MEDIATION TRAINING MANUAL

FOR JUDICIAL OFFICERS

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DEUTSCHE ZUSAMMENARBEIT

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Foreword

It is with immense pleasure and a sense of shared purpose that I present the Mediation Training Manual for Judicial officers, a foundational resource designed to guide judicial officers in mastering and applying mediation effectively within Tanzania's judicial system. This manual represents a significant milestone, born from the dedicated collaboration between the Institute of Judicial Administration Lushoto (IJA), the Judiciary of Tanzania, and our invaluable partners, GIZ Tanzania.

This training manual has been meticulously crafted to serve both as a guide and also as a catalyst for change. It integrates international best practices in conflict resolution with unique legal and social landscape of our nation, ensuring that the strategies and techniques it presents are not just theoretically sound but are also perfectly tailored to the needs of our courts and the people we serve.

In an era where court systems face increasing demands, mediation stands out as a powerful solution. As a key part of court-annexed Alternative Dispute Resolution, it offers parties an opportunity to resolve disputes amicably and efficiently. But its impact goes far beyond simply clearing case backlogs. Mediation fosters a more collaborative approach to conflict resolution, allowing parties to preserve relationships and build sustainable solutions. This manual is designed to provide judicial officers, with the essential knowledge and practical skills needed to facilitate a mediation process that is fair, impartial, and effective one that genuinely serves the interests of justice for all involved.

To ensure true mastery, the manual moves beyond simple theory. It is rich with practical exercises, engaging role-plays, and participatory learning approaches that allow for the deep internalization of mediation skills. From mastering communication techniques to navigating difficult emotional landscapes and structuring sessions in line with our legal framework, every section is built to provide judicial officers with the confidence to apply these skills in real-life court settings.

The preparation of this manual was a collective effort, and I want to express my deepest gratitude to the dedicated working group, the insightful trainers, and every contributor who spared their precious time, expertise, and efforts into this project.

It is my sincere expectation that this manual will be a valuable and trusted resource for all judicial officers. May it inspire all judicial officers to embrace mediation not just as an alternative, but as a central, powerful tool in the delivery of justice in Tanzania, helping us to build a more just and harmonious society for all.

Hon. Justice Dr. Paul F. Kihwelo
Justice of Appeal and Principal IJA

Preface

Mediation in a judicial context (court annexed mediation) connects Tanzania with Germany: in both countries, the dispute resolution procedure Mediation has been practiced in pending court proceedings for years. Judges at all levels of the judiciary in both countries are trained in the modern conflict resolution procedure of mediation so that they are able to support the parties to the conflict in working out their own solution to their conflict in a structured procedure. The judiciary is thus strengthened in its reputation among the population by not only appearing in the usual authoritative sentencing procedure, in which there is usually a winner and a loser, but also by providing another procedural level, namely mediation. In this procedure, the citizens retain control over the outcome of the procedure, the conflict is dealt with all its burdens, and a solution is usually found that resolves the conflict in the long term.

There are differences between the two countries in the design of the procedure, but on closer inspection they are of little importance: in Tanzania, participation in mediation procedures proposed by the court is mandatory, while in Germany the principle of voluntariness prevails. In Tanzania, the mediation process is divided into four phases, while Germany is taught a five-phase model.

These superficial differences are of little significance in the matter. But they are interesting and can lead to both countries learning from each other.

In Tanzania, the parties to the conflict can be obliged to appear for a mediation hearing, active participation in the procedure remains voluntary.

The phases of mediation, which in Tanzania are divided into the following four phases: Introduction (1); opening statement (2), developing options (3) and settlement agreement (4) correspond to the five phases practiced in Germany in the phase's introduction (1), developing options (3) and settlement agreement (4). Only phase 2 (opening statements) is divided into two phases in Germany, namely the collection of topics (phase 2) and the processing of the conflict areas, determination of interests (phase 3).

This training manual is intended to provide mediation trainers with indications for comprehensive training in the mediation process. Starting with the legal integration into the court proceedings and other dispute resolution procedures, the in-depth explanation of the structure of the mediation process, the techniques from active listening to looping and questioning, the psychological backgrounds of parties in conflict and communication models to one-on-one conversations and multi-person conflicts, all essential topics are presented, and didactic methods of knowledge transfer are provided. In practical exercises and role plays, what has been learned is to be tried out and experienced.

Anne-Ruth Moltmann-Willisch
Former Coordinator for Judicial Mediation in Berlin/ Brandenburg, Retired Judge Trainer for Mediation

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Basic Mediation Training for Judicial Officers in Tanzania

I. Objectives

The five-day training program is designed to enable judges in Tanzania to conduct mediations for resolving conflicts pending in court in a structured and well-considered manner. To achieve this, it is first necessary to clarify how mediation fits within the system of conflict resolution procedures. In a second step, the fundamental principles of mediation must be thoroughly explained and made comprehensible. Then it must be demonstrated what attitude a mediator must have to effectively employ the conflict resolution procedure of mediation. This is particularly challenging for judge-mediators, who in their conventional role are called upon to decide conflicts.

Additional training content includes explaining and practicing the structure of the five-phase model. General information about human communication behavior, especially of people in conflict from psychological perspectives, will be provided. From this, the tools of mediation such as active listening, looping, etc., develop, which we will explain and practice in detail. Finally, special topics of mediation such as online mediation will be addressed.

II. Methodology

The training will be conducted over five days from 9 AM to 5 PM with a one-hour lunch break and shorter coffee breaks.

In each session, short theoretical inputs will be given by the trainers, which will be practiced through active exercises by the participants.

Starting from the second day, participants will engage in role-plays to practice what they have learned. On days 2 and 3, short practice sessions are planned to learn the individual phases of mediation. On days 4 and 5, participants will play through complete role-plays. Each group will be accompanied by a trainer who observes, can intervene and explain as needed, and conducts final feedback after explaining general feedback rules.

The instruction will primarily be conducted through collaborative development of learning material on flip charts. It has been proven that this method allows for the best comprehension and retention of learning content. The flip charts will be photographed at the end and sent to participants. Additionally, participants will receive a handout where they can read about individual topics in greater detail.

Day 1

Part 1: Introductions

1. **Trainer Introduction**: Name, brief description of professional activity, especially regarding mediation and training

2. **Participant Introduction Round**: Name, court, training level/practical experience with mediation; Question: What expectations does the participant have for the week-long training?

Method: Prepare flip chart with questions from item 2; form pairs; neighboring seats work well. Participants have five minutes each to interview each other about the questions. After about 10-15 minutes, each participant introduces their neighbor.

Goal: Each participant speaks once in the plenary; participants get to know each other; everyone practices listening carefully to others; a trusting atmosphere is created.

