

Skills of the mediator

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25 July, 2017

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Getting prepared for mediation session.

Setting the room

- Safe and cozy
- No intrusion from third persons, disturbance by others and moral attacks by either a mediator or by the opponent
- Relaxed, peaceful, no unnecessary stress
- Transformation of the room

Getting prepared for mediation session.

Setting the room

- “How would I feel if I would enter this room for the first time to proceed with mediation?”
- A mediation session is not a process of psychotherapy
- A mediation session is an effective working round
- The environment – fit for writing, checking the documents, especially in business mediation

Getting prepared for mediation session.

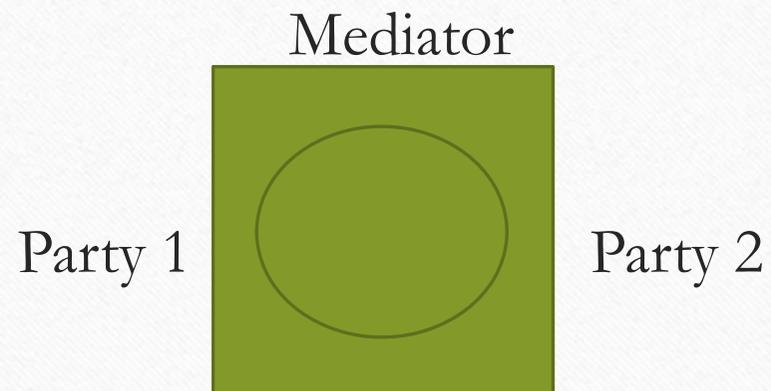
Setting the room

- With or without a table?
- In a circle or no?
- Depends on type of dispute in a family / business / other mediation
- Practical or emotional?
- Safety / barrier created by presence of a table

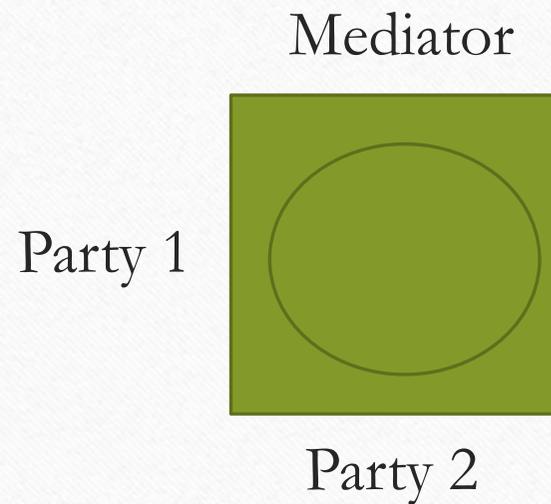
Shape of the table

- A grounded belief - a round shaped table is the most suitable for settlement of disputes
- No statistics available about proportion of settlement agreements concluded at the round shaped, and other shaped tables
- Other shapes are fine
- Eye contact
- Comfortable distance

