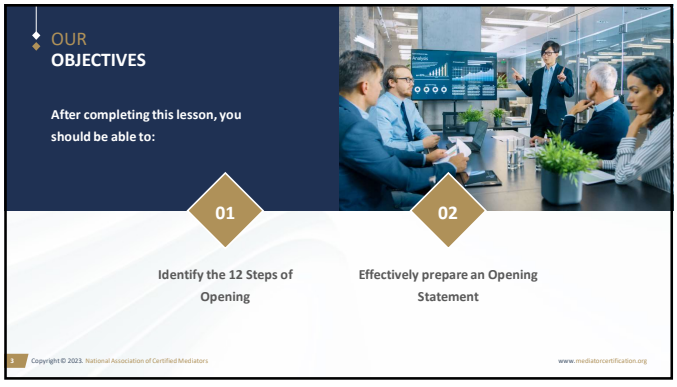

National Association of Certified Mediators
Lesson 4
THE OPENING
STATEMENT
Copyright © 2023. National Association of Certified Mediators

1


THE PURPOSE
OF THIS LESSON
The purpose of this lesson is to teach you how to "create safety and hope for disputants through employing" the opening statement.
2
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

2


OUR
OBJECTIVES
After completing this lesson, you should be able to:
01
Identify the 12 Steps of Opening
02
Effectively prepare an Opening Statement
3
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

3

INTRO TO
OPENING STAGE

NOTE 1:

This stage sets the tone for the mediation as an informal, participatory process in which first names are used, individuality is respected, and confidentiality is established as an essential precondition for open discussion.

NOTE 2:

(It should be noted here that some cultures are more formal than others and first names may not always be an acceptable form of address. Be sure to ask the participants what form of address they prefer. This is an important opportunity for the mediator to show respect for the participants' cultural norms.)

Copyright © 2023. National Association of Certified Mediators

4

INTRO TO
OPENING STAGE

- After the disputants are seated at a table, the mediator introduces everyone, explains the goals and rules of the mediation, and encourages each side to work cooperatively toward a settlement.

5

THE
12 ELEMENTS

- **The Opening Stage is comprised of 12 vital elements. The opening sets the stage for all other phases of the mediation.**

6


12 ELEMENTS
OF AN OPENING
SEATING ARRANGEMENTS
THANKING
MEDIATOR CREDENTIALS
VOLUNTARY
1
The mediator arranges seating to create an environment conducive to open, honest dialogue. The mediator also makes safety assessments for seating.
2
The mediator thanks the parties for choosing to resolve their dispute through mediation. The mediator expresses feelings of gratitude to parties to show recognition for the parties' efforts.
3
The mediator may share his education, training, or experience to further create safety and hope for the parties.
4
The mediator explains to the disputants that participation in the process is their own choice or decision rather than because of external pressure or force.
7
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

7


12 ELEMENTS
OF AN OPENING
CONFIDENTIALITY
CAUCUS
MEDIATOR'S/PARTICIPANTS ROLE
PATIENCE WITH THE PROCESS
5
Expectation that anything done or revealed will be kept private.
6
The mediator explains that there may be a need for a private meeting with one side to clarify information, diffuse controversy, or break an impasse.
7
The mediator explains to the disputants that he/she is not a decision maker or legal adviser but rather a sounding board and facilitator. The mediator also explains that his/her role is to remain impartial and neutral throughout the session. The mediator explains that this is not his/her process but rather the process of the disputants. The mediator also informs the disputants that he/she will need the parties to help him/her understand their respective interests and positions. The mediator also informs the parties that the success of the mediation depends on their full disclosure. Finally, the mediator advises the disputants to keep an open mind.
8
It's a dance.
8
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

8


12 ELEMENTS
OF AN OPENING
AGENDA
LENGTH OF MEETING
AGREEMENT TO MEDIATE
GROUND RULES
9
The mediator describes each part of the mediation session to the parties to create trust and bring about understanding.
10
The mediator informs the parties of the time constraints of the mediation session.
11
A form signed by the parties, which outlines all of the above concepts to ensure that all parties have a clear understanding relating to the expectation of behaviors during the mediation session.
12
Normally, basic rules of procedure that are established during the opening. Common ground rules are that the parties agree to not interrupt one another and refrain from personal insults.
9
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