Part 2: Legal and Regulatory Framework of the Court-Annexed Mediation in Tanzania

Introduction

Alternative Dispute Resolution (ADR) and Court-annexed mediation inclusive was put in place in 1994 through the Government Notice No. 422/1994. This Notice was later supplemented by the amendment of the First Schedule to the Civil Procedure Code Act of 1966. Mediation in particular, was by then intended to apply for the High Court Zones and subordinate courts within Dar es Salaam, Mwanza and Arusha as pilot areas (CJ Circular No.5 of 1994). This Circular was replaced by another CJ Circular No.2 of 2002 which instructed for the operation and use of ADR system nationalwide as introduced under the law. Thus, ADR is now recognized as an integral component of the Tanzanian legal system and mediation is a mandatory procedure for all civil cases filed in the High Court and all subordinate courts all over Tanzania Mainland except the primary courts.

There are various Laws, Rules and Regulations which govern the use of ADR in our Court system. These include the Constitution of the United Republic of Tanzania, 1977; The Civil Pro-

cedure Code Act, 1966; The Arbitration Act, Cap 15, R.E 2020; The Employment and Labour Relations Act; and The Labour Institutions Act No. 7 of 2004 (Cap 300 R.E 2019). Others are The Tanzania Arbitration Centre (Management and Operations) Regulations, GN 149 of 2021; Reconciliation, Negotiation, Mediation and Arbitration (Practitioners and Accreditation) Regulations, GN 147 of 2021; The Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators, GN 148 of 2021. There is also in place The Judicature and Application of Laws (Appointment, Remuneration and Disciplinary of Mediators) Rules, 2024. For purposes of this topic, only those relevant to mediation will be outlined and discussed in the following paragraphs.

Laws and Regulations Governing Mediation

The Constitution of the United Republic of Tanzania as amended from time to time

The Constitution of the United Republic of Tanzania, 1977 is the primary source of law in the country. It is supplemented by Statutes enacted by the Parliament as well as case law from the High Court and Court of Appeal. Article 107A (2) (d) of the Constitution sets the basis for use of Alternative Dispute Resolution mechanism in the civil justice system. It requires the Judiciary to promote and enhance dispute resolution among persons involved in the disputes. This article provides the following:

"(2) In delivering decisions in matters of civil and criminal matters in accordance with the laws, the court shall observe the following principles, that is to say-

(a)...

(d) to promote and enhance dispute resolution among persons involved in the disputes."

The Civil Procedure Code, Cap, 33

The Civil Procedure Code is the basic procedural law on civil matters. The legal framework for negotiation, conciliation and mediation in court are referred under Order VIII of the Code. Rule 24 provides the following:

"Subject to the provisions of any written law, the court shall refer every civil action for negotiation, conciliation, mediation or arbitration or similar alternative procedure, before proceeding for trial."

The outlined procedure in both negotiation and mediation are provided under Order VIIIC rules 25-34 of CAP 33 R.E (Amendment to the First Schedule) Rules, 2019. The Code sets the requirement of the parties to a dispute to first attend mediation as one of the ADR mechanisms to see the possibility to settle the dispute before trial. The parties are referred to the mediator who will conduct and complete mediation within one month after holding the first session. This is a mandatory requirement stated under Order VIIIC rule 32 of the Code.

The Purpose of Court-Annexed Mediation

Order VIIIC Rule 26(1) outlines the purpose and nature of court annexed mediation. This sub-rule reads as follows:

"In conducting any mediation session under these Rules-

(a) The parties shall strive to reduce costs and delays in dispute resolution, and facilitate an early and fair resolution of disputes and;

(b) the mediator shall facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable resolution."

Appointment of mediators

The amendment has introduced parties' liberty to appoint their own mediators, set time for parties to appoint mediators and the parties to provide the mediator with a statement of issues together with pleadings and any documents of importance which identify issues to dispute. Rule 25(3, 4, and 5) requires the mediator to set a date for the first session. These provisions state as follows:

"(3) Upon the appointment of the mediator, the court shall, within two days notify the mediator of his appointment and require him to confirm the appointment within two days:

Provided that, where the mediator does not confirm or refuse the appointment within the prescribed time, the court shall, within five days of the refusal or non-confirmation, appoint another mediator by the same method used to make the previous appointment.

(4) The court shall, within three days of the confirmation of mediator's appointment, transmit copies of pleadings to the mediator.

(5) The mediator shall-

(a) within seven days of his confirmation, set a date for the first mediation session and communicate it to the parties in writing or any other available means; and

(b) convene the first mediation session not later than fourteen days from the date of his confirmation.";

However, where the parties fail to select their own mediator, the court is given powers under Rule 25(6) to appoint a mediator and notify the parties accordingly.

An amendment to rule 27 allows any interested party to request to attend a scheduled mediation session. The mediator may also direct such an interested party to attend mediation. (Rule 27(3)

Confirm identity of parties

In order to mediate the actual and proper parties, the mediator must confirm the identity and authority to settle the dispute. This is provided under Rule 28(3) which says:

"(3) The mediator shall confirm the identities of the parties or their representatives and incase of the representatives, their authority to settle the matter before recording their attendance."

Confidentiality

The principle of confidentiality as provided under Order VIIIC Rule 31 of the CPC shall be adhered to in court -annexed mediations. It applies to both the mediator and all parties involved in the mediation process. All communications during the process are confidential. The Rule says:

"31. All communications at a mediation session and the mediation notes and records of the mediator shall be confidential and a party to a mediation may not rely on the record of statement made at or any information obtained during the mediation as evidence in court proceedings or any other

subsequent settlement initiatives, except in relation to proceedings brought by either party to vitiate the settlement agreement on the grounds of fraud."

Mediator to submit a report

Upon conclusion of any mediation, whether failed or successful, the mediator must submit a report to the trial court. This is mandatory under Rule 34 which provides as follows:

"34. (1) Within forty-eight hours of the conclusion of the mediation, the mediator shall submit a report to the trial court showing the outcome of the mediation.

(2) Where the mediation is successful, the report under this rule shall be accompanied with the settlement agreement."

Reference to Negotiation or Conciliation

The court may refer a case for negotiation or conciliation where the parties consent to do so. This room is provided under Order VIIIC Rule 36 of the CPC (Amendment to the Frist Schedule) Rules 2019 which reads:

"36. -(1) At the request of any party and with consent of the other party, the court may refer any matter in dispute to negotiation or conciliation, and such matter shall be dealt with in accordance with the applicable law and the agreement of the parties to the negotiate or conciliate and arrive at a settlement."

