Language of the Case
• Manage Expectations/ No Surprises
Oxytocin

- Face to face
- Touch
- Food
Opening/ Manage Expectations and Create a Hopeful Environment

• Your Role

• Role of Attorneys

• Today’s Objective

• What makes it Successful
  • Optimistic
  • Communication
  • Confidentiality
  • Perspective Taking

• What can be Frustrating
  • Time/ Perception it won’t Settle
  • Patience
  • Appearance of Partiality (Realism)
Voices

• Mediator’s voice
• Other attorney’s voice
• Adjuster’s voice
• Client’s voice
• Judge’s voice
• Juror’s voice
• Other
During Negotiations

• Go slow to go fast

• Use Key Mediation Communication Skills
Communication Skills: Key Skills for the Mediator

[1] Attending:
- Non-verbal
- Listen
- Label the emotion
- Pick up a few words
- Mirror

[2] Reflecting
- Restating
- Summarizing
- Reframing

[3] Following:
- Active listening
- Asking questions
[1] ATTENDING

COMMUNICATION SKILLS: KEY SKILLS FOR THE MEDIATOR
Non-Verbal

- Attire
- Personal space
- Eye contact
- Facial expression
- Gestures
- Calm presence
- Food
- Physical setting
- Mirroring
Listening Includes Many Elements:

60-80% NonVerbal

© Zweibel, E, Goldstein, R, Manwaring, J. Conflict Resolution: Communication Unit. 
https://maestro.uottawa.ca
Listening Is Important And Powerful

• Good listening is helpful in and of itself – if you do nothing else in mediation ...

• Builds trust and rapport

• Deescalates/calms

• Calm helps create clarity

• Listening is a precursor to problem-solving

• Feels like a “gift” – everyone wants to be heard
No ID’s

• I = Interruptions

• D = Distractions

• Minimize both
Listening

- Listen for Content
- Listen for Emotion
Label The Emotion

• Label the emotion (affect labeling)

• The science behind labeling
Affect Labeling

- Labeling the emotional content of a statement, expression, gesture, or other communication
- That is, “naming it”:

<table>
<thead>
<tr>
<th>Anger</th>
<th>Resentment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sadness</td>
<td>Hurt</td>
</tr>
<tr>
<td>Frustration</td>
<td>Grief</td>
</tr>
<tr>
<td>Disrespect</td>
<td>Anxiety</td>
</tr>
<tr>
<td>Betrayal</td>
<td>Surprise</td>
</tr>
<tr>
<td>Humiliation</td>
<td>Pride</td>
</tr>
<tr>
<td>Loneliness</td>
<td>Satisfaction</td>
</tr>
</tbody>
</table>
Affect Labeling

- fMRI studies suggest that affect labeling:
  - May diminish the response of the amygdala, other limbic regions sensitive to negative emotions
  - May produce increased activity in the right ventrolateral prefrontal cortex (a more rational part of the brain …)
    - Lieberman et al., Psychol Sci. 2007 May; 18(5):421-8

- Result: The person feels “truly heard”, can calm down

- Result: The calming occurs because the use of language neurologically helps the person transition from the emotional part of the brain to the rational
Minimal Encourager/Pick Up A Few Words

• Reflect/repeat the last few words

• Last word

  Or

• Pick up a few words
Other Key Techniques For Building Rapport (Mirror)

- Reflect their body language
- Reflect their tone of voice
- Reflect their words
The Art of People
By: Dave Kerpen

His Three Action Steps

• Listen
• Mirror
• Validate
Always Pack an Empathetic Face:

“Empathy is best described as a genuine understanding and appreciation of another’s feelings. The people around you need to see that they are important to you. Mary Kay cosmetics founder Mary Kay Ash said that everyone has an invisible sign around their necks that reads, “Make Me Feel Important.” When people feel important, they will be empowered to do their best for you. Leaders who lack an empathetic face usually find it difficult to get others to cooperate with them or their agendas.

People will trust you once they know you have a genuine concern for them. Empathy connects with another person because you find common ground, whether in pain, joy, sorrow, or celebration. To share in another person’s moment in an empathetic was creates a bond that goes deeper than you may ever realize. Think about those times of extreme personal loss. Be it a job, a parent, a spouse, or a child- you felt pain and loneliness in your search for answers. Your greatest aid likely came from the people you knew well but had never known they had also suffered the same loss until they shared with you while wearing an empathetic face. People want to know you care. Every day someone is looking for another person to simply listen and feel what they are feeling. When you listen, people realize they are important to you. Without saying a word, your face can express deep concern for them.”

From: Toy Box Leadership
By: Ron Hunter, Jr. and Michael Waddell
[2] REFLECTIVE SKILLS

COMMUNICATION SKILLS:
KEY SKILLS FOR THE MEDIATOR
[2] Reflective Skills

- Restating

- Summarizing/Core message

- Reframing
“Word for Word”
Summarizing

1. Purpose
   - Ensure you have correctly understood
   - Permit party/parties to reflect, correct what they have said
   - Build rapport

2. Technique
   - Concisely paraphrase the party's essential content in your own words.
   - Listen for the *emotional* content and intensity and accurately express it back to the speaker.
   - Pull together and organize disparate facts, ideas and themes, using neutral language.
Reframing

- When
- How
Reframing

- Change the View- effect a new focus
- Demands to Needs
[3] FOLLOWING SKILLS

COMMUNICATION SKILLS:
KEY SKILLS FOR THE MEDIATOR
Active Listening/Asking Questions

• Open-ended questions
• Close-ended questions
• Clarifying questions
• Option-generating questions
• Reality testing questions
Sum Up

- Listen with full attention
- Acknowledge their feelings
- Give their feelings a name
- Ask questions
- Mirror
Success

There is no single magic bullet

All of these micro-interventions add up to good mediation.