

Tip Sheet: Basic Five Phase Mediation Model

Purpose: This 'tip sheet' will guide you through the different phases of a simple mediation process. It breaks down what needs to happen during each phase and explains the logic of the sequence of the phases. You can use this tip sheet for planning purposes as well as during a mediation to check progress and see if you have covered the key points in each phase. **Note that this model offers an ideal type, linear logic: in practice, phases and steps can be iterative and dynamic.** If you notice at any time during a process that a specific point has not been covered sufficiently, you can return to work on it in more depth. Additionally, for the purposes of simplicity, the phase model presented in this tip sheet focuses on “at the table” dynamics and therefore excludes the important preparatory steps taking place before the negotiations, including for instance 1) conflict analysis done by the mediation team, 2) first bilateral contacts with the parties, 3) initial clarification of mediation objectives, basic guidelines and setting (refreshed in phase 1 at the table).

Basic Five Phase Mediation Model in Cartoons, Memo: SIOP (Setting/Information/Interests/Options/Plan)

Phase 1: Setting & Introduction

Phase 4: Options & Value Creation

Phase 2: Information & Sharing Perspectives

Phase 5: Plan and Concluding

Implementation matrix					
	What ?	Who?	When?	Funding	What if?
Aug					
Sept					
Oct					
Nov					

Phase 3: Interests, Concerns Clarification

Phase 1: Setting - Introduction (Should result in → Working Relationship)

1. **Aim:** Clarify the aim of this specific meeting. What is the overall purpose of the meeting / mediation? The broad aim of the mediation is often clarified with the parties already in the pre-mediation phase. But it is still essential to refresh the purpose of the meeting at the very outset.
 2. **Clarify what mediation is and the mediator's role:** Introduce yourself and your team transparently, including institutional affiliations and clarifying your mandate. How did your mediation mandate come about? Explain the voluntary nature of the mediation process and how you will guide the parties through the process to help them reach agreement. It is useful to clarify the role division between mediator and parties: mediator focusing on the process, the parties focusing on content decisions. Explain also if, when, and how you might have bilateral caucuses with the parties.¹ Clarify how you will deal with interruptions.²
 3. **Participation and representation:** Are all actors in the mediation who are needed to reach an implementable agreement? What level of decisions can be made (i.e. at the level of the table, but need to confirm with constituencies)?
 4. **Clarify context:** What are other processes, or legal frameworks that may impact our process? Can parties agree to pause legal action until the end of the mediation?
 5. **Information management:** How will information be dealt with? Use of confidentiality, Chatham house rule, transparency, dealing with media? How is information shared with constituents? What are ideas about joint statements (e.g. at the end of the meeting / mediation)?
 6. **Clarify decision-making procedure:** If more than two parties, what is the decision-making procedure (full consensus, sufficient consensus, consensus minus one, majority vote etc.)?
 7. **Timing:** Length, frequency of meetings?
 8. **Finances:** Who pays for the mediation?
 9. **Ground rules / Framework:** Before moving to phase two, summarize key aspects of the above and agree on any other guidelines that might be required. Write them on a flip chart, as an open list, so more guidelines can be added later if requested by parties. In some cases, these guidelines have been agreed in the pre-mediation phase, then it is an idea to re-fresh them, but spend less time on it.
- **Key idea: Set the framework for the talks before starting to discuss content! The agreement on the framework is usually the first joint agreement by parties. One key objective at this stage is to build a good rapport with the parties; and that by the end of phase 1, they have sufficient trust in you as an acceptable mediator – and in the process of meditation.**

¹ E.g. "You can leave the mediation at any time, but can we agree that you first contact me before you do this?"

² E.g. "Some sparks may fly, but I will request you not to interrupt each other, but I may interrupt you".

Phase 2: Information - Sharing Perspectives (Should result in → Sequenced Agenda)

1. **Perspectives:** Ask everyone to tell their perspectives of the situation from the beginning (reflect on who to start with³), collecting the stories as well as their overall objectives, positions and demands (of course, also noticing interests⁴) of the parties. Avoid ping-pong exchanges (that comes later); let each side tell their story here in full.
 2. **Equal time:** Give more-or-less equal time to each side – adapt to culture in terms of timing.
 3. **Summarize separately:** Summarize each sides separately. Avoid summarizing both sides together. Use micro-skills (active listening, reframing, questions).
 4. **Collect issues:** Collect (and if necessary neutralize⁵) issues to develop agenda. Consider and how individual items are worded.
 5. **Establish agenda:** Check if parties are OK with the agenda, if not, mediate agenda (e.g. try to establish a principle that no one has the right to veto an agenda item: having an issue in the agenda does not mean agreeing to working through it in depth).
 6. **Sequence agenda:** Different logics to sequencing⁶: 1) one issue needs to be clarified as it is the basis for other issues, 2) balance of key issues as seen by different parties, so sequence does not start with all of party A's issues and ends with all of party B's issues, 3) some mix of easy and hard to agree, so not all easy or all hard at the beginning or end, 4) in longer processes: what is time sensitive regarding implementation, may need to be sequenced earlier on. If you cannot agree on a sequence, some “a bit of this” and then “a bit of that” may help. The key idea is that if a party sees its issue will be addressed because it is visualized in the agenda, they are more likely to agree to discuss another issue, as they know their issue will come.
 7. **Times for a break:** A good moment for a break is between collecting issues/perspectives and checking agenda with parties. Another good moment is after having agreed on the agenda, before working through the agenda (i.e. between phase 2 and phase 3 of the mediation process).
- **Key idea: Share information/perceptions and collect issues before working through the issues in the next phase.**

³ Some options: 1) ask who would like to start, 2) use a random way of starting, right to left, or left to right, flip a coin, 3) ask the one with a complaint to start, as the other may not know what it is all about. 4) clarify this in pre-mediation

⁴ The focus in this stage is not on finding interests, but if they do already appear, make sure to take note of them.