Shape of the table. Square 1



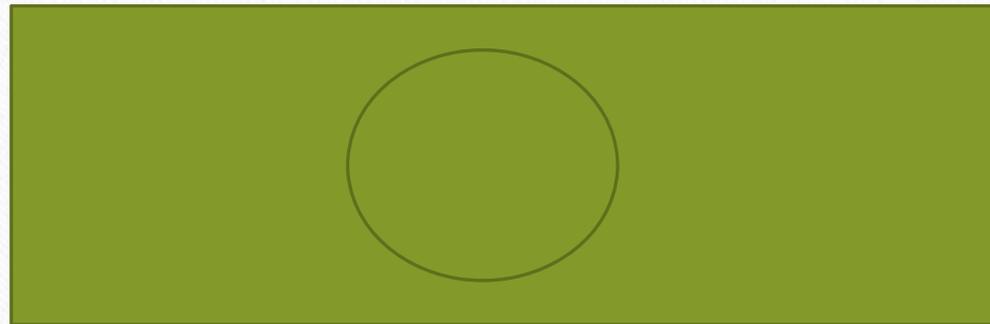
Shape of the table. Square 2



Shape of the table. Rectangular 1

Mediator

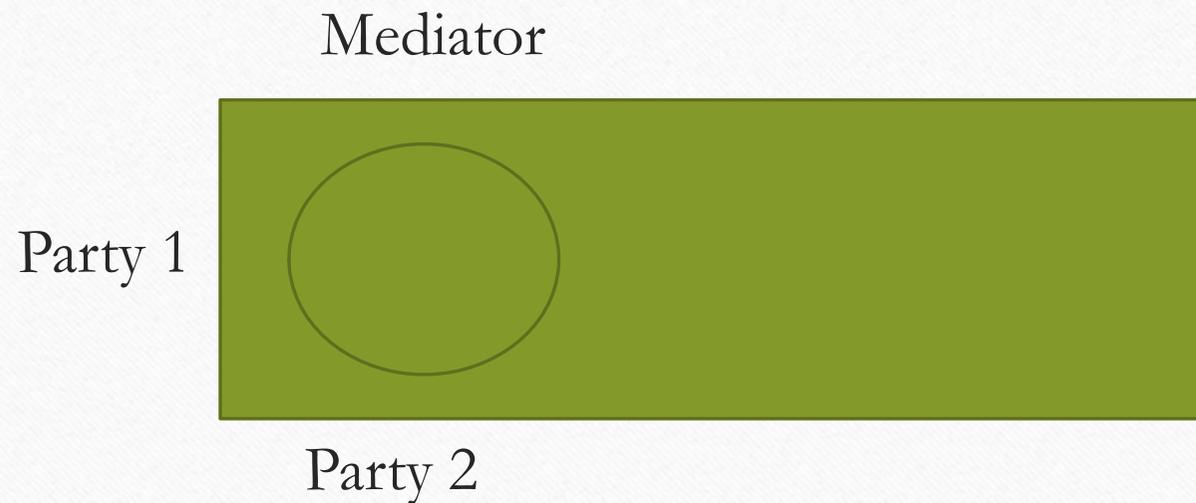
Party 1



Party 2

(Aggressive)

Shape of the table. Rectangular 2



More and less comfortable seats

- Are all seats in the room equally comfortable?
- Where would you like to sit to feel safe?
- Where should a mediator sit? And the parties?
- Who chooses seats?
- What do the mediator see from his/her seat? What do the parties see from their seats?

Chairs

- Stable
- Comfortable or at least – normal
- How many chairs in the mediation room?
- Sit physically in each chair of the parties and feel the place

Place

- Light or dark
- Noisy or quite
- Ascetic or posh

Supplementary materials

- Everything for effective work
- A paper, pen, blackboard, flipchart desk, whiteboard markers, highlighters, post-it stickers, etc.
- Notes and tools
- Visual materials
- Water, coffee, tea, snacks, etc.

Form of the questions

- Questions = means of communication
- Questions shall be used strategically, to structure and control conversation in accordance with the questioning technique
- Ask:
 1. To motivate the parties to talk,
 2. To tell,
 3. To generate ideasmeanwhile staying in the borders of the main subject of the dispute

Open questions

- An opposite to the closed questions
- Open questions invites and motivates the parties to tell more, to disclose and share their thoughts, feelings and intentions
- “Could you please tell me more about ...?”
- “What need to happen so you could gain back the trust to your business partner?”
- “Have you thought about possible solutions here?”

Closed questions

- Examines, confirms, precises and closes the story told
- Closed questions aren't worse than open questions
- Closed and narrow questions do not motivate to continue talking (if only the party to the mediation is not as personality a pure blabbermouth) □
- “When you signed a contract?”
- “What color was that car?”
- “Did you submit a claim to the court or no?”

Questions

- In the beginning of the process – important to learn as much as information as possible
- In other phases – closed questions, to precise facts, to discipline the party in mediation who is too vague in the answers, evades answering or in too philosophical mood

«Why» question – sounds aggressive

- Tone of voice, attitude, mood, body language, intonation
- In understanding and non-judging way: “Could you please tell me more why did not decide to visit your child once a year?”
- In nasty, evaluative tone technically correct question: “Could you please tell me more about this case?”