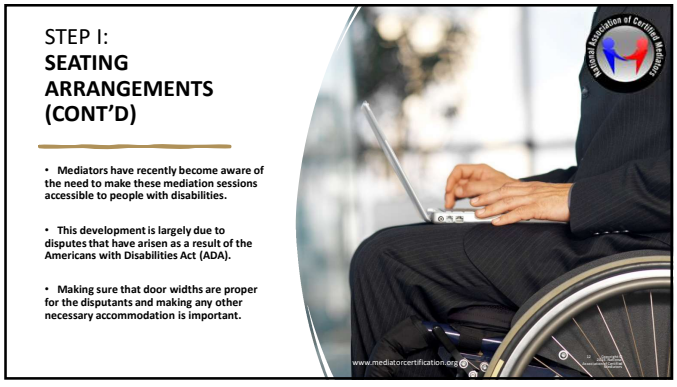
9


STEP I:
SEATING ARRANGEMENTS
• Seating arrangements should always be planned prior to the mediation session to ensure that this first most critical stage is executed without flaw.
• Christopher Moore, author of The Mediation Process, encourages mediators to manipulate spatial settings and seating arrangements to prevent conflict escalation.
• He defines environment as both "the physical distance between the parties and the mediator, and the way people's bodies are positioned in relation to each other."
• More specifically, he identifies four general categories of spatial relationships: intimate, personal, social, and public.
www.mediatorcertification.org
10
Copyright © 2023. National Association of Certified Mediators

10

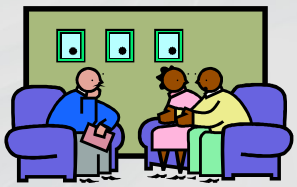

STEP I:
SEATING ARRANGEMENTS (CONT'D)
• He also cites a study that specifies the acceptable range—four to seven feet—of social distance between working colleagues as the model distance for formal mediation.
• In this view, mediators can follow a standard formula for engagement that is durable and proven.
• The mediator can maintain equal distance from disputants and thereby reinforce the idea that he is positioned impartially between opposing sides.
www.mediatorcertification.org

11


STEP I:
SEATING ARRANGEMENTS (CONT'D)
• Mediators have recently become aware of the need to make these mediation sessions accessible to people with disabilities.
• This development is largely due to disputes that have arisen as a result of the Americans with Disabilities Act (ADA).
• Making sure that door widths are proper for the disputants and making any other necessary accommodation is important.
www.mediatorcertification.org

12

STEP I: SEATING ARRANGEMENTS (CONT'D)



- The seating arrangement should also allow all the parties to see and hear each other, as well as the mediator.
- Many mediators choose to sit at the head of the table with the parties seated on either side.
- Some mediators may prefer a round table or even no table at all.

www.mediatorcertification.org

13

STEP I: SEATING ARRANGEMENTS (CONT'D)

- Last, the location should reflect the neutrality of the mediator.
- The setting of the mediation should be independent of the place of business or home of the disputants and/or their representatives.
- This is an important factor sometimes overlooked by legal practitioners who prefer their own conference rooms.

www.mediatorcertification.org

Copyright © 2023. National Association of Certified Mediators

14

STEP II: THANKING

www.mediatorcertification.org

- Disputants usually arrive nervous and anxious about the upcoming process.
- Thanking the parties for making a courageous decision to enter mediation is often soothing to disputants.

15

Copyright © 2023. National Association of Certified Mediators

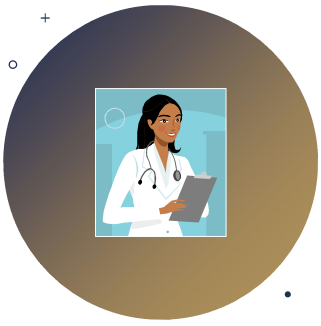
15

STEP II: THANKING (CONT'D)

- During this step is where the mediator does proper introductions and begins to establish rapport by using an icebreaker such as "how is the weather" or "did you have a hard time finding this location."
- Asking non-substance-related questions is a great way to begin to build rapport through finding a commonality from the very beginning, and it helps the mediator to obtain an initial indicator of emotional state and other things about a client.

