

SECOND ASIA PACIFIC MEDIATION FORUM

TITLE: BEST PRACTICES FOR TEACHING MEDIATION

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ABSTRACT

The Introduction to Mediation class is the foundation class for preparing future professional and volunteer mediators. A well-crafted class that integrates theory with practice will encourage students to apply their new skills in a variety of settings. Each instructor or trainer has his or her own perspective of what needs to be incorporated into the curriculum. The presenters will examine what are the best practices in teaching mediation.

The panel will draw upon the knowledge and expertise of experienced mediation instructors. Presenters will discuss their curriculum, share their syllabus and schedule, explain the role of coaches in role-plays and demonstrate or present simulations used in their mediation training.

UNIVERSITY OF SOUTH AUSTRALIA

MEDIATION THEORY AND PRACTICE

**Course Coordinator, Dale Bagshaw, Program Director,
Master of Conflict Management, Graduate Diploma in Conflict Management and
Graduate Certificate in Mediation
(dale.bagshaw@unisa.edu.au)**

Long Title	Mediation Theory and Practice				
Course ID	100293				
Short Title	Mediation Theory&Prac				
Area & Cat No.	WELF 5081				
Units	4.5	Career	PG	BUGE	No
School	SWP	Campus(es)	Magill	FOE	090513
Contact hours	W 7 (5 day block)	Mode	Internal	Final Exam	No

Prerequisite(s): Nil.

Aim

To advance the graduate participants' knowledge of theoretical concepts and skills underlying a range of approaches to mediation in a variety of settings.

On completion of this course students should be able to:

- analyse conflict and identify knowledge, values and skills needed to effectively manage and resolve conflict
- explain the differences between principled and positional negotiation, or integrative and distributive bargaining
- analyse the impact of the legal, political, economic and cultural context on dispute resolution
- critically analyse the mediator's role and apply a mediation process or approach in a manner relevant to a specific client group and/or setting
- identify when mediation is appropriate or inappropriate as an approach to resolving conflict or disputes
- identify and analyse cross-cultural issues, power issues, language issues and ethical dilemmas in mediation
- distinguish between advocacy, mediation and therapy.

By undertaking this course, students will progress in the development of the following qualities:

Graduate quality	Body of knowledge	Lifelong learning	Effective problem solving	Work alone and in teams	Ethical action	Communicate effectively	International perspective
Indicative unit weighting	1.0	0.5	1.0	-	0.5	1.0	0.5

Syllabus

Conflict theory; competition and cooperation; conflict handling styles; principled and positional negotiation; dispute resolution processes; the mediation role; the legal, cultural, political and economic context of mediation; different approaches to mediation – problem-solving, transformative, narrative; strengths and limitations of mediation; the characteristics and functions of a mediator; pre-mediation and selective screening; third party impartiality and

neutrality; the mediation process, concepts and skills: analysing conflict; framing issues; generating options; designing intervention strategies to promote cooperation; resolving impasses; achieving fair outcomes; writing agreements; advocacy, mediation and therapy; postmodernism and mediation; language, culture and gender; power and empowerment; ethical issues and standards.

Teaching and learning arrangements

This course will be taught as a 5-day intensive using a workshop format. Full attendance is a prerequisite to passing. A combination of theoretical input, discussion, supervised role plays, analysis of videoed case material, reading and written assignments will be used.

Assessment

Mediation skill assessment	10%
<i>and either</i> 1 x 4500 word paper	90%
<i>or</i> 1 x 3000 word paper	60%
<i>and</i> 1 x 1500 word critical analysis of a mediation role play	30%

Textbook

Bagshaw, Dale, 2002. *Mediation Process, Concepts and Skills Training Manual*, University of South Australia.

References

Astor, H. & Chinkin, C. 2002, *Dispute Resolution in Australia*, 2nd ed, Butterworths, Sydney.

Bush, R., Baruch, A. & Folger J.P. 1994, *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition*, Jossey-Bass, San Francisco.

Boulle, L. 2001, *Mediation Skills and Techniques*, Butterworths, Australia.

Kruk, E. ed, 2000, *Mediation and Conflict Resolution in Social Work and the Human Services*, Nelson-Hall, Chicago.

Moore, C.W. 1996, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed, Jossey Bass, San Fran.

Winslade, J. & Monk, G. 2000, *Narrative Mediation: A New Approach to Conflict*, Jossey Bass, San Francisco.

Course coordinator: Dale Bagshaw

***THE MEDIATION PROCESS, CONCEPTS AND SKILLS
WORKSHOP PROGRAM
DAY 1***

9.00 a.m: Introductions and sharing expectations.
An overview of this course, reading and assessment.