⁵ This means trying to find a formulation that is acceptable to both sides, like a chapter title i.e. getting rid of positional language, toxic or hostile language and terminology.

⁶ Sometimes it is important for the mediator to explain some of this logic to parties, especially when there are deadlocks. Other times, the knowledge is best kept with the mediation team.

Phase 3: Interests and concerns clarification (Should result in → Interest Profiles)

1. **Work through agenda:** Work through the agenda, issue by issue. Different principles can be suggested (e.g. “Nothing agreed until all agreed” “tentative agreement at level of table, but still needs checking or sleeping over”) to make the choice of first issue easier.
 - Alternative for more complex cases: Take one issue from agenda, and go through phase 4 and some parts of phase 5, and then come back and take the next issue from the agenda and chew through phases 4 and 5.
 2. **Micro-skills:** Again, use micro-skills (e.g., separate actor from action, use questions, active listening, reframing, summarizing, reflecting, etc.) to clarify and understand each side's interests and needs. Elicit a precise interest profile for each side (on a flipchart for example, or in a document) and formulate a common problem statement as well as possible areas of common ground. One tactic is to ask: “If you would get your position, your solution to the conflict would become reality, what would it do for you? What interests, needs would it satisfy?”
 3. **Fine-tune interests according to criteria (COPE):** Remember interests should be phrased in a way that is concrete (C), open for multiple options (O), positively (P) framed and triggering emotional (E) resonance. Positive does not mean “nice”, but rather an affirmative formulation of what one wants, rather than what one does not want.
 4. **Time and depth:** At this stage, let the parties go more in depth on each issue, try to elicit what is important to them, and why. You can do this iteratively with each side, one by one for each agenda item. If too polarized, a bilateral meeting (caucus) to find out interests and reflection on BATNA is one option. Avoid too many or too long bilaterals, however, as the transformation of relationships between parties normally happens better by having direct interaction in the room.
- **Key idea: Help each side to understand the other side before starting to think about options and solutions (one alternative approach is to explore initial options to find out interests, the danger is that the options will be positional). Be open-minded and precise: In terms of finding a good solution, this is the most decisive phase of the entire process!**
- **Most people cannot truly and fully understand others until they themselves feel understood. So try to understand the parties, help them formulate their interests and needs clearly and communicate them to the other side. By doing so in front of the other parties, this type of communication can assist in shifting understanding and opening up more willingness to understand the other side.**

Phase 4: Options for Value Creation (Should result in → Assessed Options)

1. **Develop multiple options:** The key idea is that mediators should slow down parties running to the first solutions that come to mind. As often these first solutions are not the best ways to satisfy the interests at stake and are still very positional. This is why it is important to look at multiple options (option = possible solution) before deciding which one is best. Good solutions often only get shaped and developed by first exploring also unrealistic and stupid options. Often brainstorming⁷ is the best way to start generating options, but there are also other ways to generate and capture options: 1) trial and error, 2) vision building, 3) model agreements, 4) links, trades and crosstrades, 5) package deals, “yes”able proposals, 6) procedural solutions to substantive problems, 7) single-text procedures, 8) working with metaphors and arts, 9) expert advice, study trips
 2. **Agree on criteria:** Criteria are ways of assessing something, principles or standards to judge the merits of an issue or option. Search for or negotiate mutually acceptable criteria. The criteria should ideally be independent of the specific will and biases of the parties. There are different sources and types of criteria:
 - Customary, religious (e.g. reciprocity)
 - Professional standards or expert advice (e.g. guidelines on water quality)
 - Socio-normative standards (e.g. cultural accepted forms of compensation, human rights)
 - Legal norms (e.g. core provisions of the legal order)
 - External benchmarks and precedents (e.g. how was a similar case settled elsewhere?)
 - Feasibility, implementability, cost/benefit analysis
 - Fairness, balanced impact on parties, Etc.
 3. **Assess options:** Jointly assess the options (1) in light of the respective interest profiles and (2) according to the above mentioned criteria.
 4. **Reality test:** Reality test options: will they hold up in reality? Can they be implemented (e.g. cost)?
- **Key idea: Develop a pool of options to avoid that parties insist on one, perhaps limited, solution: “enlarge the pie, before sharing the pie”. This is a very creative phase (depending on the topic...) some humor can help here!**

⁷ Rules of brainstorming: Anything goes, no reality check, no self-census! No criticism from anyone! Everything is written down (number is more important than quality). Work fast, think freely – then take a break.

Phase 5: Plan and Concluding (Should result in → Agreement and Implementation Modalities)

1. **Agree on options:** Agree on the option / set of options acceptable to both sides, based on the decision-making procedure agreed in Phase 1.
 2. **Agree on words:** Try to formulate at least the core parts or essential passages of the results in a precise way while the parties are present.
 3. **Agree on process:** If you cannot agree, can you agree to meet again (process agreement) or choose a different procedure. Be clear on what the purpose of the next meeting should be, and what needs to happen in between: consulting constituencies on the solutions proposed? Generating more options? Consulting experts? Etc.
 4. **Agree on information management:** If you agreed about how to inform others in Phase 1, you may need to consider this now, e.g. joint statement.
 5. **Clarify next steps:** who does what, when, how, funded by, “what if”, how monitored/verified? (design agreements to survive violations)
- **Key idea: Clarify details of implementation before final signing! The format, and status, of the final agreement also needs to be clarified: is it a written document (formal, informal)? Who needs to ratify it for it to enter validity? Which other third parties need to be informed or included and how?**