



Mediation: Conflict, Negotiation and Dispute Resolution for Lawyers

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MEDIATION: The Four Stages

- I. Introduction: Setting the Stage (Med's Opening Stmt)
- II. Define the Issues and Develop the Agenda
- III. Process the Issues
- IV. Brainstorm and Resolve the Issues



MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage I: Mediator's Introduction; Setting the Stage

Build trust in the Mediator and the mediation process
by:

1. Demonstrating control over the process
2. Intentional use of body language
3. Manipulate the mediation conference room and environment

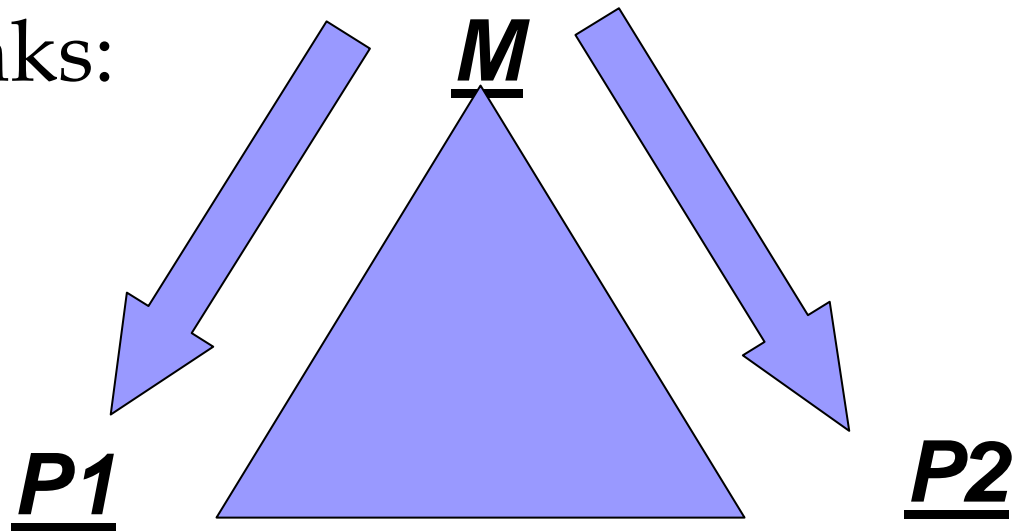
MEDIATION: The Four Stages

Stage I: Methodology

Stage I: Mediator's Introduction; Setting the Stage

Purpose: Build trust in the Mediator and the mediation process.

Mediator speaks:



MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage II: Define the Issues and Set the Agenda

1. *Give all parties a chance to be heard,*
2. Educate the *Mediator* about:
 - a) *what happened*
 - b) how the P's *feel* about it
 - c) what the P's *think* they want
 - d) how the P's are initially relating to each other; *body language*

MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage II: Define the Issues and Set the Agenda

3. Educate *ALL participants* about:

a) *what happened*

b) how the P's *feel* about it

c) what the P's *think* they want

d) how the P's are initially relating to each other; observe their *body language*

MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage II: Define the Issues and Set the Agenda

4. *Mediator Break*: Use the 4 Main Principles from GTY:

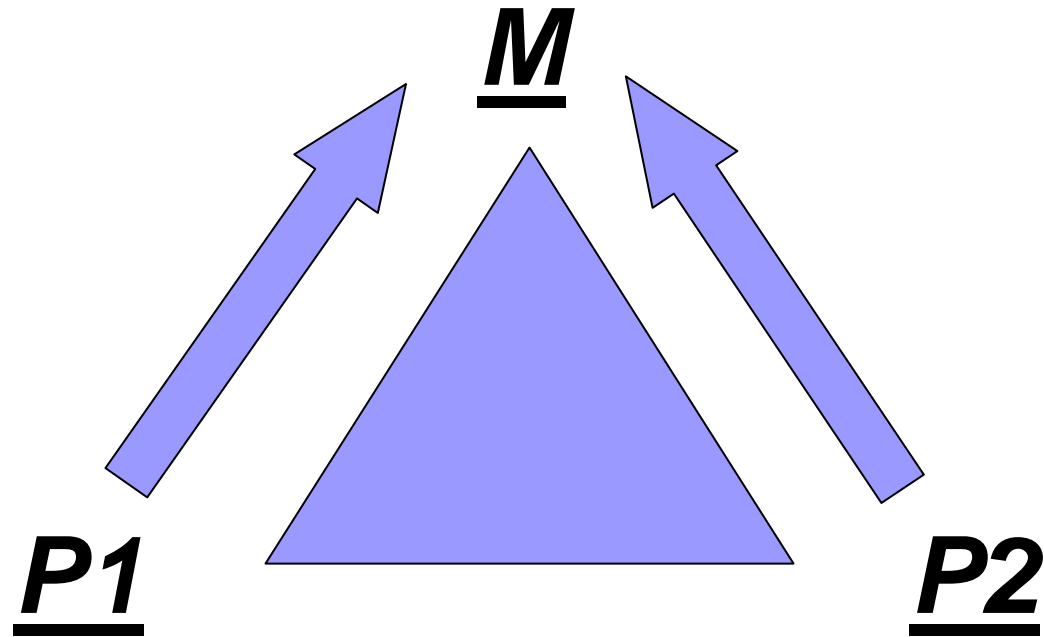
- *People: Separate the people (problem) from the (substantive/legal) problem*
- *Interests: Focus on the parties' interests, not their positions*
- *Options: Generate a variety of possibilities before deciding what to do*
- *Criteria: Insist that the result be based on some objective criteria*

MEDIATION: The Four Stages

Stage II: Methodology

Stage II: Define the Issues and Set the Agenda

Give all parties a chance to be heard and educate the Mediator.



MEDIATION: The Four Stages; Stage II Methodology

Stage II: Define the Issues and Set the Agenda:

(A) Mediator listens to all speakers.

(B) Mediator SUMMARIZES what was said by all speakers in Stage II

(C) Mediator Break: At this point, the Mediator pauses and takes a “time-out” to develop the mediation conference agenda. List all:

a) substantive/legal/content issues

b) emotional issues

c) itemize commonalities (common positive)

MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage III: Process the Issues

- ❑ Participants build mutual trust
- ❑ Better their mutual understanding
- ❑ Share: information, interests, needs, concerns (feelings)
- ❑ Participants can vent
- ❑ Decrease resistance to settlement (“Yes, but ...”)

MEDIATION: The PURPOSE of the 4 Stages

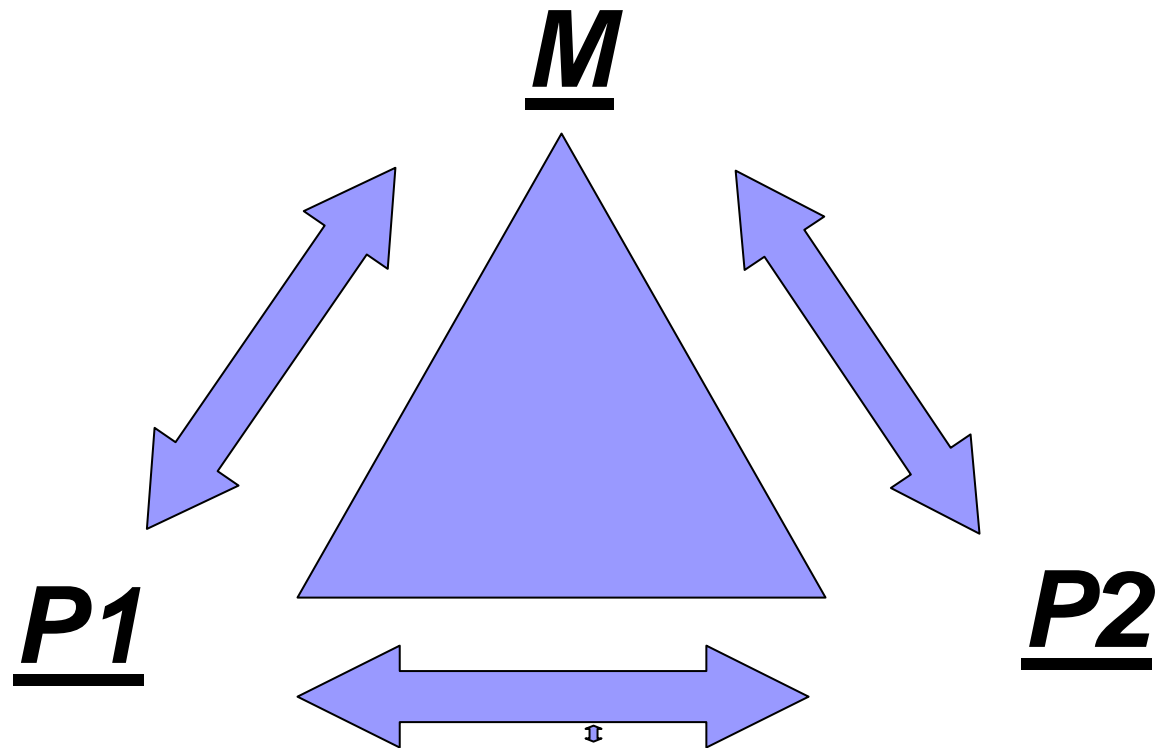
Purpose of Stage III: Process the Issues