9.30 a.m: CONFLICTS AND DISPUTES
How do you handle conflict?
Styles/strategies of conflict management.
Attitudes to conflict
Cooperation and competition.

10.30 a.m: Coffee/tea break.

10.45 a.m: APPROACHES TO DISPUTE RESOLUTION
Definitions of terms
Cultural issues
Conflict escalation.

11.00 a.m: THE PROCESS OF MEDIATION:

- definitions and approaches to mediation;
- mediator characteristics and functions;
- assumptions underpinning mediation.

12.00 noon: An example of mediation: a video.

12.30 p.m: LUNCH.

1.30 p.m: The mediation process :
ESTABLISHING THE FOUNDATIONS, SETTING THE CONTEXT: CREATING
STRUCTURE AND RESPECT.
Preparation for mediation - the mediator and the parties.

- Entering the dispute and contacting the parties.
- Selecting the mediator
- Preparing the physical context
- Screening for suitability
- Determining who is involved
- Representation and authority to settle
- Preliminary conferences
- Establishing a favourable climate
- Contracting to mediate and the mediator preamble.

2.15 p.m.: Video examples.

2.45 p.m: Coffee/tea break.

DESIGNING/MANAGING THE MEDIATION PROCESS

3.00 p.m: Causes of conflict - implications for hypothesising & intervention.

- 4.00 p.m.: Separate meetings - advantages and disadvantages.
4.30 p.m.: Co-mediation - advantages and disadvantages.
5.00 p.m.: Feedback on the day. Assignment of overnight reading.

DAY 2:

9.00 a.m.: SETTING THE AGENDA: DEFINING AND PRIORITISING THE ISSUES

- How to begin. Who goes first?
- Barriers to communication.
- Communication skills: attending, listening, paraphrasing, empathic responding, use of questions, assertiveness, dealing with strong emotions, reframing.
- Identification of interests and needs.

10.15 a.m.: Coffee/tea break

- Conflict maps.
- Framing issues to promote cooperation.
- Prioritising issues and setting the agenda.

11.00 a.m.: CREATING OPTIONS & ALTERNATIVES.

- How can you do what you want to do in the most effective way?
- Techniques for generating options
- Techniques for resolving impasses.

12.00 noon: Analysis of a video.

12.30 p.m.: LUNCH.

1.30 p.m.: ASSISTING NEGOTIATION AND DECISION MAKING.

Which option will best meet everyone's goals, needs and interests?

- *principled* versus *positional* negotiation
- preparation for negotiation – developing the BATNA
- techniques for balancing power
- developing principles, objective criteria and fair standards

2.00 p.m. : Role play or exercise

3.15 p.m.: Coffee/tea break.

3.30 p.m.: ENCOURAGING SETTLEMENT AND WRITING AGREEMENTS What constitutes a successful outcome?

IMPLEMENTATION, REVIEW AND REVISION OF THE AGREEMENT

4.30 - 5:00 pm: Feedback on the day. Assignment of overnight reading.

DAY 3:

- 9.00 - 10.30 am: Post-modernist approaches to mediation - Narrative Mediation (John Winslade and Gerald Monk) and Transformative Mediation (Bush and Folger) - small group activity with reporting back.
- 10.30 am - 10.45 am: *Tea/coffee break.*
- 10.45 - 12 noon: Video-analysis
- 12.00 - 1.00 pm: Differences between mediation, therapy and advocacy as conflict/dispute resolution roles. (Small group activity and reporting back).
- 12.00 - 1.00 pm: Video analysis.
- 1.00 pm - 2.00 pm: LUNCH
- 2.00 p.m. - 3.00 pm: Imbalances of power in mediation (domestic violence, workplace bullying etc). Gender issues and mediation.
- 3.00 p.m - 3.15 p.m: *Coffee/tea break*
- 3.15 p.m. - 4.30 p.m.: Video and analysis
- 4.30 pm - 5 pm: Screening for power imbalances and abuse - a role play.
Feedback on the day.

DAY 4:

PLEASE NOTE THE TIGHT SCHEDULE TODAY - PROMPT ATTENDANCE IS ESSENTIAL.

- 9.00 am - 9.15 am Preparation for role-plays
- 9.15 am - 4.15 pm: Supervised role plays in small groups (maximum of 40 minutes for each participant as mediator, including preparation, debriefing and feedback).
As there will be a maximum of 8 people in each small group there will be <4 different mediators in roleplays before lunch and <4 after lunch.

Suggestion -in each small group follow through with one role-play until the mediation is completed - change mediators at different stages of the process.