The Labour Institutions Act No. 7 of 2004 (Cap 300 R.E 2019)

This is a piece of legislation which establishes the institutions dealing with labour related matters. The Commission for Mediation and Arbitration (CMA) and the Labour Court are among those institutions. The legislation governing the CMA includes the Labour Institutions Act (Cap. 300, R.E 2019) and the Employment and Labour Relations Act (ELRA), (Cap. 366, R.E 2019). These statutes designate the CMA as an effective mechanism for resolving labour disputes through less formal and bureaucratic means. Section 12 of the Labour Institutions Act requires all labour disputes referred to the CMA to first undergo the mediation process and if mediation is not successful, then the matter is referred to arbitration. The functions and conduct of Mediators and Arbitrators in the CMA are governed by the Employment and Labour Relations (Code of Conduct) 2007 (GN No. 42 of 2007)

The High Court (Commercial Division) Procedure Rules, 2012 (as amended by the High Court (Commercial Division) Procedure (Amendment Rules), 2019

Part V of these rules is on court annexed mediation. It gives guidance on what the mediator is required to do in the process of mediation. The rules recognize a mediator as an independent and impartial person who will do everything to facilitate parties to resolve their dispute. Rule 36 states the consequences of failure to appear during mediation process while Rule 37 allows restoration of a mediation if the trial court is satisfied that there were sufficient reasons for non-appearance. Under powers of rule 39, the mediator may conduct joint or separate meetings with parties; and seek expert opinion if the parties agree to pay costs thereof, if any. In addition, the rules require the mediator to be guided by the principles of objectivity, fairness and natural justice as well as confidentiality.

Court-Annexed Mediation Guidelines, 2024

Before 2024, there were several consultations and studies to analyze the general situation of court-annexed mediation processes. One of the major observations was the absence of guidelines to regulate the entire process of mediation and the practice was not systematically conducted. From these findings, it was recommended to the Honorable Chief Justice that there was a need to have common Mediation Rules and Guidelines. Thus the amendments came in to address the proper way to conduct mediation process.

Among the major salient features in the amendment of the First Schedule is the new sub-rule 2 under Order VIII Rule 24 which gives power to the Chief Justice to issue guidelines for conducting Alternative Dispute Resolutions. Rule 24 (2) reads:

"(2) The Chief Justice may prescribe the manner and procedure including issuing guidelines and such other directives as it may be necessary for conducting alternative dispute resolution referred to under this rule."

On the basis of the above amendment, the Court Annexed Mediation Guidelines, 2024 were put in place. The Guidelines apply to the conduct of court annexed mediation in all civil cases instituted in the High Court, Courts of Resident Magistrate and District Courts. However, Guideline 2.3 allows the mediator to adopt any other approach in addition to these guidelines to suit the circumstances of the case but subject to the consent of the parties.

Mediators are therefore guided by these Guidelines although in addition, they may adopt any other approach to suit the circumstances of the case but subject to the consent of the parties (Guideline 2.3).

Main features under the Guidelines

i. Mediation may be conducted either physically or electronically. Where mediation is conducted physically, the venue shall be within the court premises but in case they opt for another venue they must share the costs of the venue. (Guideline 3)

ii. The time frame of transmission of pleadings to the appointed mediator and commencement of mediation. The pleadings must be transmitted to the mediator within three days after receiving the mediator's appointment confirmation; the mediator to set a date of mediation within 7 days from the date of confirming the appointment; and conduct mediation session within 14 days from the date of confirming the appointment. (Guideline7)

iii. The mediator must disclose to the parties any circumstance that could potentially give rise to a probable apprehension of lack of impartiality in the conduct of mediation. If parties agree to waive in writing), the mediator may proceed with mediation. Where the parties object, the mediator has to withdraw from mediation and a new mediator shall be appointed. (Guideline 8)

iv. Guideline 10 sets out the principles and consideration for mediation:

- The objectivity, fairness and natural justice;
- duties and obligations of the mediator; and
- observation of the principle of confidentiality.

v. The guidelines outline the following four stages of mediation: Introduction; Opening statement; Exploring options and developing consensus; and Conclusion. (Guideline 10.4)

vi. Where mediation is not conducted as a result of failure by either of the parties to attend without good cause, the mediator is required to submit a certificate of non-attendance to the trial judge/magistrate.(Guideline 11.1)

vii. After conclusion of the mediation, the mediator is required to report to the trial court within 48 hours showing the outcome of the mediation. Where it was successful, the report shall be accompanied with the Settlement Agreement.(Guideline 13)

viii. The Appendices to the Guideline have seven different Forms applicable in mediation-

- Notice of appointment of the mediator (Form MD/1);
- Notice of acceptance (Form MD/2);
- Appointment of a representative and Authority to settle (Form MD/3);
- Statement of Understanding (Form MD/4);
- Certificate of non-attendance (Form MD/5);
- Mediator's Report (Form MD/6); and
- Settlement Agreement (Form MD/7)

The Judicature and Application of Laws (Appointment, Remuneration and Disciplinary of Mediators) Rules, 2024

The Judicature and Application of Laws (Appointment, Remuneration and Disciplinary of Mediators) Rules, 2024 apply to mediators, other than judicial officers, conducting court annexed mediation. Part two of the Rules provides for the qualification of mediators; the process to appoint the mediators; determination of applications and the Register of mediators.

Rule 5 sets out the qualifications for a person to be appointed as a mediator. The Rule provides:

"5. A person shall be eligible for appointment as a mediator under these Rules if that person is accredited as a reconciliator, negotiator, mediator or arbitrator under the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations."

The Registrar of the High Court keeps and maintains a register of mediators appointed under these Rules (Rule 8). Remuneration and liability to pay mediators are found under Rules 10 and 11 respectively.

Part IV of these Rules is about the Code of conduct and disciplinary measures. These provisions include the enforcement of the code; sanction for breach of code; complaints over misconduct and scrutiny of complaints. The Judge in-charge is given the powers to enforce the Code for the purpose of controlling the discipline of mediators. A mediator who breaches the Code commits a professional misconduct (Rule 12)

Where the mediator is a serving judicial officer, he shall be liable to such disciplinary action as prescribed for under the Judiciary Administration Act (Rule 13). Sanctions for non-judicial officers may include a written warning; payment of such amount of money as may be adequate to cover the cost or loss incurred by the complainant as a result of the complaint; recommendation to the Chief Justice for mediator's suspension or revocation; or any other action as the Judge in-charge may consider fit (Rule 15).

Conclusion

The above legal framework highlights the current laws applicable in the administration of justice through ADR mechanisms and specifically mediation. The success rate in mediation will depend on the proper application of these laws by not only skilled, committed and professional mediators but also the engagement of other partners in the process.

Part 3: Methods of Conflict Resolution - Distinguishing Mediation from Other Dispute Resolution Procedures

Goal: Collect various conflict resolution procedures and discuss their essential characteristics. Subsequently, clarify differences regarding decision-making authority, legal basis, outcome responsibility, and outcome security.

Method: Have participants work in groups of four to collect all known conflict resolution procedures and write them on cards; then cluster them on the bulletin board an discuss in plenary.

Methods of Conflict Resolution

1. Bilateral Negotiations

Bilateral negotiation is the most used and successful method of dispute resolution. Almost every conflict initially goes through a phase of negotiation between both sides, and in many cases conflicts are resolved in this phase. Only when negotiations fail do parties seek other ways of dispute resolution. These negotiations usually occur directly and immediately between parties without involving a neutral third party. This aims to achieve a quick solution without additional costs. The parties retain full control over the process and its outcome.

