

Mediation Skills in Conflict Resolution

Presented

by the

Federal Mediation and Conciliation Service

Considerations of Mediator Training

- ❑ Much is common sense
 - ❑ Learn skills and approaches
 - ❑ No prescribed or 'right' way
 - ❑ Mediation is one type of ADR
 - ❑ Training does not transform you into a mediator
 - ❑ Mediators are neutral, not neutered
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Roles of the Mediator

- ❑ Advocate of the process
 - ❑ Demonstrates empathy for the parties
 - ❑ Neutral on the issues and positions
 - ❑ Poses positives and negatives
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Conceptual Goals of Mediation

- ❑ Process of assisted negotiations
 - ❑ Involves mutual obligations
 - ❑ Conflict management vs. resolution
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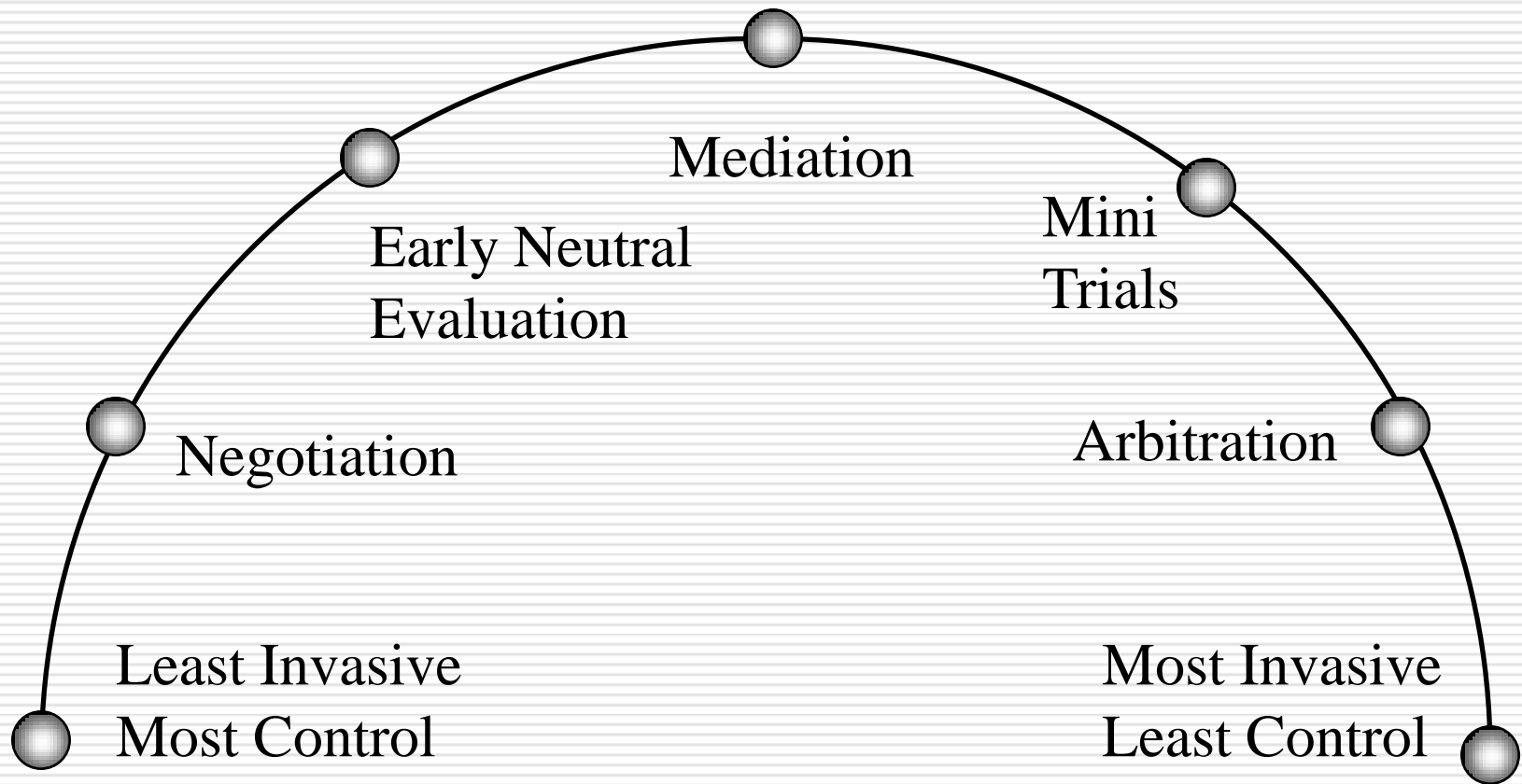
Course Objectives