Tea/coffee break (15 minutes each) and lunch (40 minutes only) to be taken when ready.

- 4.15 - 5.00 pm: Debrief and discuss learning from the role-plays in large group

DAY 5:

- 9.00 - 10.15 am: Cross-cultural issues and mediation.

10.15 am - 10.30 am:	Tea/coffee break.
10.30 am - 11.00 am:	Small groups - special issues in for mediators in particular contexts - eg indigenous, workplace, industrial relations, family court, schools etc.
11.00 am - 12.30 pm:	Video viewing for the optional assessment.
12.30 pm - 1.30 pm:	LUNCH
1.30pm - 3.15 pm:	Large group role-play with feedback and analysis.
3.15 - 3.30 pm:	Tea/coffee
3.30 - 4.00 pm:	Ethical and other issues arising from the subject.
4.00 - 4.30 pm:	Review of assessment requirements Review and evaluation of the subject

1. ASSESSMENT:

Assessment will involve an assessment of your attendance record and participation in small group learning (10%) AND EITHER a formal written assignment of 4,500 words (60%) and a 1500 word critical analysis of a videoed mediation role play (30%) OR one major essay of 6,000 words (90%).

ATTENDANCE AND PARTICIPATION (10%)

Full attendance is a prerequisite to a pass in this course as there will be an emphasis on experiential learning. Participants will be expected to sign a morning and afternoon attendance sheet.

Assessment of your small group participation on Day 4 will be based on the following criteria

- Your ability to analyse your performance as a mediator at the end of the mediation, highlighting what you did well and what you could have done differently.
- Your overall ability to give constructive feedback to others on their performance as a mediator.

SOUTHERN OREGON UNIVERSITY

Mediation and Conflict Management Syllabus

Michael Belsky, Ed.D. & Jonathan Lange, Ph.D.

Welcome to "Mediation and Conflict Management," an introductory course in dispute resolution. The objectives of the course are, briefly, to: 1) acquaint you with an overview of the major theoretical approaches to dispute resolution, 2) enable you to understand the requisite knowledge of and perform the requisite skills in the mediation of disputes. A few *examples* of this knowledge base and skill set include: understanding the fundamental structure of mediation and negotiation; understanding how culture, gender and other factors might affect mediation; becoming aware of the ethical concerns and standards of mediation practice; being able to perform communication skills such as "reframing," "normalization," and "hypothetical agreement building;" being able to document and write mediated agreements. Completion certificate: This course meets the qualifications and minimum training requirements as set out by the Oregon Dispute Resolution Commission. Participants who demonstrate knowledge and competence in basic mediation skills will be awarded a certificate of course completion.

TEXTS: Slaikeu, Karl A. (1996). When Push Comes to Shove: A Practical Guide to Mediation Disputes. San Francisco: Jossey Bass. (This book is required for all students.)

Belsky, Michael. (2003). Introduction to Mediation and Conflict Management. A Reader Southern Oregon University

Graduate students are also to read the following. (It is optional for undergraduates.)

Kolb, Deborah M. & Assoc. (Eds.), (1994) When Talk Works: Profiles of Mediators. San Francisco: Jossey Bass.

EVALUATION:(Graduate students' system is outlined below.) For undergraduates only, grading is based on a "contract" system, with all assignments graded on a pass/no pass basis. That is, you choose the grade you want by passing the necessary requirements.

For undergraduates, to receive a "C" grade you must:

- a) attend class regularly and participate,
- b) pass the final exam, and
- c) complete the "Written Agreement" assignment

For undergraduates, to receive a "B" grade you must:

- a) attend class regularly and participate,
- b) pass the final exam,
- c) complete the "Written Agreement" assignment and
- d) complete the "Self-Evaluation" assignment

For undergraduates, to receive an "A" grade you must:

- a) attend class regularly and participate,
- b) pass the final exam,
- c) complete both the "Written Agreement" and "Self-Evaluation" assignments and

d) complete either 12 annotations or a research paper

GRADING (again, for undergraduates only): While grading of all assignments will be on a pass/no pass basis, we still expect that you will strive for excellence in each endeavor that you take on. This grading system turns over to the student an unusual amount of the responsibility for learning; that is, it's up to you to make these assignments meaningful and worthwhile. Should any of your work not receive a passing grade, your final grade will be lowered one full grade from the "contract" that you chose. For example, if you pass all the assignments, but fail the exam, you receive a "B" in the course. Similarly, if you pass the exam and two assignments, but fail on a third, you would receive a "B." We will attempt to make the criteria for passing assignments as clear as possible, presented in class in both written and oral form. Due dates will be announced in class. Clarification for certificate of completion requirements will also be presented. Also, please know that some of the best, hardest-working students choose a contract grade other than "A." We respect your choice.