The unlimited flexibility of direct negotiations also carries certain risks. When conflict parties only exchange positions and present arguments unstructured without agreeing on an efficient negotiation process, such negotiations are likely to fail. The study of typical negotiation patterns was the foundation for developing the "Harvard Concept," which characterizes a fact-based negotiation method ("principled negotiation") that can be applied to any type of negotiation, whether private, business, or international between countries/nations. The core message of the concept is that neither hard bargaining (building extreme positions, holding them long, wanting to win) nor soft bargaining (avoiding personal conflicts, preferring to make concessions rather than representing one's own interests) leads to superior results. Interest-based negotiation is the third alternative: this negotiation style is hard on the substance but soft on the people involved. The five-phase model of mediation builds on the Harvard Concept. This model will be explained in greater detail later.

2. Moderation of Settlement Negotiations

In this dispute resolution procedure, a neutral third party, the moderator, is involved. They guide negotiations between disputing parties by focusing on the structure of the negotiation.

Their task is to improve communication between the conflicting parties. They can give the floor, establish discussion rules when necessary, ensure understanding verification (that contributions are equally understood by all). If there is an agenda, they monitor compliance. The moderator provides external structure to bilateral or multilateral negotiations.

3. Mediation

The term "mediation" refers to a voluntary, confidential, and structured process in which the parties involved can develop an interest-based solution with the support of impartial third parties. There are very different definitions of mediation. The term originates from the Latin word "mediare" = "to be in the middle." Characteristic of every mediation is that the mediator cannot decide the conflict. The third party whom the parties entrust with negotiation moderation is impartial. This means they not only try to optimize the negotiation process by ensuring good communication between parties and structuring the procedure. They are responsible for the process, not for the content of the agreement. As an impartial third party, they work with the parties to develop the party interests that determine the conflict, for each side. The heart of mediation is the respective, usually very different interests of the disputing parties. These must be worked out to create better understanding on both sides. Legal aspects play a subordinate role compared to the actual interests of the parties. The dispute decision remains the exclusive responsibility of the parties. If an agreement is reached in the end, the mediator implements it together with the parties in a binding form.

4. Conciliation

In conciliation, dispute resolution occurs under the leadership of a neutral third party. This person should propose solutions but does not make binding decisions for the parties. In an conciliation procedure, deliberately non-legal aspects are included in the dispute resolution. The difference from mediation is that an conciliator works much more substantively than a mediator. The conciliator evaluates the dispute material; the mediator concentrates on process control. Unlike the mediator, the conciliator makes an conciliation award that is formally non-binding for the parties but creates settlement pressure due to the personal authority of the arbitrator or publication of the proposal. Characteristic of conciliation is that the conciliator, like a judge, concentrates on evaluating and weighing the facts presented. Only at this level do they try to mediate, which usually ends in a compromise between the starting positions.

5. Expert Determination

Expert determination concentrates on deciding a single factual or legal question. It decides only this, not the entire conflict. A neutral third party, an expert, is appointed to examine a definable point of dispute. The opinion of this third party is accepted by the parties. Parties often connect this with the expectation that with this binding decision on a central point of dispute, an agreement for the entire conflict can be reached. For expert determination, parties must contractually agree on the decision of a specific question through expert determination and also determine whether the opinion should be binding for a possible follow-up process or only represent a recommendation. By mutual agreement, parties can give the expert guidelines for determining the disputed aspect.

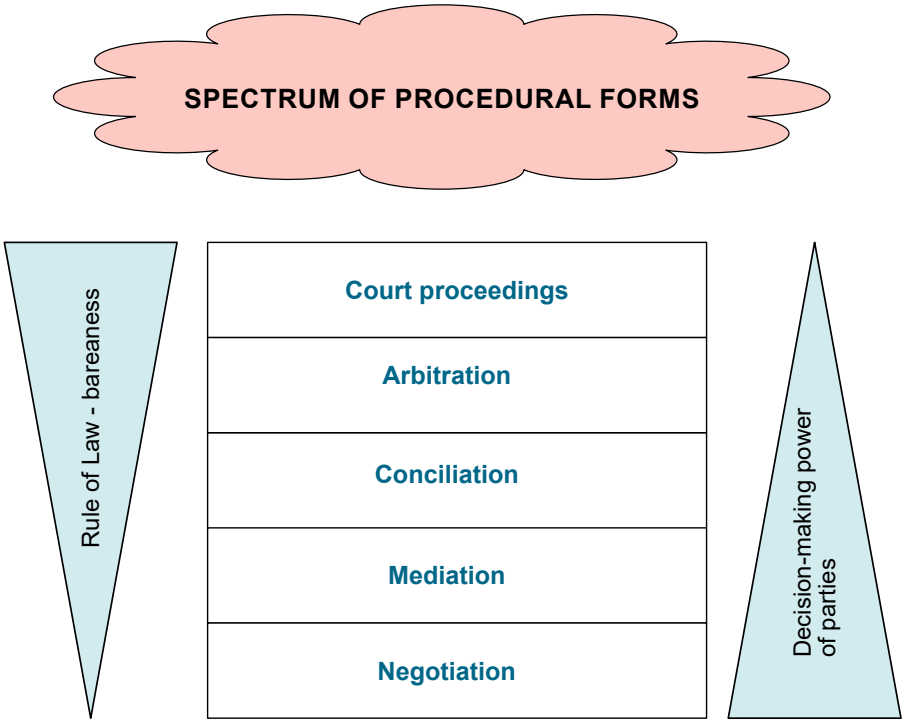
6. Arbitration Proceedings

In arbitration proceedings, one or more private arbitrators are appointed who - like a state judge - decide the dispute authoritatively. The "arbitration award" is binding between the par-

ties. There are usually no legal remedies like appeal or revision against it. In some civil procedure codes, review by state courts is possible based on superior standards such as "violation of good morals." Arbitration proceedings are based on consensus of the parties involved, who have agreed to such a final, binding dispute resolution procedure. In arbitration proceedings too, a third party decides the dispute. The decision standard is exclusively applicable law. However, arbitration proceedings allow more room for case-specific, procedural approaches than rigid civil procedure codes. In arbitration proceedings, procedural control remains partly with the parties, who can decide on specific evidence procedures or removal of arbitrators. An arbitration award must be recognized by state courts to be enforceable.

7. Court Proceedings

In state court proceedings, parties delegate the dispute to a neutral third party - the judge. The judge decides the dispute by judgment, unless the parties settle in the proceedings. The parties may propose their own settlement and have the same recorded by the trial judge. A settlement proposal may also be made by the judge based on his legal assessment of the subject matter. The path to the judgment that the judge ultimately renders follows a strictly observed procedural order that is predetermined and highly formalized. The judge is guided exclusively by legal considerations and is limited to the subject matter of the dispute as defined by the claim. The judgment is final for the instance but can be reviewed through legal remedies in another instance. Participation in court proceedings is mandatory for the defendant (default judgment). The strong formalization through procedural rules limits the parties' influence on the course of proceedings and the outcome. The model of judicial dispute resolution has been a successful dispute resolution procedure for centuries. The disadvantages are - briefly summarized - often very long proceedings duration, high costs, and impairment of personal and business relationships when there can only be one winner.