- ☐ Understand definition of mediation
 - ☐ Understand negotiation
 - ☐ Understand mediation as 'assisted negotiation'
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Course Objectives (Con't)

- ☐ Understand role of mediator
 - ☐ Understand mediation as type of ADR
 - ☐ Acquire knowledge and skills to apply ADR to disputes
 - ☐ Practice ADR skills in simulated settings
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Facilitated Procedures



Mediation

- ❑ Gives parties more control
 - ❑ Process less formal than adjudication
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Litigation vs. Mediation

- Litigation -- relationship between judge and parties.
 - Mediation -- relationship between the parties.
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Benefits of Mediation

- Satisfaction
 - Range of Options
 - Effect on Relationships
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Mediation Settlements

- ☐ More satisfied
 - ☐ More creative solutions
 - ☐ Feel better toward one another
 - ☐ Retain more control
 - ☐ Interests are better served
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Guidelines for Use of Mediation

- ☐ Relationship strained but must continue
 - ☐ Miscommunication is apparent, but a neutral would facilitate communication
 - ☐ Third party neutral would change dynamics
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Guidelines for Use of Mediation (Con't)

- ☐ Parties are willing to settle or reevaluate positions
 - ☐ Parties interested in retaining control of outcome
 - ☐ Sufficient time to reach settlement
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Traditional Negotiation Model

- ☐ Issues
 - ☐ Positions
 - ☐ Arguments
 - ☐ Power and Compromise
 - ☐ Uneven outcome
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Interest-Based Model

- ❑ Minimizes the use of power in negotiation
 - ❑ Bases negotiation on identifying mutually beneficial solutions
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Positions vs. Interests

- Position is understanding what a party feels/believes/wants
 - Interest is determining why something is important
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Interest-Based Negotiations Terms

- ☐ Issue
 - ☐ Position
 - ☐ Interest (Mutual and Separate)
 - ☐ Options
 - ☐ Standards
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Interest-Based Negotiations Assumptions

- ❑ Communication enhances relationships
 - ❑ All parties receive benefits
 - ❑ Each party should help the other
 - ❑ Open discussion expands interests and options
 - ❑ Standards replace power
 - ❑ Anger is defused
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Principles of Interest-Based Negotiations

- ❑ Focus on issues, not personalities
 - ❑ Focus on interests, not positions
 - ❑ Create options to satisfy both mutual and separate interests
 - ❑ Evaluate options according to standards, not power
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Interest-Based Negotiations Steps

- ☐ Identify the problem
 - ☐ Discuss all interests
 - ☐ Generate options
 - ☐ Select standards to evaluate options
 - ☐ Evaluate options using standards
 - ☐ Develop solution and capture in writing
-

Interest-Based Negotiations Techniques

- ☐ Brainstorming
 - ☐ Consensus-Building
 - ☐ Problem-Solving
 - ☐ Idea Charting
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Interest-Based Negotiations

Mediator's Role

- ❑ Assisting in identifying interests
 - ❑ Helping parties to investigate what is important in a particular demand
 - ❑ Probing for specific information that will help analyze a demand
 - ❑ Helping to determine what will be gained
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Mediation

- ☐ Understand definition of mediation
 - ☐ Understand mediator's role in mediation process
 - ☐ Know stages in a 'typical' mediation
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Definitions of Mediation

- An intervention by a third party neutral designed to facilitate negotiation.
 - A **voluntary** and **confidential** process in which an impartial third party **assists** disputants in finding a **mutually acceptable solution** to their dispute.
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Goals of Mediation