EVALUATION AND GRADING (for graduate students): Graduate students are required to complete all assignments. (However, you will choose either the research paper or the annotations, not both). Your work will be graded on a 4.0 system (1.8 to 2.75 = C; 2.8 to 3.4 = B; 3.5 to 4.0 = A) and should be more thorough and comprehensive than undergraduates'. Graduate students' exam will have additional (and extensive) questions.

Percentage breakdown for graduate students:

Exam	40%	Written Agreement	15%
Research Paper or Annotations	25%	Self-Evaluation	20%

EXAM: For both undergraduate and graduate, the exam will be an essay, take-home exam. To pass, undergraduates must do "C" work. Due date to be announced.

ATTENDANCE: We expect that all of you will be here for every minute of every class session. The most important parts of the class happen in class. Missing more than half a day (total) constitutes a "no pass" for the attendance requirement. This would lower your grade and could nullify your certificate of completion. We take attendance very seriously; exceptions will be made only in extreme circumstances and we would rather not make them. Plan to be in class for the full time.

PARTICIPATION: We can not overemphasize the direct relationship between your effective participation and our entire workshop experience. That is, the success of this class will be in great part determined by how well you participate. It is critical that you effectively participate verbally and nonverbally. By this we mean that you listen attentively and with respect to anyone speaking and that you offer ideas, examples, and questions that aid the communication learning climates. You are expected to participate fully in all role plays.**ADDITIONAL NOTES**

1. Grades of incomplete (I) will be assigned if the criteria, as outlined in the school catalog, are met. You must request an "I" in advance, and you must have sufficient reason for that request.

2. All papers must be typed or computed, one and a half or double-spaced with reasonable margins, with attention paid to spelling, grammatical, and typographical errors. These should be minimized. (Please note: These types of mechanical errors are responsible more than any other single weakness that moves us to assign a "No Pass" grade.)

3. You should know now that it will be difficult for you to gauge your grade performance as we proceed. This is one of the consequences of the dates in this course.

4. Late paper policy: Late papers put us--as well as other students--in an awkward situation. Lateness is often met with extreme consequences outside academia. Still we realize that things do happen to cause lateness, so our policy on late papers includes the following: a) we may not accept them at all, but if we do, the paper's lateness must be cleared with us in advance of the time they are due, and you must have a good reason to request the extension, b) a few days is the maximum extension, c) they will be read in a cursory manner, with few to no comments other than a grade, d) the "grade will be "lowered" in some manner, i.e., a full grade for graduate students; to a low pass for undergraduates. (If the paper is already low pass, a late low pass paper fails.) Please try your hardest to avoid this situation.

5. If you miss a part of the seminar, it is your responsibility to find out everything that you missed (notes, assignment changes, etc.). Please do not ask us what you missed; ask a classmate.

6. Confidentiality: Much of our time in class will be in lecture-discussion and role-play. (We will also have a number of videotapes and guest speakers.) It is possible that in the course of discussion or role play, a student colleague will say something personally important and confidential. It is your duty to maintain confidentiality. These principles hold when talking with "real" mediation clients. In actual mediations, the confidential materials and communication events are not subject to disclosure in any judicial or administrative proceedings. (Exceptions are explained in ORS36.220 to 36.238. More on this later.) In sum, all confidential communication shared in class must not be discussed outside of class. You are invited to meet with either instructor should you want to discuss this.

7. Continuing Education: Graduate credit or certification from SOU meets the requirements for LCSW Continuing Education. Southern Oregon University is an approved provider (#04327) of continuing education hours for the National Board for Certified Counselors. The Oregon State Bar has approved the program for 40 CLE hours (35 practical skills or general and 5 legal ethics).

8. Information on the assignments follows and/or will be explained in class. Your "Written Agreement" assignment will be based on a role play, conducted in class, in which disputants actually reach an agreement. You will document that agreement. Other assignments are made clear below (Self-Evaluation, Annotations) and/or will be discussed in class.

SELF-EVALUATION ASSIGNMENT

Please answer each question below, either one at a time, or in a paper that at some point addresses all the questions. Approx. page length: 4-6 pgs.

1. What draws you to a class in dispute resolution? Were there any precipitating factors in your youth? Is there something about your (current or anticipated) job that motivated you to take the class? To what types of mediation are you drawn?
2. How would you characterize your "conflict style?" What did you advocate during the "Blue-Red" game? Are you more likely to avoid, accommodate, compete or cooperate? Do you use all four "styles" depending on the situation? How predominate is one over the

others? What do you gain and lose as a result of your style? How do others' feel about your style? How would this affect your mediation style?