Goal: Make clear the procedures of dispute resolution in terms of decreasing decision-making power of the parties regarding the procedure and content of the decision and increasing legal basis.

Method: Have participants categorize the collected procedures with reference to decision-making power and legal basis.

Part 4: What is Mediation?

Goal: Learn characteristics of mediation and clarify differences from judgment procedures

Method: Call-out method (flip chart) and group work

Definition:

Mediation is a confidential and voluntary process in which the parties involved can develop an interest-based solution with the support of an impartial third person.

Mediation is a *confidential and structured process in which parties seek to reach an amicable resolution of their conflict voluntarily and responsibly with the help of one or more mediators* (§ 1 MedG).

Call-out Exercise:

Characteristics: Collect on flip chart (two columns)

Key Characteristics of Mediation: - **Confidentiality** - **Voluntariness** - **Open-endedness** - **Impartiality of the mediator** - **Full information** - **Presence of parties** - **Future orientation** - **Interest orientation** - **Win-Win**

Flip chart collection: Contrast characteristics of adjudicative procedure in contentious court proceedings: - **Decision-making authority of the judge** - **Usually: Backward-looking** - **Position-oriented/Result-oriented** - **Win-Lose** - **Public** - **No consent to procedure required**

Essential Characteristics of Mediation:

Confidentiality: The mediation process is confidential. This means, on one hand, that the mediator treats the content of conversations confidentially. On the other hand the parties are bound to confidentiality. This is provided under Order VIIC Rule 31 of the Civil procedure Code. The mediator should point this out also to third parties.

Voluntariness: The mediation process is voluntary. This means no party can be forced to remain in a mediation process if they no longer have interest in it (so-called secondary volun-

tariness). Obligatory mediation clauses or mandatory mediation by law do not contradict this principle because it's not decisive whether a party must come to mediation, but whether they can leave it at any time.

Open-endedness: A mediation can only be meaningfully conducted if all parties are open to multiple solutions. Therefore, the interests behind positions are also worked out because these yield more than one solution option.

Impartiality of the mediator: The mediator is impartial, meaning they stand on both/all sides of the conflict parties. This means they actively try to find out the real interests and needs of both sides.

Full Information: This principle means all parties must be equally informed about the essential circumstances of the conflict. If essential facts are not shared, mediation will not be able to lead to a result.

Presence of parties: Personal presence of parties is required because mediation is based on better understanding between parties. Direct conversation and immediate encounter for collaborative development of a solution is important.

Future orientation: Parties seek a solution for the future in mediation. Clarifying the past is only part of the discussion to develop a good solution for the future from experience.

Interest orientation: Parties develop an interest-based solution with the mediator's support. Legal classification of viewpoints also plays a role, but not primarily.

Win-Win: The goal of agreement is a conflict solution that satisfies both/all sides. Since parties are solely responsible for the outcome of the solution, a solution with winners on both/all sides is likely.

Definitions of Judgment Procedure Characteristics:

Decision-making authority of the judge: The judge's decision-making authority means parties give up their own responsibility for solving the conflict. The judge decides solely on a legal basis. Parties try to convince the judge with their arguments, not the opposing party.

Backward-looking (usually): In court proceedings, facts from the past are usually processed to establish responsibility and fault and derive consequences such as damage claims.

Position/Result-oriented: The judge's decision-making authority is limited to the subject matter defined by the claim and response to claim. For the positions contained therein, the judge seeks solutions in their judgment.

Win-Lose: In a judgment, there is usually a winner and a loser.

Public: In court proceedings, the public is usually admitted. No confidentiality.

No voluntariness: The state court procedure is not voluntary, at least for the defendant. No consent is required.

Part 5: Exercise on Dynamics of Conflict Resolution Before a Decision-Maker and a Mediator

Exercise: Who gets the small house by the sea?

Form groups of 3 people each: two conflict parties and one third party.

Conflict: A couple is separating. Both want the small house by the sea with garden that they built together in good times. They have already agreed on everything else.

The case should be played through in 2 alternatives, 10 minutes each.

Alternative 1: The dispute should be decided by the third party. The third party must decide after 10 minutes who gets the house. They don't need to justify the decision.

Alternative 2: The third party (a friend of both) should only mediate but not decide.

Then discuss in plenary: 1. How did the third party feel in each role? 2. How did the parties feel in the different alternatives?

Goal of the exercise: Participants experience the different attitudes of a decision-maker and a mediator in the exercise. The experiences are usually different. Participants who play party roles usually experience how differently they speak in Alternative 1, namely primarily toward the decision-maker, and in Alternative 2, namely to each other.

Part 6: Collect Characteristics of Mediator Attitude vs. Deciding Judge

Goal: Show the differences in attitude between a decision-maker (judge) and a mediator. This change is always a special challenge for judge-mediators.

Method: Group work in groups of 3, collect characteristics and write on cards; Duration 15 minutes

JUDGE	MEDIATOR
Neutral	Impartial
Result-oriented	Open-ended
Distant	Friendly and approachable
Conducting toward result	Conducting toward procedure
Guided by law	Guided by interests
Selektive perception of facts	Open to all aspects of conflict
Looking at the past	Looking into the future
Public hearing	Confidential hearing
Decision on result	No decision on result, personal responsibility of parties

Part 7: Toolbox Part 1

Method:
Step 1: Call-out method; Question: What does a person do who listens well? Note question on flip chart; participants collect ideas; trainer notes.
Step 2: Explain active listening and paraphrasing
Step 3: Exercise: divide into groups of 2; mutually practice active listening (i.e., don't ask questions, just paraphrase, summarize in own words)
Loop exercise (1): Where will you spend your next vacation, why did you choose that destination, what will you do there?
Step 4: Explain looping; work out reasons and goals of active listening/looping together (flip chart)
Step 5: Evaluation in plenary

1. Active Listening

Active listening is a key technique of mediation.

The basic principle of active listening is that the listener constantly shows the speaker how well they are listening. The active listener approaches the conversation partner with a respectful and interested attitude. Active listening is the counter-model to "passive silence" as usual in bilateral negotiations and discussions - the listener remains silent. In active listening, the listener gives non-verbal signs in the simplest form that they are listening attentively. They nod, take notes, or murmur "I understand." The listener is always turned toward the speaker and maintains eye contact. They show that they empathically receive what is said and really want to understand. The active listener avoids any form of evaluation of what is heard and instead assumes that the narrator reports their subjective truth.

In mediation, the mediator usually employs a more intensive form of active listening in which the mediator linguistically mirrors or reproduces the heard statement of the speaker.

