

# Mediation: Conflict, Negotiation and Dispute Resolution for Lawyers

Dina Feldman-Scarr, Esq.  
California Western School of Law

Copyright 2007, Dina Feldman-Scarr

# 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 Stage II; Define the Issues and Set the Agenda

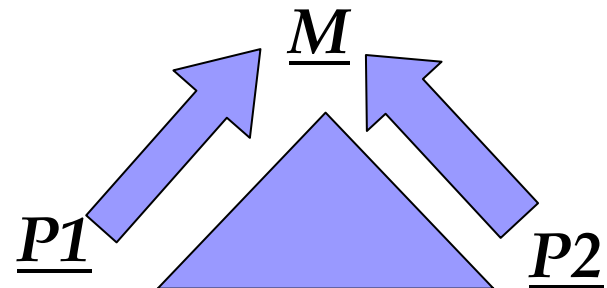
- 1. *Give all parties a chance to be heard*
- 2. Educate the *Mediator* about:
  - a) *what happened (perspective, viewpoint)*
  - b) how the P's *feel* about it
  - c) what the P's *think* they want (*position*)
  - d) how the P's are initially relating to each other; *body language*

# MEDIATION: The Purpose of Stage II; Define the Issues and Set the Agenda

- 3. Educate *ALL participants* about:
  - a) *what happened* (*perspective, viewpoint*)
  - b) how the P's *feel* about it
  - c) what the P's *think* they want (*position*)
  - d) how the P's are initially relating to each other; observe their *body language*

## MEDIATION: How To Do Stage II; Define the Issues and Set the Agenda

1. One at a time, ask each of the Parties to tell you what brought them to mediation: their perspective, viewpoint. Take notes.
2. Ask the second speaker to speak as if he/she spoke first (lessen rebuttal). Take notes.
3. *SUMMARIZE what each party said!*



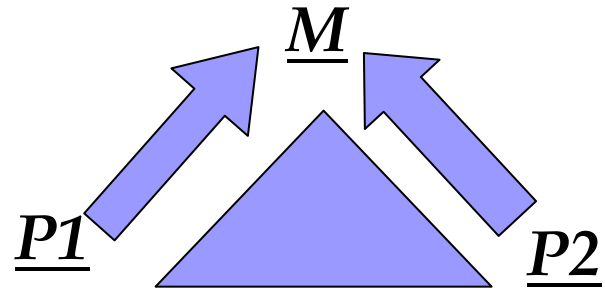
# MEDIATION: How To Do Stage II; Define the Issues and Set the Agenda

4. Take your **MEDIATOR BREAK**:

a) Identify/list all substantive/content issues.

b) Identify/list all relationship/human factor issues  
[emotional issues].

c) Any commonalities of issues between the parties?



# MEDIATION: How To Do Stage II; Define the Issues and Set the Agenda

4. **Mediator Break:** Use the 4 Main Principles from GTY to set the agenda:
  - **People:** *Separate the people (relationship problem: perception, communication, emotion.) from the (substantive/legal) problem.*
  - **Interests:** *Focus on the parties' interests (needs, concerns), not their positions.*
  - **Options:** *Generate a variety of possibilities before deciding what to do.*
  - **Criteria:** *Insist that the result be based on some objective and valid criteria.*

# MEDIATION: How To Do Stage II; Define the Issues and Set the Agenda

- **4. Mediator Break:** Consider these five **Basic Human Needs** from GTY (page 48) to set the initial agenda:
  - *Security*
  - *Economic Well-Being*
  - *A Sense of Belonging*
  - *Recognition*
  - *Control Over One's Life*

# MEDIATION: How To Do Stage II; Define the Issues and Set the Agenda

1. Party 1 speaks. Mediator takes notes.
2. Party 2 speaks. Mediator takes notes.
3. Based on your notes, *Summarize* what was said by all Parties.
4. *Mediator Break*: At this point, the Mediator pauses and takes a “time-out” to develop the mediation conference agenda. List these:
  - a) substantive/legal/content issues
  - b) human factor/emotional/relationship issues
  - c) itemize all commonalities (“common positive”)

# MEDIATION: How To Do Stages II - III; Define the Issues and Set the Agenda

- Reconvene the Parties for Stage III
- Ask your first Open-Ended Question about Commonalities (2<sup>nd</sup>: Emotional / Human Factor Issues; 3<sup>rd</sup>: Substantive / Content / Monetary Issues)
- Proceed to “PATs formula”

## MEDIATION: How to do “P A T S”

1. Mediator will ask an open-ended question  
(Mediator takes notes while listening)  
1(A) party/client/attorney speaks & answers.

Mediator will then:

2. Acknowledge or Translate
3. + Paraphrase (or Summarize)
4. Verify with the speaker
5. Ask your *next* Open-Ended Question