3. When observing role plays, what did you observe? What does that tell you about yourself? (That is, what we observe is always in some ways a reflection of ourselves, and so what do your observations suggest about you and mediation and conflict management?)
4. With what parts of the class did you especially "resonate?" That is, what did you find yourself thinking that might help you evaluate yourself with regard to conflict management and mediation.
5. Based on past experience (if you have any), the class role plays, your reading of Slaikeu (and other ADR texts if you've read some) and any other relevant place from which you can draw, identify what you think are your (likely) strengths and weaknesses as a mediator. At what do you seem to be especially good? On what skills and techniques must you work especially hard at improving?
6. What opportunities might you create so that you can work on self-improvement? Honestly, how committed are you to create these opportunities?
7. What else should you add to more thoroughly fill out this self-evaluation as you analyze the relationship between you, mediation and conflict management?

ANNOTATIONS GUIDELINES - MEDIATION AND CONFLICT MANAGEMENT

Annotations are to be taken from academic journal articles. They present all pertinent bibliographic information, discuss contents, identify methods used (if relevant) and provide a brief evaluation. Each annotation should be approximately one full typewritten page, normal font and spacing.

All annotations **MUST** be on articles about some element of mediation, negotiation and/or conflict management. You should take up to **no more** than three different topical areas (e.g., children of divorce, cross cultural mediation, environmental disputes); you may focus on just one or two if you wish.

The three main journals that will always have articles include The Negotiation Journal, The Journal of Mediation Quarterly and The Journal of Conflict Resolution. Please be careful with these journals as they are in great demand; they serve a large number of students who use them regularly.

Additionally, you can flip through various communication journals such as Communication Monographs, Communication Education, Human Communication Research, or Journal of Applied Communication. You can also look at various psychology, sociology and business journals to find articles. Some of the business journals include Organizational Dynamics, Personnel, Group and Organization Studies, Academy of Management Review, Training, Journal of Applied Behavioral Science and many more. A strong psychology journal is Journal of Marriage and Family; there are others. Once you find an article to your liking, you may wish to use that article's bibliography to find related articles.

Another direct route would be to identify an area, and then use one of the library indexes. Ask

your reference librarian for help in using electronic indices. You could also start with an article cited in your text, and go from there.

Do not use the "abstract" from the journal cover or article first page, even though it is similar to your task.

You are not to use "popular" magazines (e.g., Psychology Today, Mademoiselle, etc.) While some of these have decent information, we want you to delve into academic texts.

Mediation and Conflict Management Schedule

40 Hour Program

Instructors: Michael Belsky, Ed.D. & Jonathan Lange, Ph.D.

**Coaches: Joanne Lescher, Leslie Lane, Kent Provost
& Fred Perloff**

Day One

8:00 - noon

Dilemma Exercise

Introductions and Seminar Overview
Dispute Resolution Theory and Perspectives
ADR Models (*Mediation Monthly*)
Definitions & Conflict Theory
Foundational Principles
The MACBE Model (*Conflict, Cooperation & Justice*)

Negotiation: Theory and Process

Cooperation vs. Competition
Zero-Sum Bargaining
Principles in Collaborative Negotiations
Interests vs Positions
Negotiation Strategies
Creating Options for Mutual Gain
Using Objective Criteria and BATNA
Syllabi: Requirements for Credit

1:00 - 5:00

Communication Skills and Techniques

Active Listening (Exercise) and Perception Check
Reframing and Use of Hypotheticals
Summarizing, Grouping and Ordering
Questioning, Confronting and Silence
Generalization and Normalization
Mutualization and Anchoring
Demonstrate (Michael and Jonathan) (*Family Housing, p.59*)
Role Play (Practice Communication Skills)
Mediation Is It For You? (Video)

Day 2

8:00 - noon

Communication Skills and Techniques

Acknowledge the Point and Dismiss and Redirect
Agreement in Principle/Building Blocks (“TAs”)
Creating Dissonance and Shifting the Focus
Metaphors, Analogies and Quotes
Non-verbal and Rapport Development
Demonstrate and Role Play (*Barking Dog, p. 73 or The Neighbor, p.73*)

1:00 – 5:00

Dispute Resolution Mythology
Benefits of Mediation
Mediator Responsibilities
The Mediation Model (p. 32 & Slaikeu, pp. 285-290)
Appropriateness For Mediation
Guidelines for Mediating
Agreement to Mediate, Confidentiality & Reporting Requirements
Communicating With Attorneys
Ground Rules and Safety Concerns
Impartiality and Neutrality
Responding to Uncooperative Behavior
Arranging The Meeting Space (Slaikeu, Chapter 5)
Names (Video) Discuss
Role Play Instructions & Guidelines for Co-Mediators
Telephone Interview Skills
Telephone Interview (p. 40)
Demonstrate and Role Play
Debrief and Evaluate