 Copyright © 2023. National Association of Certified Mediators

16



STEP II: THANKING (CONT'D)

www.mediatorcertification.org

- At this point the mediator usually asks the parties if going on a first-name basis is permissible.
- The mediator makes sure that if he uses a proper name such as "Mr. Brown" for one party then he makes sure he keeps symmetry.
- For example, if one party wants more formal names—Mr. or Mrs.—then use it with both (all) clients to

 Copyright © 2023. National Association of Certified Mediators

17

STEP III: MEDIATOR CREDENTIALS

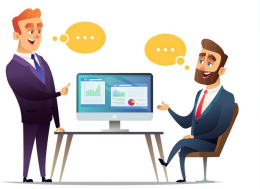
The concept of mediator credentials is the same as in the convening stage.

 Copyright © 2023. National Association of Certified Mediators

18

STEP IV:
VOLUNTARY

- In most private cases, the parties choose the mediator.
- In some jurisdictions where mediation is a mandatory incident to some type of lawsuit, the parties are still free to terminate mediation if it is not productive.
- No one can or will impose a settlement on the parties in mediation.
- Therefore, this must be explained thoroughly in the opening stage of mediation.



19 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

19

STEP V:
CONFIDENTIALITY

- Mediation is considered a private discussion.
- Normally, the only documents to be retained at the conclusion of mediation are the Agreement to Mediate and the signed Mediated Settlement Agreement.
- Frequently notes, evidentiary information, or case files are not retained by the mediator after the mediation is concluded.

20 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

20

STEP V:
CONFIDENTIALITY (CONT'D)

- The mediator agrees that he/she will not share information that is given to him/her in private without express consent.
- The mediator also agrees that he/she will not willingly testify on behalf of any party or submit any type of report on the substance of the mediation.
- Additionally, the mediator agrees not to discuss the substance of the mediation with outside parties.

www.mediatorcertification.org
21 Copyright © 2023. National Association of Certified Mediators

21

EXCEPTIONS TO CONFIDENTIALITY

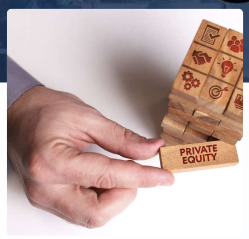
1. The mediator must explain all exceptions to confidentiality.
2. In unusual circumstances, a judge can order disclosure of information that would prevent a manifest injustice, help establish a violation of law, or prevent harm to public health and safety—for example, child abuse or elder abuse.
3. Generally, information concerning fraud and criminal activity or threats of imminent harm are not considered confidential in mediation and must be reported immediately to the appropriate officials.

22 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

22

STEP VI: CAUCUS

A caucus is a private meeting where the mediator meets separately with the disputing parties.



Most mediators and many divorce mediators use separate, private sessions from time to time.

These are either planned separate sessions, which are scheduled in advance, or spontaneous separate sessions, which are referred to as "caucuses."

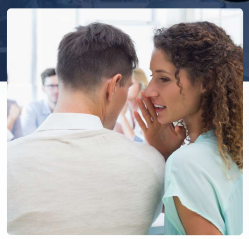
In business mediation, caucuses are used extensively by most mediators; whereas, in family mediation, most mediators use caucuses sparingly or not at all.

23 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

23

STEP VI: CAUCUS (CONT'D)

Planned separate are used for various purposes.



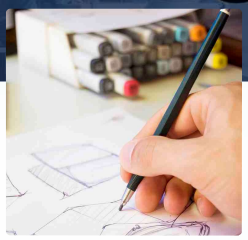
The mediator can empower a weaker party, assess negotiating flexibility, clarify each party's interests, and allow each party to vent.

Because the focus is on only one person at a time, the client tends to feel better understood, which results in increased rapport between the client and the mediator.

24 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

24

STEP VI:
CAUCUS (CONT'D)



Many times it is a good idea to give the noncaucusing party an assignment while meeting with the other party.

For example, ask the noncaucusing party to draft a list of needs that he would like to see met by the conclusion of the session.

This helps both of the parties feel that their needs are being met and that they are not being neglected by the mediator.