2. Paraphrasing

The conversation technique of paraphrasing consists of the mediator reproducing and summarizing the speaker's statements in their own words. The mediator uses their own word choice as much as possible but does not speculatively interpret what they heard and adds nothing substantively. The listening is active insofar as they signal to the speaker through their repetition that they have understood them substantively. At the same time, the mediator encourages the speaker to explain themselves completely or concretize and continue their thoughts. The mediator's responses contain no personal opinion such as approval or criticism.

3. Mirroring - or Verbalizing

The technique of verbalizing goes one step further than paraphrasing. During the speaking process, the mediator pays attention not only to the content of the statement but also to the manner of description and underlying emotions. Word choice, speaking pace, and body posture convey messages that want to be recognized. They indicate the emotional state and motivation of the party. Isolated perception and interpretation of non-verbal messages is error-prone; misunderstandings and misinterpretations often occur. The technique of verbalizing prevents this

by converting emotions perceived by the listener into words. The party can then confirm the listener's perception as correct or reject it as false.

4. Loop of Understanding

The technique of "Loop of understanding" goes one step further.

The mediator repeats and paraphrases what they heard in their own words and gets a confirmation of understanding from the speaker that they understood them correctly and completely.

Example:

Mediator: Do I understand you correctly that you had already planned the trip in spring and also discussed it with your girlfriend?

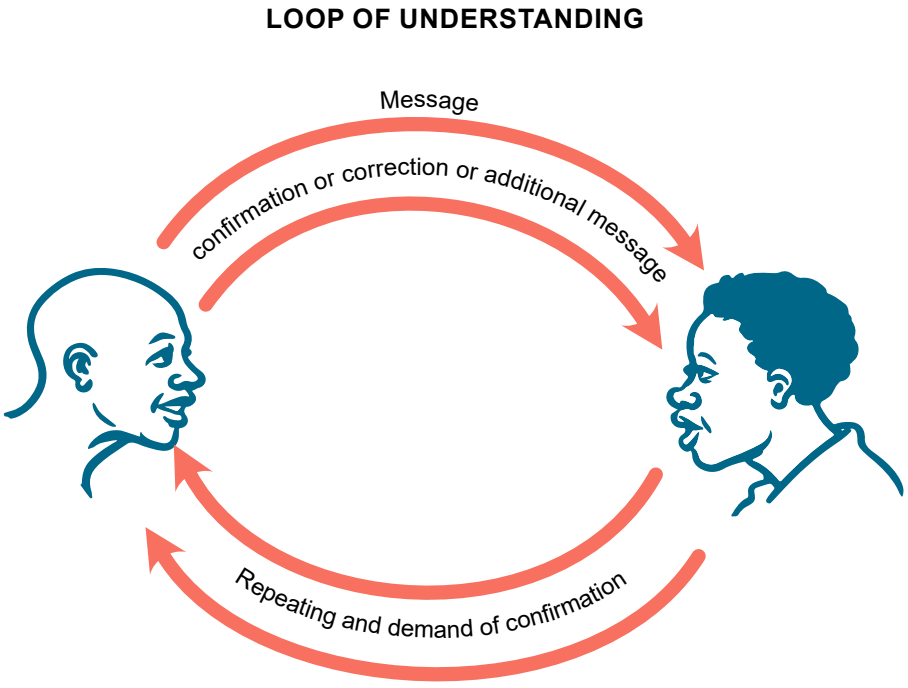
Mediand: Not quite.

Mediator: What didn't I understand quite right?

Mediand: I had planned the trip in spring, but only discussed it with my girlfriend in summer.

Mediator: So it was that the discussion with your girlfriend came some time after the trip planning.

Mediand: Exactly.



5. Reasons and Goals of Active Listening - Looping

Goals:

The core of the technique consists of repeating the heard statement and verbalizing non-verbal expressions. When the mediator employs this technique, they pursue several goals:

b) Slowing down and creating transparency

Many negotiations fail because parties believe they know the dispute-relevant facts and the views of the opposing side, but actually don't know them, at least don't understand them. Misunderstandings result. Here it's important to first slow down negotiations to create more time for understanding. Repetition doubles the listening time for the opposing side. Moreover, conflict parties who are emotionally stressed often express themselves inappropriately, imprecisely, and accusingly. Verbal statements can be misinterpreted. The technique of active listening/looping counteracts such communication deficits through the mediator's control question of whether they understood the statement correctly. Transparency of the conflict is important for the progress of mediation. Only precise understanding of the actual conflict enables determining the conflicting interests and remaining clarification needs.

c) The feeling of being understood

Through active listening, the presenting party develops the feeling of being really understood and taken seriously. By being put in this position, they can coherently describe their perception. In doing so, they will self-reflectively change one formulation or another when they are mirrored through the mediator's summary that the statement was ambiguous. Paraphrasing has, as neuropsychological studies show, actually a positive emotional effect on the expressing party. The feeling of being understood and taken seriously is also important because the disputing party gains trust in the mediation process and the mediator's guidance. This trust leads to constructive further cooperation. The party gains confidence in their own negotiating strength and ability to participate in mediation (empowerment).

d) Process control by the mediator

The mediator controls the negotiation through the technique of active listening. The conversation runs through the mediator, who serves as a communication bridge. They thus give each party the time they need for their presentation. The technique also enables the mediator to approach each fact complex step by step and handle it structurally.

e) Objectifying the negotiation

The mediator objectifies the negotiation through active listening because the conversation partner is no longer the opponent but the neutral mediator. With direct addressing of the opponent in conflicts, something personal and accusatory always resonates. This is avoided through this technique. Emotions that the mediator addresses and puts into words also become visible and understandable. The party understood also emotionally is again enabled to follow the negotiations factually.

f) Listening and understanding by the opposing side

The conversation technique of active listening makes it easier for the passively listening party to really understand the opposing side's perspective. In bilateral negotiations, opponents concentrate on justifying their own position, not on understanding the opposing one. Opponents tend to assume they already know exactly from previous conversations what the opposing side wants and believes, and therefore any additional statement is meaningless. It only matters to find convincing arguments for one's own position. "We listen to reply, not to understand," goes a bon mot.

When the mediator applies the technique of active listening, they counteract this automatism in the opposing side's mind. The technique frees the participant limited to the listener role from the otherwise felt compulsion to respond spontaneously. They can and must concentrate entirely on listening. Additionally, every aspect is presented twice. Thus what is heard can be better understood and stored. Moreover, we intuitively believe the neutral third party more than the party we're arguing with. This applies even when the third party only repeats the party's presentation without making it their own. The negative connection between speaker and spoken is dissolved; the statement is more likely to be considered neutral.

Closing round: Each participant says in about one sentence what particularly appealed to them from the day's content.

