

Facilitative Mediation in Practice

Mediation is a confidential process in which people come together to resolve their disputes with the assistance of an impartial third party (the “mediator”). The mediator facilitates communication and negotiation, helping the parties define and clarify the issues they wish to address; share their perspectives about the dispute and how he or she has been affected by it; develop and consider options for resolution; and voluntarily reach solutions or agreements that are mutually beneficial.

Joint Sessions: The most effective way of assisting clients to resolve their disputes is to hold joint sessions and encourage the parties to engage in face-to-face, collaborative discussions.

The facilitative mediator, unlike a judge, arbitrator, or evaluative mediator, does not take sides, give legal advice, or render a decision. Her complex role involves facilitating constructive communication through dialogue; clarifying and organizing details of the discussions; encouraging solution-focused “problem-solving;” and managing emotions. Throughout this process, she tracks the parties' agreements, testing their durability through question-asking, and records them as they are made. When the parties are satisfied with their agreements, the mediator drafts the final agreements for review by the parties' attorneys.

How It Works

Facilitative mediation is often referred to as “integrative” or “interest-based.” Instead of focusing on positions—which tend to have limited solutions—the mediator encourages each party to identify and discuss the reasons underlying an attachment to a particular outcome. When parties talk about their needs and interests, there is a greater potential for collaborative problem-solving and therefore a greater range of possible solutions.

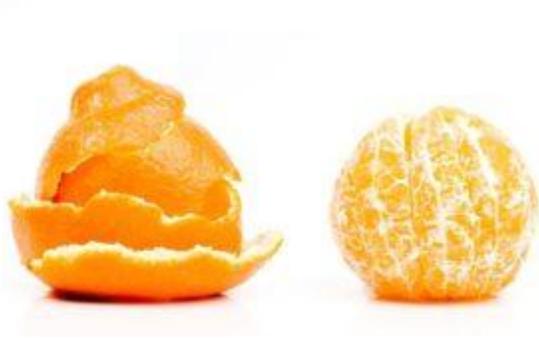
Initial Session: The mediator explains the mediation process. We review and sign the **Agreement to Mediate**. The parties may suggest ground rules for assurance that the mediation will be experienced as safe, respectful and fair.

Each Party's Perspective: Each party has an uninterrupted opportunity to present his or her perspective of what the dispute is about and how he or she has been affected by it. As each person speaks, the others are encouraged to listen closely for any opportunities to recognize where misunderstandings may have occurred or for overlooked areas of agreement. It also is a chance for parties to share deeply-held feelings constructively — and to feel heard.

Identify Key Issues: With the help of the mediator, the parties identify the issues they will address in mediation. While mediations involving divorce or separation generally involve the same set of issues (i.e., division of marital property and debt; child and spousal support; parenting arrangements), all families have their unique concerns—for example: “Who cares for Dad when Mom is in the nursing home?” or “How will we pay for private school now that we have to pay for two homes?” Adult siblings also may wish to discuss feelings of being excluded or disrespected.

Identify Needs and Interests: Facilitative mediation is “integrative” or “interest-based.” Instead of focusing on positions—which tend to have limited solutions—the mediator encourages each party to identify and discuss the reasons underlying an attachment to a particular outcome. When parties talk about their needs and interests, there is a greater potential for collaborative problem-solving and a greater range of possible solutions.

The Parable of the Orange is the classic illustration of interest-based negotiation:



Two siblings were arguing over who would have the last orange. Finally, they ran to their mother, each one shouting, “Mama, it’s my orange; I saw it first!” and “Mama, I want that orange.” The mother, who had always taught her young children to share, scowled at the youngsters and snatched the orange away.

“Silly children,” she scolded, “there’s an easy solution to this!” and she took her big kitchen knife and sliced the orange cleanly in two.

“What have you done, mother?” one of the children cried. “I wanted the pulp for a glass of orange juice!”

The other child was just as horrified. “Oh no!” that child gasped, “I wanted the rind to make a beautiful orange cake!”

The moral of this tale is that, had the mother asked each child to explain the reason underlying the desire for the orange, she would have helped them satisfy each of their interests—so that the child wishing for the pulp would have had a full glass of orange juice and the child wanting the rind would have had a richer orange cake.

Generate Options for Resolution: The parties are asked for ideas for alternative solutions to the concerns that have been identified.

Consider, Evaluate and Negotiate: Once the parties are satisfied that they have exhausted all possibilities for options, they are ready to consider each of them and determine which one is most preferred, desired, or sustainable. Questions such as, "What effect will this have on other family members?" are presented. This often is a time when consultation with other professionals, such as lawyers, child development specialists and CPAs is appropriate.

Tentative Agreements: The mediator(s) will record agreements as they are made; parties are encouraged to consider these agreements as changeable rather than "chiseled in stone." This flexibility often is helpful later on when the parties need to make trade-offs or tweak certain provisions to make the agreement meet their needs more fully.

Homework In-Between Sessions (Information Gathering): Information gathering, such as conducting an inventory of property, obtaining documents, or consulting with financial, legal, or other professional experts, is accomplished between mediation sessions. Your mediator can provide you with the names of reputable experts within King County and in other areas of Washington as well.

Parties usually work on "homework" assignments jointly or independently between sessions. Assignments may include organizing financial documents, preparing budgets, researching community resources (e.g., childcare, caregiving) or consulting with mutually selected CPAs, financial advisors, etc.

The Agreement: Once the parties have addressed and resolved all the issues, the mediator drafts their agreements into a detailed Memorandum of Understanding or, in the case of clients mediating a divorce or relationship dissolution, a Property Settlement Agreement. There is a follow-up session to review the document together to ensure that the agreements are accurately set forth. Occasionally, on seeing all the pieces of the agreement assembled for the first time, one party may wish to change a provision or two. If there is significant disagreement between the parties, the review session may turn into a mediation session or a follow-up mediation session will be scheduled to resolve the outstanding issue(s).

—Rina M. Goodman, JD
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