Copyright © 2023. National Association of Certified Mediators

25

STEP VII:
MEDIATOR'S/PARTICIPANTS ROLE

According to Stan Troy of Princeton Mediation Inc. in New Hope, Pennsylvania, a mediator's role is as follows:

1. Provide an overview of what will happen in the mediation.
2. Evaluate each party's ability to represent their own wants and needs.
3. Define the ground rules for open and honest communications between the parties.
4. Establish the parties' mediation goals and obtain agreement about ground rules to facilitate communication.
5. Explore and define areas of mutual concern and potential conflict.
6. Clarify the parties' position on important issues by encouraging each to realize and express what they want and care about.
7. Challenge unnecessarily limiting assumptions and identify creative options, thus eliminating blocks to creating resolution.
8. Recommend and assist with the selection of professionals and coordinate information they provide during the mediation process, ensuring your mediation goals are honored.
9. Draft a settlement agreement with the parties and consult with the attorneys who may finalize the documents with the court (if applicable).

Copyright © 2023. National Association of Certified Mediators

26

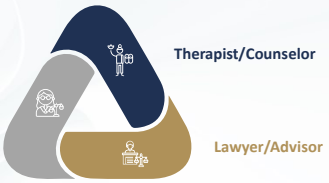
A MEDIATOR
IS A (N):

- **EDUCATOR** — Helps parties understand the process
- **GUIDE** — Orients parties in transition process
- **IDEA GENERATOR** — Adds creative options and breaks stalemates
- **TRANSLATOR** — Clarifies words and meanings
- **MESSAGE CARRIER** — Go-between for the parties
- **FACILITATOR** — Keeps mediation on track
- **FACE-SAVER** — Helps parties resolve with dignity
- **LIGHTNING ROD** — Diffuses anger
- **RE-BUILDER OF RELATIONSHIPS** — Supports mutual understanding
- **AGENT OF REALITY** — Assists parties assessing the practicality of options
- **COLLABORATOR** — Coordinates other professionals assisting transition

Copyright © 2023. National Association of Certified Mediators

27

A MEDIATOR IS NOT A:



Copyright © 2023. National Association of Certified Mediators

28

STEP VII: MEDIATOR'S/PARTICIPANTS ROLE (CONT'S)

The Prince County Family Service Bureau of Canada states:

STEP 1: The participants are responsible for the content of the mediation, the problems that are solved, and the solutions that are reached.

STEP 2: They design their own solution with the guidance of the mediator.

STEP 3: They owe duties of good faith, respect, courtesy, and disclosure of information to each other and to the mediator.

Copyright © 2023. National Association of Certified Mediators

29

STEP VIII: PATIENCE

- **Normalize the situation for the parties.**
- ***Normalize is a transitive verb which means to make something normal or return something to normal, or become or return to normal.***
- **In this regard, you want to communicate to the parties that a series of concessions will go back and forth between the parties.**

Copyright © 2023. National Association of Certified Mediators

30

STEP VIII:
PATIENCE (CONT'D)

- In addition, emphasize that all of their thoughts and suggestions will be respected, but they may not be implemented if there is not consensus on both sides.
- When the parties understand what is expected of them, they learn to trust the process of mediation.
- Finally, by ensuring the parties that it is a "normal" process to go back and forth exchanging proposals, this adds confidence and patience from the disputants.

Copyright © 2023. National Association of Certified Mediators

31

STEP IX:
AGENDA

- An easy way for the mediator to set the agenda is to have the parties complete an issue identification form prior to the mediation session.
- This form may be completed right before the mediation session or in the convening stage.
- *Issue identification is the action or an act of recognizing and naming a topic(s) for discussion or of general concern to the parties.*
- In addition to the instructions on the form, you may want to ask the parties to list the issues from the easy issues to the difficult issues; list the most urgent/important to least urgent /important
- Review the student manual

32

STEP X:
LENGTH OF MEETING

- Approximately 65% of mediations conclude in three hours or less.
- The Supreme Court mandated mediation in Conciliation Court for most cases.
- A survey of people using mediation in Conciliation Court was conducted. A total of 390 evaluations were completed.

