

## SKILLS AND TECHNIQUES FOR MEDIATORS

Mediators learn to do the following:

### 1. Listen Actively

Listen to the meaning of what the people are saying, not simply what it means to you. Focus on their words, not on what you are going to say. Don't interrupt; give them time to say what they want to say.

### 2. Understand the perspectives of the disputants

Ask questions:

- "When you mentioned the difficulties you've been having, what kind of difficulties were they?"
- "You spoke of adequate compensation, how much would that be?"
- "How long have you known Mr. Jones?"
- "What do you mean when you say it was unfair?"

### 3. Separate the positions from the interests

In a conflict each side takes a **position** which is **their attitude or point of view**. People in a dispute **think differently** about the problem at hand. But underlying their attitude or point of view is another factor, their interests. **Interests** are deep-rooted human needs such as identity, security, control over one's life, recognition, sense of belonging, and fairness.

Once you separate positions from interests, then **try to determine which interests the parties share and which interests conflict**. Often the parties will share many interests in common. For example, they may want to continue their relationship and even have a good relationship and they may both want stability and order. You should try to see if you can reconcile these compatible interests. You should point out to the disputants that they have these interests in common. Often these interests are intangible, unexpressed, and inconsistent. So as mediator you must work on perceiving them and understanding them.

When you begin to understand more about the dispute, ask yourself "Why are these people taking their positions?" Ask "Why haven't they settled their dispute and what interests of theirs stand in the way?"

As mediator you will see if their perceptions are inaccurate and if so you will need to **educate** the disputants that their perceptions are inaccurate. As mediator you will see if there have been misunderstandings and misinterpretations and try to clarify them.

As the mediator, you must begin to work toward reconciling their interests because that's how you will get a good settlement. Many of the questions you ask will be to acknowledge their interests and establish the legitimacy of their interests.

#### **4. Facilitate understanding between disputants**

Ask questions and reframe and rephrase their statements to clarify their positions and interests. For example you can say:

- "So, you're saying that ....
- "It sounds like.....
- " Let me make sure I understand....
- " Am I correct in stating you'd like .....
- " What if she doesn't agree? Is there something else she could do?
- "What if John can't pay all the money but is willing to give you some of it?"
- "At least you both agree on ..... and apparently you still disagree on ...."

Appeal to notions of legitimacy (what is right, fair, legal, honorable, moral), notions of precedent (research shows...traditionally it has been...), consequences (results people hope for or fear). Appeal to reciprocity. Mention what a court would decide.

Look for opportunities to recognize and reinforce the disputants while also maintaining a neutral stance. Look for areas of agreement. Don't overreact to emotions. Recognize they are part of life. Let disputants make their emotions explicit, and legitimize their expression of emotions. You and disputants can apologize for emotions, but recognize they are part of life.

## **5. Generate options for resolution**

- Describe problem and generate options for settlement. Divide issues into smaller components.
- Agree in principle before details are worked out.
- Open up all possibilities for options
- Ask if alternation of duties or vacations is possible
- Design new, integrative solutions (example of orange - one wants to eat and one wants to use peel for cake icing)
- Use outside experts or resources for information
- Look at situation from points of view of various experts, ex. bankers, ministers, nurses, feminists, coaches, doctors
- Use single text document - mediator drafts a settlement and parties go over it
- Link issues and trade and compromise - focus on shared needs and wishes
- Develop "doables" - step-by-step small agreements toward the overall settlement