Day 3

8:00 - noon

The Mediation Process

Cross-cultural & Gender Awareness
Building Trust (pp.17-18)
Responding To Uncooperative Behavior
Mediator Opening Statement & Check List
Demonstrate and Role Play an Opening Statement
Debrief and Evaluate

1 - 5:00

The Mediation Process

SOS Model (Slaikeu, p.137)
Demonstrate and Role Play Conflict Grid (pp.23-44)
Smoking in the Work Place (p.59) or Wedding Flowers (p.74)
(Fact Finding)
Debrief and Evaluate
Hon. Rebecca Orf, Jackson County Courts
Mediation in the Courts & *Justice 2020 Report*

Day 4

8:00 - noon

The Mediation Process

Caucusing
Assessing Options for Settlement (p. 61)

Document Agreements

Testing and Evaluating Agreements

Demonstrate and Role Play Documenting Agreements

Debrief and Evaluate

Conflict Between Department Manager and a Salesperson (pp. 77-78)

1 - 5:00

Mediation Topics

Balancing Power

Resolving Impasses

Demonstrate, Role Play & Document (*Real Estate or Property Line*, p. 73)

Debrief and Evaluate

Mary Miller, Executive Director, Mediation Works, Jackson County

Day 5

8:00 - noon

Mediation Topics

The Transformative Model

Controversial Issues in Mediation

Power, Control and Abuse

Alcohol and Drug Abuse

Reporting Requirements (Child Abuse Reporting Form, p.44)

Demonstrate and Role Play (*Car Dealership and Car Owner*, p. 89)

Debrief and Evaluate

Working Lunch (Pot Luck)

Restorative Justice Program

Victim Offender Mediation (Video)

Joanne Lescher: Victim Offender Mediation

12:00 - 4:00

Mediation Ethics and Practice

Demonstration Role Play (*Cultural Diversity*, p. 79 or *Right to Die*, p.74)

Debrief and Evaluate

Interacting with the Courts and Attorney Review

Oregon Mediation Association Core Standards of Mediation Practice

Ethical Issues and Legal Issues Regarding Best Practice

Statutory and Regulatory Materials

Careers in Dispute Resolution

Confidentiality Legislation

Mediation Success Stories

www.crinfo.org

Professional Organizations – Association for Conflict Resolution, Oregon

Mediation Association, Association of Family and Conciliation Courts, etc

Evaluation

Certificates of Completion

BASIC MEDIATION SKILLS WORKSHOP

Four-day Programme

Course Outline and Requirements

Instructor: Prof Lim Lan Yuan JP (email:limkly@singnet.com.sg)

Aim of Workshop:

The purpose of this four-day mediation skills workshop is to provide the necessary training for those who need to acquire basic skills in mediation. It will focus on the theory and practice of mediation. Topics covered include the stages of the mediation process, preparation for the mediator, communication skills and techniques of mediation including identification of common ground, breaking impasses and ethical issues for mediators. The emphasis in this workshop is on skills training.

Assessment:

Participants will be introduced to the practice of mediation in Singapore and will have the opportunities to practise the process and skills in a number of mediation simulations. They will be assessed on their performance at these simulations. At the end of the workshop, participants will be required to undergo a written two-hour assessment to test their basic understanding of the role and functions of mediators.

Background Reading:

Astor, H & Chinkin, C M (1992) *Dispute Resolution in Australia*, Butterworths, Australia

Brown, Henry J & Marriott, Arthur, L (1993) *ADR Principles and Practice*, Sweet & Maxwell, England

Folberg, J & Taylor, A (1984) *Mediation: A comprehensive Guide to Resolving Conflicts Without Litigation*, Jossey-Bass Publishers, San Francisco

Lim, L Y (1996) Impact of Cultural Differences on Dispute Resolution, *Australian Dispute Resolution Journal*, 7(3), 197-204

Lim, L Y (1997) *The Theory and Practice of Mediation*, FT Law & Tax Asia Pacific, Singapore

Lim L Y (1998) An Analysis of Intervention Techniques in Mediation, *Australian Dispute Resolution Journal*, 9(3), 196-205

Moore, Christopher W (1986) *The Mediation Process – Practical Strategies for Resolving Conflicts*, Jossey-Bass Publishers, San Francisco