- ☐ Vent feelings and reduce hostility
 - ☐ Clear-up misunderstandings
 - ☐ Facilitate clear communications
 - ☐ Determine underlying interests
 - ☐ Find areas of agreement
 - ☐ Incorporate these into solutions devised by the parties
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Creating Trust

- ☐ Listening
 - ☐ Keeping confidences
 - ☐ Being empathetic
 - ☐ Suspending judgments
 - ☐ Projecting an attitude of acceptance
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Destroying Trust

- ☐ Breaching confidence
 - ☐ Acting superior
 - ☐ Not listening or acting inattentive
 - ☐ Judging parties
 - ☐ Acting uncaring
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Knowledge

- ❑ Complete information on all sides
 - ❑ Complete understanding of the process
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Skills

- ☐ Good communication skills
 - ☐ Conflict management/resolution skills
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Attitudes

- ☐ Empathy
 - ☐ Impartiality
 - ☐ Confidence
 - ☐ Patience
-

Steps in Mediation

Phase I: Setting the Stage

- ☐ Background about parties and dispute
 - ☐ Scheduling the meeting
 - ☐ Determining authority to settle
 - ☐ Arranging physical space
 - ☐ Discuss process with partner
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Steps in Mediation

Phase II: Introductions

- Welcome and Protocol
 - Addressing the parties
 - Defining process and mediator's role
 - Assurance of confidentiality
 - Representatives (if appropriate)
 - Use of joint and separate sessions
 - Breaks, restrooms, smoking, coffee, etc.
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Steps in Mediation

Phase II: Introductions

- Welcome and Protocols (Con't)
 - Caucuses
 - Courtesy and mutual obligation
 - Notetaking
 - Review of agreement to mediate
 - Signing of agreement to mediate
 - Questions and clarifications
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Steps in Mediation

Phase II: Introductions

- Opening Statements
 - What brought you here?
 - What would you like to see happen?
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Steps in Mediation

Phase II: Introductions

☐ Venting

- Get feelings out into the open
 - Review issues, needs, and proposed outcome
 - Break
-

Steps in Mediation

Phase III: Separate Sessions

- Identify problem
 - Explore concerns, options, view of 'reality'
 - Problem-solving
 - Identify options
 - Consider consequences
-

Steps in Mediation

Phase IV: Subsequent Separate Sessions

- Bargaining and Negotiations
 - Further exploration of options
 - Conduct reality tests
 - Establish principles and/or standards
-

Steps in Mediation

Phase V: Closure & Agreement

- ☐ Conclude with a joint session
 - ☐ Discuss terms of settlement
 - ☐ Prepare written agreement
 - ☐ Sign written agreement
-

Mediator's Activity Level

- ❑ Begins at high level to impart information, introduce the process
 - ❑ Drops markedly to focus on listening and learning
 - ❑ Increases in options and closure stages
-

How Mediators Do It

- ☐ Gather information
 - ☐ Demonstrate empathy
 - ☐ Persuade
 - ☐ Invent supposals and possible compromises
 - ☐ Reduce tension
-

1. Gather Information

- ☐ Have parties explain issues
 - ☐ Ask questions to get more detail or to double-check
-

2. Demonstrate Empathy

- ☐ Be willing to listen, even to material that is not relevant
 - ☐ Indicate understanding of each party's point of view
 - ☐ Indicate your empathy as part of information gathering
-

3. Persuade

- ❑ Start at low intensity and build slowly
 - ❑ Demonstrate understanding of dispute
 - ❑ Consider which issue to approach first
 - ❑ Start with a small issue
-

3. Persuade (Con't)

- ☐ Be cautious in identifying issues
 - ☐ Emphasize need for action
 - ☐ Be willing to create confrontation
 - ☐ End with a key 'major' item
-

4. Invent Supposals & Compromises

- ☐ Deal with items on which you are expert
 - ☐ Tie into concepts mentioned by parties
 - ☐ Develop interrelated proposals
 - ☐ Build gradually from one point to the next
 - ☐ Do not guarantee agreement
 - ☐ Never say 'never'
-

5. Reduce Tension

- ☐ Relieve the pressure as needed
 - ☐ Tell a joke or story
 - ☐ Threaten to tell a joke
 - ☐ Discuss topic of mutual interest
 - ☐ Maintain professional manner
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Steps in Mediation