Mediator's GOAL at Stage III is to help the parties TRANSITION from recounting their history of harm + emotional charge TO an atmosphere ripe for mutual problem solving!

MEDIATION: The Four Stages

Stage III: Methodology

Stage III: Process the Issues



MEDIATION: The PURPOSE of the 4 Stages

Purpose of the Caucus: This special mediation tool allows the Mediator to meet with each side PRIVATELY and CONFIDENTIALLY (end of Stage III or in Stage IV)

Six Point CAUCUS CHECKLIST:

- 1. Any secrets?*
- 2. Hidden agendas?*
- 3. Reduce tensions*
- 4. Help the P's get past an **impasse***
- 5. Help a P **save face***
- 6. Confront a "**problem party**"*

MEDIATION: The PURPOSE of the 4 Stages

WHEN to Caucus:

- ✓ *Trust your “gut”*
- ✓ *Crisis at the end of Stage III*
or during Stage IV
- ✓ *Review your Six-Point CAUCUS CHECKLIST*
before every caucus!

KEY: When you caucus with 1 party, you must caucus with all parties!

MEDIATION: The PURPOSE of the 4 Stages

The FOCUS of every Caucus:

- ✓ Reality testing (via Med. Questions)
- ✓ Clarify details and facts
- ✓ Clarify interests, needs, concerns

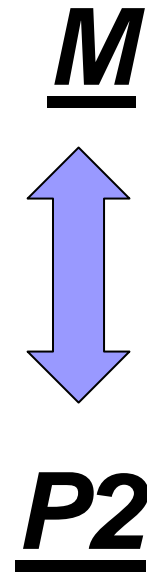
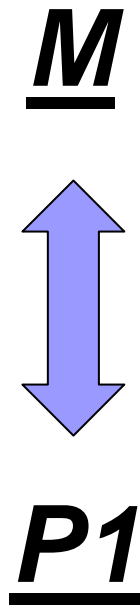
KEY: When you caucus with 1 party, you must caucus with all parties!

MEDIATION: The Four Stages

Caucus: Methodology

Use your 6-point caucus checklist.

The FOCUS of every Caucus:



MEDIATION: The PURPOSE of the 4 Stages

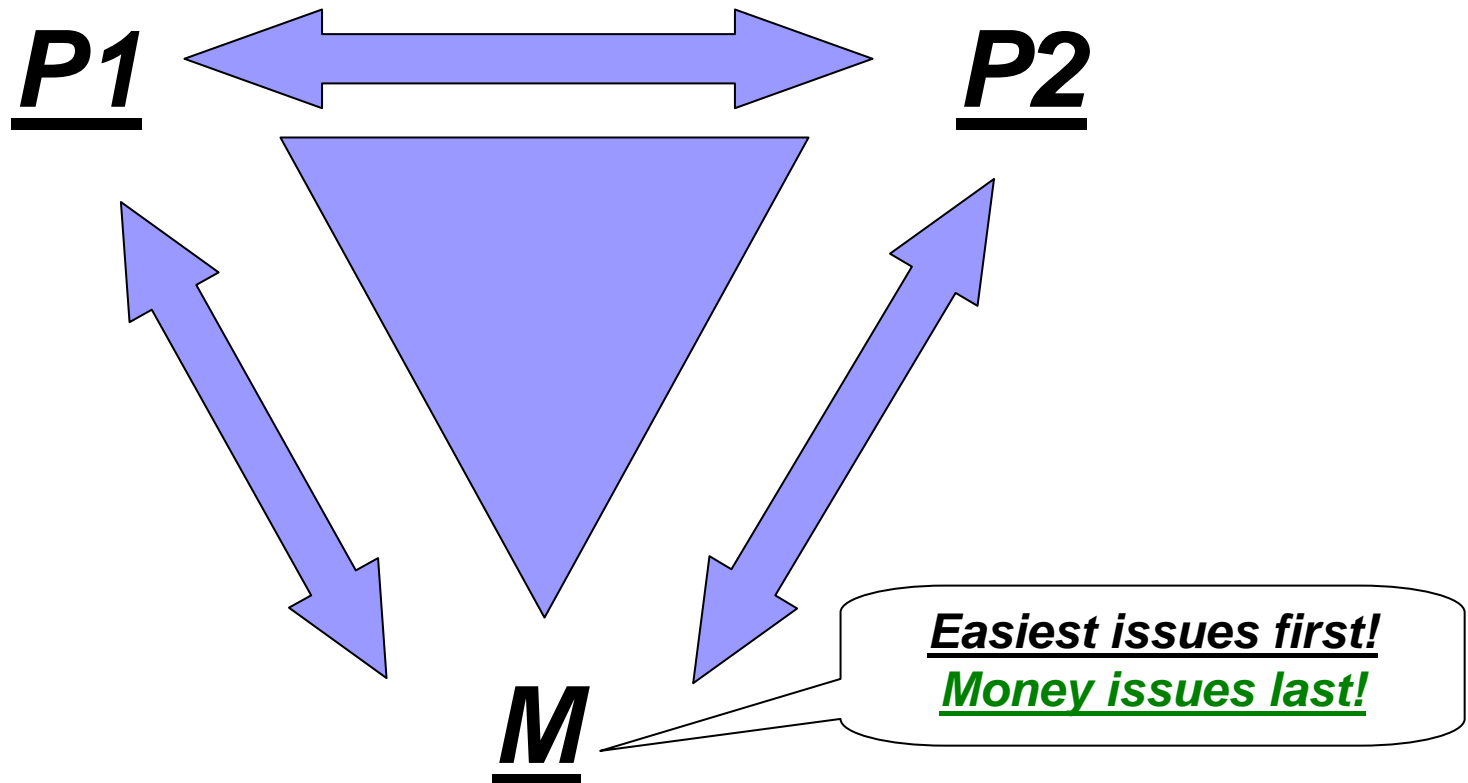
Purpose of Stage IV: Brainstorming

- ❖ Start with the *easiest* issues
- ❖ Brainstorm as many *ideas* as possible (don't brainstorm for "options")
- ❖ Mediator writes down the ideas *on a notepad*, *not* a markerboard, chalkboard or easel

MEDIATION: The Four Stages

Stage IV: Methodology

Stage IV: Brainstorming



MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage IV: Brainstorming

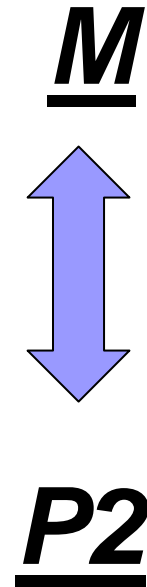
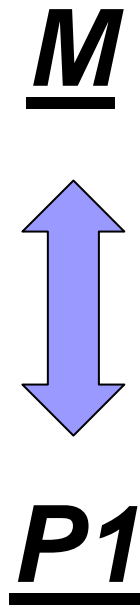
KEY: “HABIT\$ of Agreement” = **start with small/easy** issues and work “up.” Money issue is **ALWAYS** discussed **LAST!**



MEDIATION: The Four Stages

Caucus: Methodology

The FOCUS of every Caucus:



MEDIATION: The PURPOSE of the 4 Stages

Purpose of Stage IV: Resolving the Issues

- ❖ *Commemorate the terms of agreement, in writing*
- ❖ *Always include a mechanism for resolving any future disputes: “The P’s agree to resume mediation in the event of ...”*
- ❖ *Always include a mechanism for future contact and communication*