33

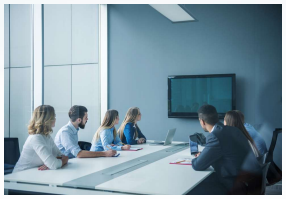
STEP X:
LENGTH OF MEETING

45% completing the evaluations were plaintiffs
50% were defendants
5% did not specify

Length of Mediation	0 to 15 minutes	21%
Length of Mediation	16 to 30 minutes	53%
Length of Mediation	More than 30 minutes	26%

CEDR commercial mediation statistics for 1998/99 report that the average length of mediation over the 257 cases was 1.3 days.

The majority of mediations are booked in two- to four-hour blocks. If the situation is high conflict, more time or more sessions may be needed.

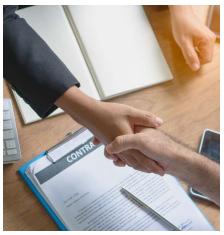


34 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

34

STEP XI:
AGREEMENT TO MEDIATE

- ***An "Agreement to Mediate" is the reaching or sharing of the same opinion about the expectations and requirement for mediation.***
- **An agreement to mediate is signed by all of the parties to the mediation before the process begins.**
- **The purpose of this powerful form is to outline the expectations of the process and obtain agreement from the parties concerning their adherence to them.**
- **Review manual**

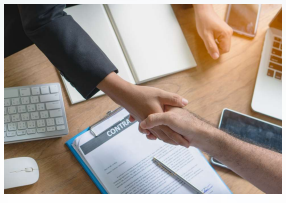


www.mediatorcertification.org 35 Copyright © 2023. National Association of Certified Mediators

35

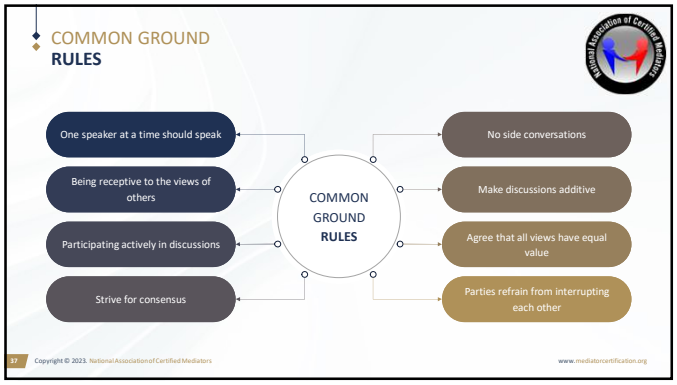
STEP XII:
GROUND RULES

Ground rules are a common set of agreed standards in some process, such as negotiation, mediation, psychotherapy, or facilitation, that allow meaningful dialogue to proceed with the aim of minimizing conflict.

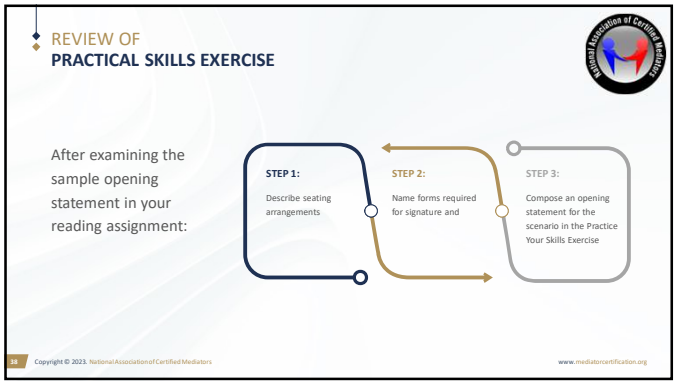


36 Copyright © 2023. National Association of Certified Mediators www.mediatorcertification.org

36


COMMON GROUND
RULES
One speaker at a time should speak
Being receptive to the views of others
Participating actively in discussions
Strive for consensus
COMMON GROUND RULES
No side conversations
Make discussions additive
Agree that all views have equal value
Parties refrain from interrupting each other
37
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

37


REVIEW OF
PRACTICAL SKILLS EXERCISE
After examining the sample opening statement in your reading assignment:
STEP 1:
Describe seating arrangements
STEP 2:
Name forms required for signature and
STEP 3:
Compose an opening statement for the scenario in the Practice Your Skills Exercise
38
Copyright © 2023. National Association of Certified Mediators
www.mediatorcertification.org

38


Question & Answer
GET IN TOUCH
877-850-0052
info@mediatorcertification.org

39