Day 2

Part 1: Welcome

Part 2: Communication in General

Verbal and Non-verbal Communication

Communication is an everyday, natural process. People communicate constantly and in almost every life situation. "One cannot not communicate." Through communication, social relationships are created and changed. Communication appears easy and simple but is often complicated in its course and characterized by misunderstandings.

In mediation, communication plays a major role and has powerful significance. Therefore, the basics of communication should be briefly presented here in overview.

Communication comes from the Latin word "communicare" and means "to share, communicate, make common, unite." This already makes clear that it takes more than one person to communicate.

Communication basically takes place on three levels: verbal, para-verbal, and non-verbal.

Verbal communication consists of word expressions that are audible and understandable. Interesting and scientifically proven is that only about 20% of human communication occurs through verbal expression. 80% is para- or non-verbal.

Para-verbal communication refers to all those characteristics of communication that vocally accompany the spoken word, i.e., intonation, voice modulation, dynamics, speaking pace, pitch, speech pauses…

Non-verbal communication occurs through facial and visual signals that are continuously and in most cases unconsciously exchanged between sender and receiver.

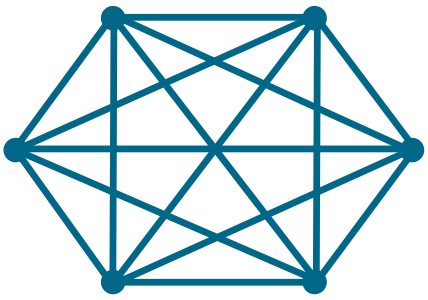
Sender → Message → Receiver

The sender passes messages to the receiver on all three levels.

The mediator's task is to decode these messages using communication techniques.

Usually at least three people are involved in a mediation process: one mediator and two parties. These people have different functions: the mediator controls the communication process as an uninvolved, neutral third party. The two parties try to reach an agreement consensually.

Depending on the situation, any number of additional people can be added: another mediator and especially multiple parties and their lawyers or third parties.



From the number of people involved in the mediation process, the number of different relationship lines and resulting communication processes emerges. Their number increases exponentially with each additional person. While there are 3 different communication channels with three communication participants, there are already 10 with 5 communicators and 36 with 9.

During the entire mediation process, various communication processes run explicitly and implicitly between all participants. Explicitly, these are expressed in spoken words. Implicitly, non-verbal signals are received and sent by everyone.

Emotions

Emotions are complex psychophysical reactions to stimuli or situations that manifest in our body and brain and usually convey a feeling to us.

Paul Ekman, US citizen, researched universal basic emotions with indigenous people of Papua New Guinea. From this, he developed the so-called "Facial Action Coding System," which many psychologists still work with today. People can read emotions in strangers' faces even when they share neither culture nor language. Empathy is possible across all boundaries, reads the hopeful message. Ekman became famous, however, because he promised to reliably expose liars based on his research, as they betrayed themselves through smallest movements of facial expressions and body language. (The series "Lie to Me" is based on his findings). Many of his indicators for lies are now considered outdated. But the categorization of fundamental emotions still applies today.

The seven basic emotions: - **Joy:** A feeling of satisfaction and happiness. - **Sadness:** A feeling of melancholy and sorrow. - **Anger:** A feeling of dissatisfaction and rage. - **Fear:** A feeling of worry and dread. - **Surprise:** A feeling of shock and amazement. - **Disgust:** A feeling of repulsion and aversion. - **Contempt:** A feeling of disdain.

Interesting is that there are only two positive basic emotions and five rather unpleasant emotions.

Emotions are important indicators of interests in mediation.

Communication Models

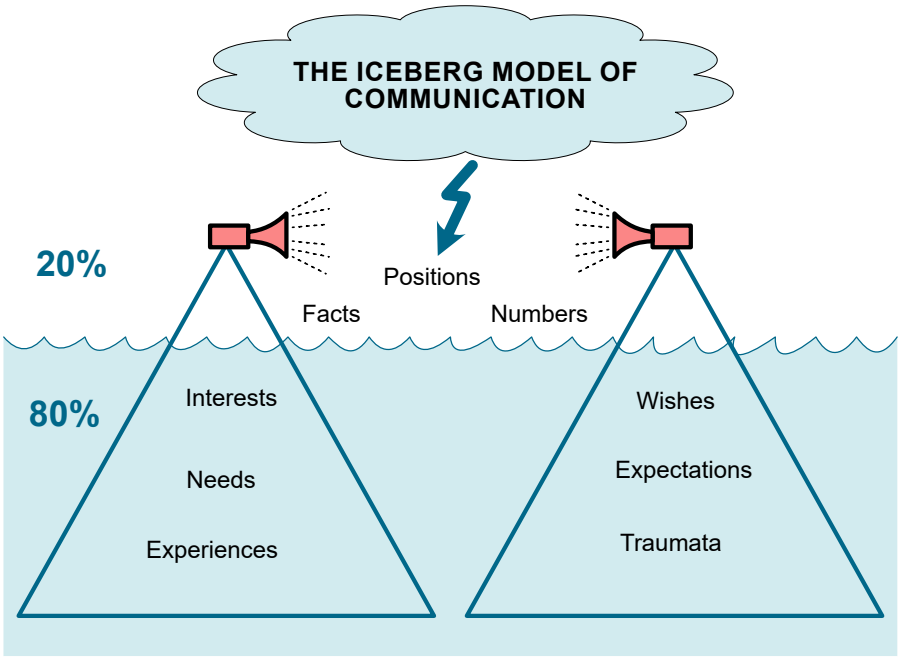
Communication models describe processes and sequences of interpersonal communication in generalized form at a superordinate level. Mediators can use these in different phases of their work, proactively for describing and analyzing observed relationships and reactively for analyzing optimizable or successful actions. They serve to analyze and optimize communication competencies.

a) The Iceberg Model

The iceberg model in communication illustrates that a large part of communication takes place unconsciously and non-verbally. Similar to an iceberg, where only a small part is visible above

the water surface, only a small part of the message (about 20%) is verbal and thus visible. The larger part of the message (about 80%) is non-verbal and invisible but significantly influences communication.

Illustration:



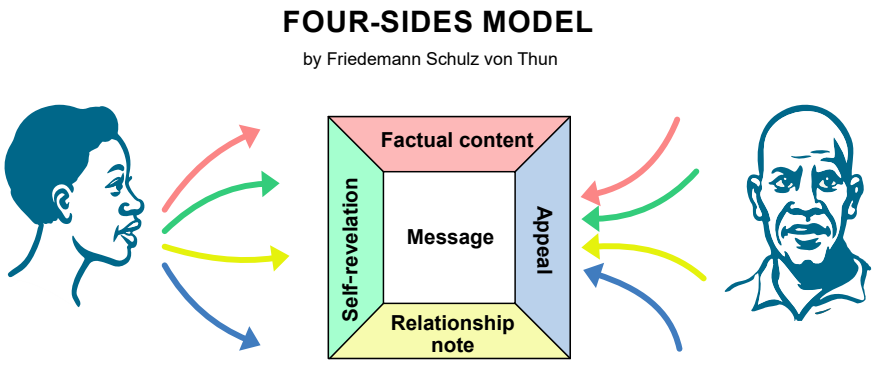
- **Visible part (iceberg tip):** Verbal communication, i.e., contents that are explicitly spoken, such as facts, data, or thoughts.
- **Invisible part (iceberg underwater):** Non-verbal communication that works subconsciously, such as facial expressions, gestures, body language, tone of voice, and personal environment. What we understand is very much influenced by experiences, assumptions, traumas and emotions.