Questions

- In the aspect of asking questions the work of mediator is similar to the work of journalist
- A good question can help the respondent to think about themes, about which the person haven't even thought before in the heat of the dispute
- For the mediator this task is very heavy especially if the subject of the dispute is complicated and connected with a list of complicated facts, which the mediator must learn in a limited period of time

Stay with the subject

- If the party speaks about subject A, don't ask about B
- However – there are exceptions

Notice the subject

- Notice and hear the moment, when the party repeats some word, phrase or subject 2, 3 or even 4 times
- Sending of strong signal she/he wants to talk about this more and wants to be helped to be disclosed
- “I noticed that today you mentioned twice [the subject X]. Would you like to tell me more about this and what [the subject X] means to you?”
- The purpose of such question is:
 1. to help to the party to realise the posed question; and
 2. to discover the meaning of it; and
 3. to help to the opponent to hear wishes, feelings and aims of the first party.

Active listening

- Although the sound locator of the human – ears – are placed externally, and technically it is possible to hear and listen even not looking at the source of sound – the to the speaker or being rather distant, nevertheless it is important for the mediation process to demonstrate to the parties in a reasonable amount that they are really heard not only in the audial level of sounds, but also in the level of understanding

Active listening

- The purpose of the active listening – to correctly perceive inner condition, needs, feelings and wishes of the partner in conversation, which mostly are expressed in a rather hidden and indirect way
- These messages must be paraphrased to share with the partner of conversation his world of feelings
- Active listening = letting the partner in conversation talk, showing gestures, facial expression and body language or mutual understanding, at the same time remembering and respecting the feelings of the opposing party in mediation

Reflecting in mediation

- In a reasonable quantity and frequency
- Take into account type of the dispute and personalities of the parties
- If the tempo of mediation is slower the mediator can manage to reflect almost after every second sentence

Reflecting in mediation

- Statement: “I want to have peace and silence when I am home.”
- Reflection: “So you say that peaceful atmosphere is important for you.”

- Statement: “I don’t want to continue this agreement because I am constantly cheated.”
- Reflection: “Do I understand you right that you have lost trust into your business partner?”

Reaction of the party to the reflection

1. The party positively approves that the mediator has understood correctly what was told by the party.
2. The party negatively responds by saying that that is not what was just told. In this case the mediator should try to clarify the contents of information by asking that party to explain a little more for better understanding of the story.
3. Perplexity showed by the both parties. This is typical to fast speed, precise, business-like mediation processes, when it is almost impossible for the mediator to find the right time for reflection of said information and posed emotions.

Reflection

- Not only to contents, but also to emotions
- “I see that you are very sad now.”
- “You have a lot of anger about this matter.”
- Naming emotions can help the parties to understand better the situation

Joint and separate sessions

- Various opinions
- If the mediation process is begun with the joint meeting, then the parties strengthen their confidence into neutrality of mediator and equal attitude towards both parties
- The introductory session is especially important because the first impression about the mediator and his abilities to conduct the process of mediation is established.

Joint and separate sessions

- When the mediation process is opened by separate sessions, there is much higher probability that both parties will disclose without delay to the mediator their wishes, aims and interests
- The risk of separate sessions is connected with the fact that the opponent can feel and demonstrate distrust into the mediator and start questioning his neutrality, not knowing what issues the mediator has discussed with the opponent in the absence of the other party

Joint and separate sessions

- Joint and separate sessions supplement to each other, not exclude
- Application of just and only separate session could be useful when both or any of the parties would have proposed a clear precondition that it's participation in mediation is only realistic when both parties will never sit in the same room.
- Individual sessions, called also shuttle mediation is organized by the mediator in equal amount and length with both parties
- When conducting separate sessions the mediator must make sure that he is able to maintain his impartiality and neutrality

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Thank you!

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