FOUR-DAY MEDIATION SKILLS WORKSHOP PROGRAMME

Day One Morning

INTRODUCTION TO MEDIATION MOVEMENT

Various processes of dispute resolution

- formal and informal
- public and private
- traditional process - litigation
- arbitration - usual alternative

New processes

- informal and consensual
- rely on negotiation/mediation
- known as Alternative Dispute Resolution (ADR)

Mediation movement

PRACTICE AND APPLICATION

Mediation has been applied in various areas:

- Court mediation - court based or annexed/mandatory or non-mandatory
- Commercial mediation eg construction, information technology
- Community mediation eg neighbourhoods
- Peer mediation eg schools

Continuum of dispute resolution processes

- negotiation
- conciliation/mediation
- expert appraisal
- mini-trial
- adjudication
- arbitration
- litigation

Advantages and disadvantages of mediation

NATURE OF DISPUTES

Definition of conflict

More about conflict

Why conflict occurs

- actual grievances
- misunderstanding
- non-communication
- wrong communication
- misconception
- instigation
- sense of righteousness
- grievous emotional hurt etc

Day One Afternoon

NEGOTIATION PRINCIPLES

Core elements of negotiation

- a verbal interactive process
- involving two or more parties
- who are seeking to reach an agreement
- over a problem or conflict of interests between them
- in which they seek as far as possible to preserve their interest but prepared to adjust views and positions in the joint effort to achieve agreement

Positions versus interests

Negotiation strategies

Characteristics of competitive negotiators

Characteristics of co-operative negotiators

Negotiation Exercises

Day Two Morning

WHAT IS MEDIATION?

The process by which the disputing parties are assisted by a neutral person (mediator) or persons (co-mediators), to define the issues in dispute in order to develop options and alternatives and reach a consensual settlement that will accommodate their needs

What is not mediation?

Characteristics of mediation

PHILOSOPHY OF MEDIATION

Concept of empowerment

What mediation hopes to achieve

Objective in mediation

Mediation goals

THE MEDIATION PROCESS

Stages of mediation

Opening stage

Forum stage

- joint session
- private session

Problem-solving stage

Settlement stage

Demonstration of a mediation process

Day Two Afternoon

MEDIATOR'S OPENING STATEMENT

- Introduction
- Ensure authority to settle at the mediation table for all parties
- Explain what mediation is about
- Explain the procedure in mediation
- Establish rules of courtesy
- Obtain commitment to proceed

Importance of effective opening

Exercises in Opening

Caucus or private meetings

What is a caucus?

When to call a caucus?

How to call a caucus?

Role Play I

Debriefing

Day Three Morning

ROLE OF MEDIATOR

Establishing trust and rapport
Fact finding and isolation of issues
Creation of options and alternatives
Negotiating and facilitating settlement etc

TECHNIQUES OF MEDIATION

- establishing trust
- identifying the real issues
- helping the parties to save face
- keeping outburst under control
- reality testing
- creating doubts as to the viability of positions
- striking at the relationship
- highlighting the advantages of settlement
- breaking impasses etc

Mediation approaches

- Facilitative
- Evaluative
- Directive etc

Day Three Afternoon

MEDIATION SKILLS

Understanding importance of communication

Listening skill

- Passive Listening
- Active Listening

Questioning skill

- Open questions
- Close-ended questions

Non-verbal language
Reframing

Summarising
Counselling skill

Role Play II

Debriefing

Day Four Morning

FUNCTIONS OF MEDIATOR

Procedural functions
Substantive functions

USE OF CO-MEDIATION

Advantages and disadvantages
Practice guidelines

CULTURAL ISSUES

REQUIREMENTS OF A GOOD AGREEMENT

PREPARATION FOR MEDIATION

ETHICAL ISSUES

Standards of practice
Ethical duties of mediators
Common ethical standards

Day Four Afternoon

CASE STUDIES AND DISCUSSION

Role Play III
Debriefing

CONCLUSION

- Mediation can be seen to achieve important societal goals
- Can bring out intrinsic good and character of individuals
- Can produce satisfaction to parties through reframing conflicts as mutual problems and finding win-win solutions
- With changed and better social attitudes, society as a whole will become a better place to live and work in

The Use of Role Playing to Facilitate Learning

No matter how much reading and observing the trainees undertake, a useful way to develop mediation skills is by using them in actual interpersonal situations. Role-plays are ideally suited to provide the necessary experience although it requires considerable demands of the trainer. The interaction with parties, whether in joint or private mediation sessions, helps the trainees to appreciate and understand better the needs and wants of the parties concerned and how they actually feel or view their problems. Role-plays have the potential to improve the learning and practice of mediation skills and techniques.

