

Quick reference guide stages of a mediation process

Initial Contact Phase Preparation and agreements (I-1, I-2)

Focus: preparation, lay foundation.

- Intake/preparation consultation (I-1.1, I-2.1-3).
- Conflict of interests check (I-1 + consult code of conduct).
- Suitability check (I-2.4).
- Managing expectations (I-1.1).
- Mediation approach/strategy (I-2.1-3).
- Legal and administrative issues (I-8 + Resource B).

Transition to phase 1:

Arrange the first mediation session.

Phase 1 Opening statements (I-3, I-4, I-5)

Focus: set tone, manage expectations, first dispute scan.

- Opening statement mediator (I-3)
 - Check parties' names, whether to use first names or more formality.
 - Mediation process, tasks mediator and parties.
 - Caucus (double confidentiality) (I-1.6).
 - Logistical arrangements (I-1.1).
 - Time scope, deadlines and commitments (II-1.4).
 - Postponement/suspension of judicial or other proceedings.
 - Ground rules (I-5).
- Do the parties have any questions or need further clarification?

Transition to opening statement parties:

"What do you expect from this mediation?" or

"Who wants to start?"

- Opening statements parties:
 - Who will go first (I-2.1)?
 - First scan: content and blocking issues, interests, causes of the conflict (II-7, II-8).
- Main techniques:
 - Listening for content, interests and blocking issues (III-2).
 - Summarize (III-4).
 - Check assumptions (IV-2.2), ask verification questions (III-10.5.2).
 - Questioning style Open, closed, straight and clarifying (III.10.1).

Transition to phase 2: Joint summary and issue agenda:

"We have to discuss ... and ... and also ..."

Can we settle this dispute if we find a solution to all of these topics? Or did we overlook important issues?"

Transition for caucus-mediation strategy:

- Get consent on main rules for the caucus (II-16.4).

"I think it is time now to continue in separate meetings ..."

Phase 2 Exchange and exploration (I-6, II-7, II-8, II-15, II-16, III-1, IV-1, IV-2, IV-3, IV-4, IV-7)

Focus: manage/structure. Move focus from positions & past to interests & future.

- Setting a negotiating agenda (I-6).
- Exploration of interests (II-7).
- Main techniques and methods:
 - Listening for content, interests, blocking issues & opportunities (II-7, 8, III-2).
 - Structure the process and communication (II-15).
 - Encourage the parties to Paraphrase (II-3).
 - Acknowledgement (III-5.2).
 - Reframe, recontextualize (III-6).
 - Questions: (III-10) and reality testing (III-11).
 - Summarize (III-4).
 - Dealing with emotions (IV-4).
 - Dealing with tricky tactics and difficult behavior (IV-3).
 - Check BATNA/ WATNA/ RATNA, (III-14.1), leverage (III-14.2) and ZOPA (III-14.3).
 - Caucus (II-16).
 - Ladder of inference (IV-2.2), clarify perspectives (IV-2.1) and psychological barriers (IV-2.3-4).
 - Balance power (II-3), empowerment (II-6) and empathy (II-5).
 - Maintain and demonstrate neutrality (II-2, III-7).

Transition to phase 3: verify that:

- All interests are on the table + blocking issues are identified.
- Emotions have been dealt with to the extent that they will not stand in the way of reaching settlement.
- There is understanding for each other's points of view and for
- The role of each party in the origin and development of the conflict.

Summarize + "Now that it is clear that ... and ... We need to find a solution for ... and"

Phase 3 Generating options & negotiation (III-15, III-16, IV-1)

Focus: generate as many mutual gain options as possible, reach agreement.

- Breaking deadlocks (IV-1)
 - Dealing with tricky tactics and difficult behavior (IV-3)
 - Balance power, make sure all parties participate (II-3)
 - Understand each party's own constituency (I-2.7.2) and their individual scope of authority (I-2.7.1)
 - Develop objective criteria (III-16.1)
 - Set priorities (II-15)
- Stimulate creativity and "out-of-the-box-thinking" using techniques for generating options (II-15):
 - Brainstorming (III-15.1)
 - Expand the pie
 - Prepare lists and discuss them
 - Develop one mutual vision
 - Seek advice from experts
 - Ask the mediator to suggest additional options
 - Consult external sources
 - Use different thinking frames
- Aim at package deals; pay special attention to this aspect when interim solutions are involved (II-12)

Transition to phase 4:

- Summarize results, time and energy invested.
- List decisions to be included in the settlement agreement.

"I think we are ready to draft the agreement."

Phase 4 Finalizing agreement & closure (I-2.7, II-11, II-12, II-13)

Focus: finalizing agreement, reaching a deal that can be implemented and that is durable.

- In case of agreement (In part) (II-11.2-3)
 - Prepare draft agreement (if applicable combined with a list of remaining difficulties/options):
 - Check balance (all parties need to be addressed and do something) and use of neutral language (II-3, III-7).
 - Make it SMART (II-12).
 - Specific: unambiguous what has been agreed.
 - Measurable: clear when agreement is fulfilled.
 - Achievable: it can be done.
 - Realistic: parties will do it.
 - Time limit: it has a defined ending.
 - Avoid dependence on contingencies.
 - Avoid legalese (parties must recognize their solution and own language).
 - Check communication with constituencies and related face-saving aspects.
 - Stress importance of compliance.
 - Provision in case parties encounter problems during implementation (f.e. mediation clause) (Resource B).
- In case of no agreement (II-11.1)
 - Positive summary of results and commitment (III-4).
 - Make a list of what has been accomplished (f.e. understanding, clarification of the disputed topics, agree to disagree).
 - Clarify next steps.

Phase 5 Follow-up and implementation, CPD

Focus: make sure the parties can implement what has been agreed, CPD.

- Be available for the parties, if necessary revisit or readjust the terms of agreement or search for additional solutions if parties encounter problems during implementation.
- Use each mediation for your own Continuous Professional Development (CPD) and review your own performance:
- How did parties reach settlement, what went well, what should be done differently next time, other learnings?



A more detailed table can be found in II-9.