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 - Problem-solving
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Steps in Mediation

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Steps in Mediation

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Mediation

Wrap-Up

- Definition of mediation
 - Mediator's role in mediation process
 - Stages in 'typical' mediation
-

Tools of Mediation

Objectives

- ☐ Understand concepts of communication
 - ☐ Apply communication skills
 - ☐ Demonstrate active listening skills
 - ☐ Understand ways to expand problem-solving
 - ☐ Understand development of mutually acceptable solutions
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Communication

- ☐ Process of keeping people informed
 - ☐ Transfer of knowledge
 - ☐ Expression of opinion or emotion
 - ☐ Process to change behavior or motivate
 - ☐ Transmission of instruction or requests
 - ☐ Become aware of self and others
 - ☐ Establish relationships
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Communications Barriers

- ☐ Not considering the other's frame of reference
 - ☐ Negative feelings toward the receiver
 - ☐ Inability to express thoughts
 - ☐ Hidden agendas
 - ☐ Negative feelings toward sender
 - ☐ Poor listening
-

Communications Barriers (Con't)

- ☐ Preoccupation
 - ☐ Defensiveness
 - ☐ Faulty assumptions
 - ☐ Low self-concept
 - ☐ Selective screening
 - ☐ Stereotyping
 - ☐ Poor physical condition
-

Communications Barriers (Con't)

- ☐ Differences in social or economic status
 - ☐ Lack of interest
 - ☐ Lack of trust
-

Barriers within the Message

- ☐ Pseudo questions
 - ☐ Blocking responses
 - ☐ Differences between verbal and nonverbal message
 - ☐ Information overload
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Barriers in the Environment

- ☐ Noise
 - ☐ Temperature
 - ☐ Humidity
 - ☐ Poor acoustics
 - ☐ Uncomfortable seating
 - ☐ Distractions
 - ☐ Time limitations
-

Route to Agreement

- Show them that you understand
 - Acknowledge strong feelings
 - Rephrase concerns in your language
 - Let them tell you background
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Route to Agreement (Con't)

- Get yourself a hearing
 - Explain your own feelings
 - Refer to their points and ask to explore them
 - Make points firmly, but politely
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Route to Agreement (Con't)

- Work toward a joint solution
 - Seek ideas
 - Build on their ideas
 - Offer your ideas, but don't impose them
 - Help parties to construct a solution
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Opening Session Objectives

- ☐ Set up a mediation session
 - ☐ Introduce the mediation process to parties
 - ☐ Conducting a joint information session
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Introducing the Mediation Process

- ☐ Tone
 - ☐ Space
 - ☐ Pace
-

Preliminary Matters

- Initial Contacts
 - By phone
 - Per chance meetings
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Preliminary Matters (Con't)

- Physical Space
 - Meeting table
 - Caucus or breakout rooms
-

Preliminary Matters (Con't)

- ☐ Reviewing the File
 - ☐ Authority
 - ☐ Co-Mediation
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The Introduction

- ☐ Stand up as they enter
 - ☐ Use last names
 - ☐ Direct parties to their seats
-

Mediation Orientation

- ☐ What is mediation?
 - ☐ Role of mediator
 - ☐ Mediator disclosures
 - ☐ Confidentiality
 - ☐ Role of attorneys and/or representatives
 - ☐ Joint and private sessions
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Mediation Orientation (Con't)

- ☐ Courtesy
 - ☐ Notetaking
 - ☐ Agreement to mediate
 - ☐ Questions
-

Sharing Information

☐ How to Start

- Explain the purpose
 - Let them tell their stories
-

Sharing Information (Con't)

- Conveying Interest and Building Trust
 - Physical components
 - Verbal components
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Sharing Information (Con't)

- Arguing
 - Allow time to vent

Sharing Information (Con't)

- When to Break
 - Cues for breaking

Sharing Information (Con't)

- Issues to be Resolved
 - Ask each party about issues
 - Develop list
-

Sharing Information (Con't)

□ Ending the Joint Session

- Summarize session
 - Give overview of separate sessions
 - Give order of separate sessions
 - Remind them that you will keep confidential the content of the separate session unless they grant permission to share that information
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Opening Session

Wrap-Up

- ☐ Set-up a mediation session
 - ☐ Introduce mediation process to the parties
 - ☐ Conducting a joint information session
-

Separate & Subsequent Sessions Objective

- ☐ Know all the phases of a mediation conference
-

Goals of Separate Meetings

- ☐ Elicit information
 - ☐ Test positions
 - ☐ Build momentum toward an agreement
-

Why Separate Sessions?

