

Why a Mediation is not a Judicial Settlement Conference

Jerome F. Weiss



Alternatives
TO THE HIGH COST OF LITIGATION

Are Legal Disputes Just About Money? Answers from Mediators on the Front Line
By Jerome F. Weiss

www.mediate.com/mediation Articles by Jerome Weiss
"When It's Not Just About the Money"



STANDARD I. SELF-DETERMINATION

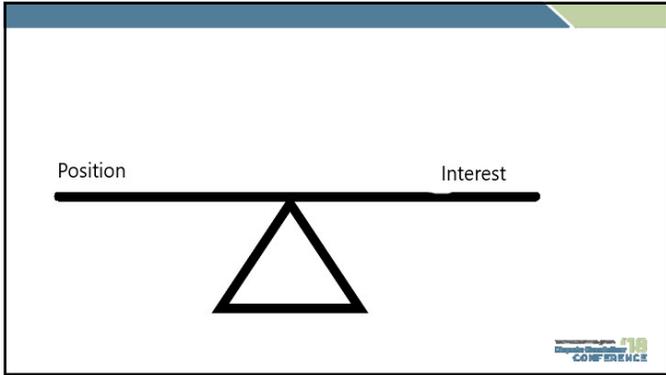
A. A mediator shall conduct a mediate on based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.
2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

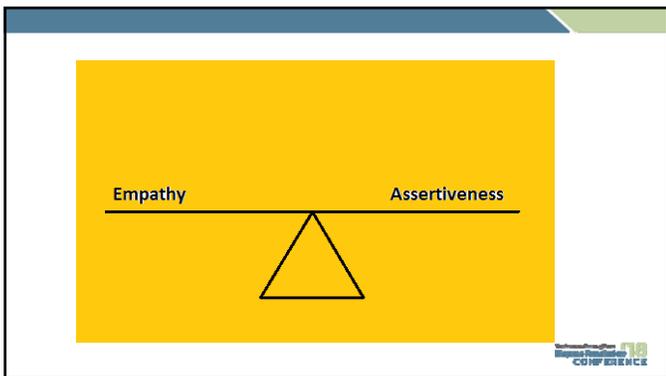
B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others

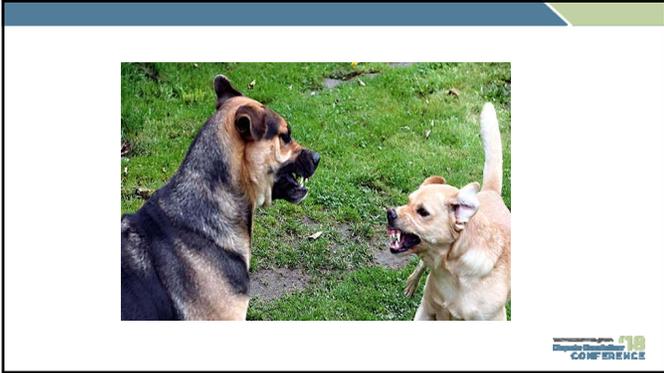
"Model Standards of Conduct for Mediators" adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution (2005)



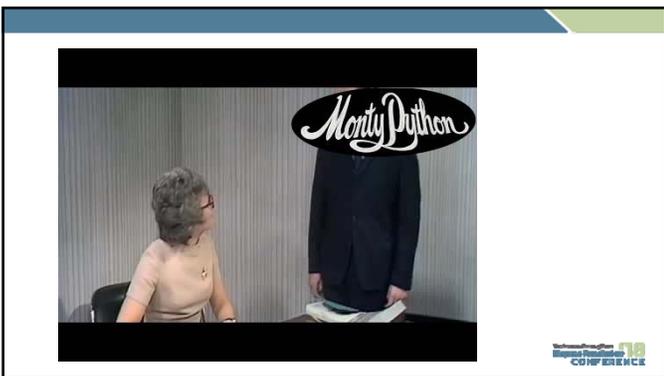




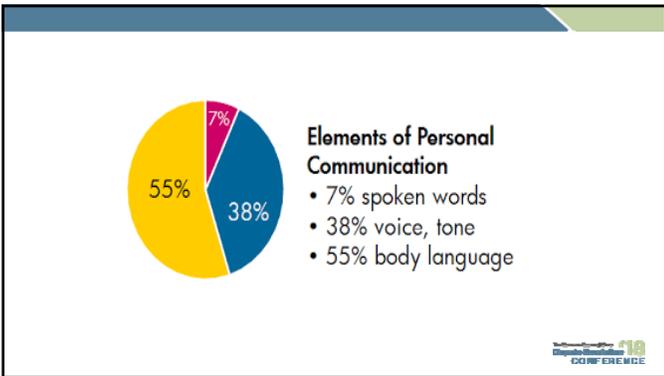








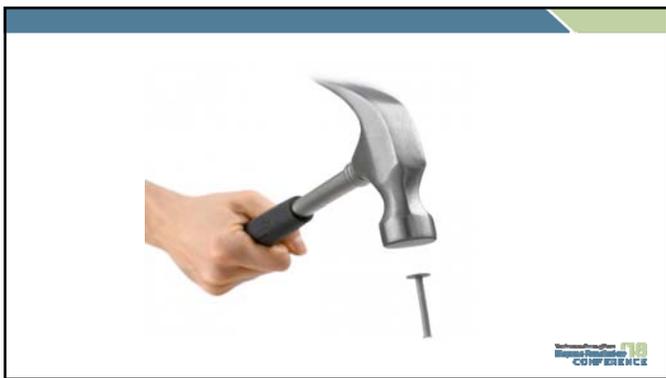














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MEDIATOR TECHNIQUES

Role of Mediator
EVALUATIVE

Problem Definition NARROW	Urges/pushes parties to accept narrow (position-based) settlement Prepares narrow (position-based) agreement Predicts court or other outcomes Assesses strengths and weaknesses of each side's case	Urges/pushes parties to accept broad (interest-based) settlement Develops and prepares broad (interest-based) agreement Predicts impact (on interests) of not settling Educates self about parties' interests	Problem Definition BROAD
	Helps parties evaluate proposals Helps parties develop & exchange narrow (position-based) proposals Asks about consequences of not settling Asks about likely court or other outcomes Asks about strengths and weaknesses of each side's case	Helps parties evaluate proposals Helps parties develop & exchange broad (interest-based) proposals Helps parties develop options that respond to interests Helps parties understand interests	

FACILITATIVE

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"We'd now like to open the floor to shorter speeches disguised as questions."

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