

MEDIATION PRESENTATION OUTLINE

- A. Ohio Civil Rights Commission – brief history
 - 1. a state agency created on July 29, 1958.
 - 2. our mission – eliminate discrimination
 - 3. our offices – currently five and one satellite office
 - 4. number of cases we have per year
 - 5. responsibilities – investigating and making final recommendations based upon the evidence obtained
 - 6. types of closures – PC, NPC, CACO, CA, WOC w/Settlement, WOC – grant, Administrative closures
 - 7. 1998 – pilot mediation program began due to increase in cases
 - 8. success of pilot program
 - 9. statewide mediation program established
 - (a) number of mediators currently
 - (b) Who are customers are (the Parties to the dispute)
 - (i) Charging Party
 - (ii) Respondent
 - (c) What we tell our customers upfront regarding mediation
 - (i) voluntary
 - (ii) free
 - (iii) right have attorney present
 - (iv) advocate/support persons
- B. Before scheduling a mediation
 - 1. How does it come about?
 - (a) Initial contact – by phone or in person (we get charge first)
 - (b) Accused side is contacted and given mediation option
 - (c) Both sides must agree to mediation of their own free will
 - 2. Where is it held?
 - (a) Neutrality of place – keeping the playing field even
 - 3. What to be sure the Parties know about mediation BEFORE they decide whether or not they want to mediate
 - (a) Mediator is not a judge
 - (b) Mediator does not give opinions
 - (c) Mediator is neutral
 - (d) Mediator facilitates the discussion that lends itself to resolution
 - (e) Each person in the dispute gets to speak and be heard
- C. Before the Mediation Session
 - 1. Meet with each party via phone or in person
 - (a) Introduce yourself
 - (b) Explain mediation process and their role
 - (i) They will get a chance to state their side of the dispute.
 - (ii) They have a “captive” audience
 - (c) Explain your role and your neutrality as the Mediator
 - (i) Reiterate your neutrality
 - (ii) You will assist both sides
 - (iii) You will facilitate the discussion that lends itself to resolution
 - (d) Make each person feel comfortable with you
 - (i) Each person needs to feel that they can trust you
 - (ii) Be sure to answer all of their questions
 - (e) Setting the date, time and place
 - (f) Confirm mediation in writing to each person involved

D. Mediation

1. The Parties to the dispute arrive
 - (a) How to begin
 - (b) Introductions
2. To start - Joint Session or Private Caucus?
 - (a) I meet privately first: puts people at ease; gives them some space before we begin
3. Joint Sessions – pros and cons
 - (a) Ability to observe how the Parties react to each other
 - (i) Observe body language
 - (ii) Physical movements, Sounds/noises
 - (iii) Determine atmosphere/feelings: friendly, hostile?
 - (b) Ability to get factual differences cleared up immediately
 - (c) Ability to get clarification from one side for the understanding of the other side (reframing)
 - (d) Imbalance on the playing field: Dominance by one side
 - (e) Sending veiled threats or tearing someone down is hard to stop before the message is out there for everyone to hear
 - (f) Close proximity of very angry people has potential to rise to physical violence
4. Caucuses (Private Sessions) – Pros and Cons
 - (a) Pro: ability to get people to open up to you and be more forthcoming
 - (b) Pro: ability to get information that the person does not want the other side to know
 - (c) Pro: ability to give information without making one feel bad for not knowing it
 - (d) Pro: people tend to calm down and become more reasonable when they are not in the presence of the person with whom they are in dispute.
 - (e) Con: can give an appearance of not being neutral if the mediator spends more time with one person than another
 - (f) Con: leaving the other person alone, the mediator does not know if they are calling and talking to people outside the mediation about what is going on inside the mediation.
 - (g) Con: Party that is alone may feel as though they are wasting time if they have to wait awhile to talk with the mediator again
 - (h) If one or both parties are highly emotional, it is best to separate them, at least temporarily. Need to calm down and become more objective
 - (i) If both Parties are working well together and you are making progress, there may be no need to caucus.

E. The Qualities of a Good Mediator

1. Be open and approachable
2. Be friendly and personable – kind and courteous; like a friend
3. Be fair and impartial; keep the playing field even for both sides
4. Be non-judgmental – do not give an opinion on either sides position
5. Be patient – as long as it takes!
6. Excellent communication skills
 - (a) ability to reframe comments correctly so that one side may finally understand what the other side has been trying to tell them
 - (b) make sure each person feels they are on equal footing with every other person in the room
7. Excellent listening skills
 - (a) Ability to not just hear what is being said, but what is not being said and what is getting lost between the lines – figure out what the real issues are that are just below the surface
 - (b) Each person’s perspective is their reality – that goes for ALL of us

F. Role of the Mediator

1. Underlying issues
2. Common interests
3. Potential consequences of not resolving

G. What the Parties will hear

1. Something new
2. Factual issues/ramifications
3. Feelings/ramifications

H. What a Mediator should keep in mind

1. Courtesy
2. Kindness
3. Professionalism
4. Flexibility
5. Creativity (ability to think outside the box)
6. Three sides to every story
7. Do not assume that an issue will be easy or difficult to resolve
8. Encourage positive comments – they diffuse anger and tears
9. Be prepared for anger and tears – they are expressions of legitimate feelings
10. Always maintain your neutrality

I. The Bottom line

1. Everyone wants to be heard
 - (a) Listen carefully
 - (b) Acknowledge what was said
2. What does the consumer want to resolve their complaint?
 - (a) Can the other side do what the consumer wants?
 - (b) Will the other side do what the consumer wants?
 - (c) If the answer to either a or b is NO, can a compromise be reached

J. Mediation Results

1. Resolution
 - (a) put terms reached in writing
 - (b) congratulate each person on reaching agreement
 - (c) thank each person for their hard work
 - (d) THEY reached resolution, not you
 - (e) Reiterate any positives that one side may have said about the other
2. Impasse
 - (a) allow them to leave the premises separately
 - (b) thank them for coming in good faith
 - (c) reiterate any positives that were said
 - (d) wish each person well
3. People are usually very grateful for your kindness whether or not the dispute is resolved.

K. Benefits of Mediation

1. One less burden for each person to focus on
2. Ability to preserve continuing relationships
3. Disputes are settled early on instead of dragging on
4. Alleviates the stress brought on by the dispute
5. Saves the Parties time and money
6. Ability to informally explore settlement options
7. Improve everyone's understanding
8. The parties control the outcome