- ☐ Maintain confidentiality
 - ☐ Divert hostility
 - ☐ Filter out negatives
 - ☐ Explore settlement possibilities
 - ☐ Stroke parties
 - ☐ Refocus parties
 - ☐ Overcome impasse
-

Overcoming Reluctance in Holding Separate Sessions

- ❑ Meeting with each side privately
 - ❑ Building expectation for private session and explaining their part in the process
 - ❑ Gaining parties' trust
-

First Separate Session

- ☐ Start slowly
 - ☐ Establish appropriate tone
 - ☐ Build relationship
 - ☐ Empathize
-

First Separate Session (Con't)

- ☐ Ask questions
 - ☐ Test positions
 - ☐ Maintain confidentiality
 - ☐ Make assignments
 - ☐ Closing
-

Second Separate Session

- ☐ Be conscious of time
 - ☐ Listen to their agenda
 - ☐ Resist deciding who is right or wrong
 - ☐ Emphasize the opportunity to elaborate
 - ☐ Increase your involvement
 - ☐ Help parties see other viewpoints
 - ☐ Focus on interests
 - ☐ Develop options
-

Subsequent Separate Sessions

- ☐ Commend progress
 - ☐ Use shuttle diplomacy
 - ☐ Be positive
 - ☐ Prioritize
-

Subsequent Separate Sessions (Con't)

- ❑ Serve as agent of reality
 - ❑ BATNA and WATNA
 - ❑ Build on areas of agreement
 - ❑ Express frustrations or chastise
 - ❑ Offer supposals
 - ❑ Refrain from delivering formal offers
-

Common Reasons for Failure

- ☐ Lack of understanding
 - ☐ Failure of adequate preparation
 - ☐ Failure of effective communication
 - ☐ Emotionalism
 - ☐ Extrinsic factors
 - ☐ Different perceptions
 - ☐ Different information
-

Common Reasons for Failure (Con't)

- ❑ Different assessments of information
 - ❑ Different attitudes toward risks
 - ❑ Different attitudes toward settlement
 - ❑ No zone of agreement
 - ❑ Constituency pressures
 - ❑ Stakes not suited to compromise
-

Overcoming an Impasse

- ☐ Bring pressure on the parties
 - ☐ Create subcommittees
 - ☐ Conduct supplementary private meetings
 - ☐ Hold 'off the record' meetings
 - ☐ Temporarily break-off negotiations
-

Final Meeting

- If no agreement
 - discuss areas covered
 - If partial agreement
 - review areas of agreement
 - If full agreement
 - make sure terms are clear
-

Writing the Agreement

- ☐ State parties, dispute, and voluntary agreement reached through mediation
 - ☐ Use simple, clear language
 - ☐ Write agreement in third person
 - ☐ Write promises in paragraphs
 - ☐ Provide space for parties to sign
 - ☐ Date agreement
-

Co-Mediation Objectives

- ☐ Understand procedures for co-mediation
-

Co-Mediation Guidelines

- ☐ Choose partner with similar vision
 - ☐ Work out communications
 - ☐ Give leadership roles to co-mediators
 - ☐ Use seating arrangement to maximize success
 - ☐ Assign specific tasks
 - ☐ Use opening statement to set tone
-

Co-Mediation Guidelines (Con't)

- ☐ Adopt non-competition principle
 - ☐ Consult co-mediator on important decisions
 - ☐ Maintain a unified focus
 - ☐ Use diversity of mediation team to advantage
-

Co-Mediation Guidelines (Con't)

- ☐ Have fall-back or 'fail-safe' plan
 - ☐ Be flexible
 - ☐ Support your co-mediator
 - ☐ Debrief after each co-mediation
-