The role-play places the trainees in a situation which imposes similar types of constraints, motivations and pressures that exist in the real world. Through role-plays, trainees learned by listening, watching, doing and being coached in what they do. Through this reflective process, not only did they apply what they had heard and learned from lectures, books and demonstrations but when they performed an action that was part of the actual conflict situation, they also learned, by reflecting themselves, and with their instructors, how the action went.

The use of role-plays brings home to trainees that some aspects of behaviour that can be developed as an essential part of the mediation skills such as the building good listening and questioning skills, establishing rapport and trust, and the ability to connect with people at a human level through the expression of empathy, warmth and sincerity.

Writing Up the Role-play

An important requirement in writing the role-play is to simulate as closely as possible the actual events, together with the behaviours exhibited and the arguments raised during the mediation session. If a dispute was a highly emotional one, it is essential that such behaviours should be displayed by the party in the role-play. An example of a script is given in the Appendix. Three separate scripts have been written, one each for the mediator, the shop's representative and the customer. For each of the parties, a further note was given together with instructions for an appropriate behavioural stance to be adopted during the mediation. Each role-play is structured to bring out at least one lesson in mediation skills and techniques.

Appendix - Scripts for Role-plays

Script for Mediator

A customer purchased a burglar alarm system for \$6,500 and paid a deposit of \$1,600. Before the installation, the customer expressed dissatisfaction with the system and asked for a full refund. The shop refused the refund. You are asked to mediate in this dispute.

Script for Shop's Representative

You represent a security firm and have gone on a house visit to introduce the company's product, namely, burglar alarm systems, and managed to get the customer to sign a contract for the installation of a system for \$6,500. A deposit of \$1,600 was received.

Three days later, the customer called to ask for a refund, saying that the system was not what she wanted. The customer wanted a system in which, in the event of an emergency, the alarm would go straight to the police rather than through the shop's central monitoring system.

Instead of talking calmly, the customer shouted and accused the shop of cheating. Subsequently, she kept writing to and calling the shop. Because of the harassment, the manager of the shop decided not to refund her deposit but to ignore her calls.

In your view, you did not force the customer to purchase. Because of the argument, the shop has yet to install the alarm system. Since the customer does not want it, the shop will want to retain the deposit. This is clearly stated in the purchase order.

Additional Notes to Shop Representative

Although the shop has not installed the alarm system, you have drawn up the necessary installation plan at the first visit, and, in particular, at the second visit to the customer's house. You note, however, that the customer is not an easy person to deal with. You are reconsidering whether you would want to deal with such a customer who is unlikely to be satisfied with anything. You are therefore prepared to refund some, but not all, of the deposit. You may consider, a refund of up to \$1,000. You will, however, consider the refund only if the customer persists, and when other alternatives have been exhausted.

Appropriate stance to adopt at mediation

Your approach at the mediation is professional. You remain calm and firm. Your stand at the mediation is to maintain the status quo, meaning that, since contract has been signed, you will have to retain her deposit if the deal does not go through.

Even if the customer is angry and perturbed, you will remain calm and let the customer express her views. You are not antagonistic.

Script for Customer

A representative from the security shop came on a house visit to promote its products. Having been briefed on the system, you signed a contract for the installation of an alarm system for \$6,500.

Three days later, after looking into more detail at the literature about the system, you realised too late that the alarm system needed to go through the shop's central monitoring control system rather than being linked directly to the police. This would delay their arrival in case of a burglary. You therefore called the shop to ask for a refund, saying that the system was not what you wanted.

You felt cheated and told the shop so. Thereafter, because of your extreme anger, you started writing to and calling the shop but received no response. This further aggravated the situation.

You feel that the company is not responsible and therefore cannot be depended upon to provide good service should there be an emergency. You eventually lodged a claim for a refund of \$1,600.

Additional Notes to Customer

You have lodged a claim but friends have told you that it would be difficult to back out now that a contract has been signed. You are not hopeful of receiving the full refund but nonetheless you are not giving in as yet. If, eventually, you are not able to succeed, you are prepared to receive a lesser amount but not less than \$1,000. This is because you genuinely feel that the shop has cheated you by not telling you of the control system.

Appropriate stance to adopt at mediation

At the mediation session, you will continue to raise your temper and abuse the security firm. You will shout if need be as you are very angry with the shop.

You will interrupt the shop representative if you find any discrepancy in the description of what has transpired. For example, if the shop's representative mentions that the installation plan of the house is made at the first visit to the house, you will start shouting and accusing him of lying. This is because you know that the plan was made only on the second visit to your house, and even then he just took a cursory look. You therefore cannot trust the shop to do a good job.