Why is this important?

- **Understanding:** The iceberg model helps understand the importance of non-verbal communication and the relationship level, which greatly influences message interpretation.
- **Communication success:** By perceiving and considering non-verbal communication, misunderstandings can be avoided and communication made more successful.
- **Intercultural communication:** The iceberg model is also relevant in intercultural communication, as cultural differences are often communicated unconsciously and non-verbally.

Summary: The iceberg model makes clear that in communication we should pay attention not only to what is said but also to non-verbal communication, which makes up a large part of our message.

b) The Four Sides of a Message - Communication Square



Factual content:	Information and facts
Self-revelation:	The speaker reveals something about himself consciously or unconsciously.
Appeal:	Expresses what the speaker wants the recipient to do, think, or feel.
Relationship note:	Expresses how the speaker sees his relationship to the recipient, manifested in voice, gestic, facial expressions.

The **Four-Sides Model** (also **Message Square, Communication Square** or **Four-Ears Model**), published in 1981 in the first volume of the writing *Talking Together* by Friedemann Schulz von Thun, is a model of communication psychology with which a message is described under four aspects or levels: *factual content, self-revelation, relationship,* and *appeal*. These levels are also called "four sides of a message." The model serves to describe communication that is disturbed by misunderstandings.

The overarching goal of this model building is to observe, describe, and model how two people relate to each other through their communication. Schulz von Thun turns to statements (the "messages"). These can be viewed from four different directions and interpreted under four different assumptions - these are the four aspects or levels that Schulz von Thun calls "sides of a message":

Factual aspect The described matter ("factual content," "What I'm informing about")

Self-statement What becomes clear about the speaker based on the message ("Self-revelation," "What I reveal about myself")

Relationship aspect What is revealed about the relationship based on the manner of the message ("Relationship," "What I think of you or how we stand to each other")

Appeal What the receiver should be prompted to do ("Appeal," "What I want to move you to do")

In this way, the "message as object of communication diagnosis" can be used. Disruptions and conflicts arise when sender and receiver interpret and weight the four levels differently. This leads to misunderstandings and consequently to conflicts.

Exercise: with all participants together

The Example "The Traffic Light is Green!"

The woman sits at the wheel, and the man says: *"Hey, the traffic light is green!"*

The woman answers: *"Are you driving or am I?"*

The man's statement can be understood on the four levels in this situation as follows:

- on the *self-revelation* level: as *indication* that the passenger is in a hurry and impatient,
- on the *factual* level: as *indication* of the traffic light that just turned green,
- on the *appeal* level: as *request* to drive off,
- on the *relationship* level: as *intention* of the passenger to help the woman at the wheel, or as demonstration of the passenger's superiority over the woman.

So the passenger may have placed the weight of the message on the appeal. The driver could instead perceive the passenger's statement as degradation or patronizing (relationship level).

Regarding the listener and their habits, Schulz von Thun expands the Four-Sides Model to a "Four-Ears Model." One ear each stands for interpreting one of the aspects: The "factual ear," the "relationship ear," the "self-revelation ear," and the "appeal ear."

Factual Level/Factual Content

On the factual level, the sender conveys data, facts, and circumstances. Tasks of the sender are clarity and comprehensibility of expression. With the "factual ear," the receiver checks the message with criteria of truth (true/untrue), relevance (relevant/irrelevant), and adequacy (sufficient/requiring supplementation). In a well-functioning team, this usually proceeds without problems.

Self-revelation

Every statement causes partly conscious unintentional self-presentation and simultaneously unconscious, involuntary self-disclosure. Every message can thus be used for interpretations about the sender's personality and their thoughts or feelings. The receiver's "self-revelation ear" listens for what is contained in the message about the speaker.

Relationship Level

On the relationship level, it becomes apparent how the sender and receiver behave toward each other and how they assess each other. The sender can - through the manner of formulation, body language, tone of voice, and other means - show appreciation, respect, goodwill, indifference, contempt regarding the other. Depending on what the receiver perceives in the "relationship ear," they feel either accepted or degraded, respected or patronized.

Appeal Level

Anyone who expresses themselves usually also wants to achieve something. With the appeal, the sender wants to move the receiver to do or refrain from doing something. The attempt to influence can be open or hidden. Open are requests and demands. Hidden influences are called manipulation. On the "appeal ear," the receiver asks: "What should I think, do, or feel now?"

Exercise 2: in groups of 3

Following situation: A man and woman sit at dinner. The man sees capers in the sauce and asks: "What's that green thing in the sauce?"

Participants should analyze the message on all 4 levels, once from the sender's side (the man), once from the receiver's side (the woman).

The man means on the various levels:

Factual level:	*There's something green.*
Self-revelation:	*I don't know what it is.*
Relationship:	*You will know.*
Appeal:	*Tell me what it is!*

The woman understands the man on the various levels as follows:

Factual level:	*There's something green.*
Self-revelation:	*I don't like the food.*
Relationship:	*You're a terrible cook!*
Appeal:	*Leave out the green stuff next time!*

Part 3: Communication in Conflict

Background

People in conflict behave differently in their communication. Simply put, this is because one party doesn't say everything that's important to them and the other party doesn't perceive everything that's important. How does this happen?

In every situation, cognitive and emotional schemas operate that determine people's thinking, feeling, and acting. In conflict situations, the ability to perceive is restricted, mental flexibility decreases, thinking becomes more rigid. This reduces the possibility of taking in broad information and decreases willingness to change perspectives. Emotional processes take over control in the brain; depending on personal disposition, attack and flight schemas are activated.

Communication only takes place on the position level and its expression changes. The party is trapped in a kind of conflict tunnel.

Since conflict usually exists between two parties, very similar processes occur in the other party. Emotional control also takes place in them and schemas adapted to the situation are active.

Additionally, both parties react to each other's non-verbal signals, in many cases without being aware of it.

If it's possible to show the parties light at the end of the tunnel, to lead them out of cognitive rigidity and emotionally relieve them, they will be enabled to again constructively exchange

views about their concerns. The communication models shown above and looping/active listening on all levels help with this.

Loop Exercise (2): Form pairs; one tells the other about a conflict that emotionally touches them (has touched them); the other loops; try to loop on emotional level as well; switch after 10 minutes each

Evaluate in plenary

Part 4: Introduction to the 5-Phase Model of Mediation

The "Orange Example" and principles of the Harvard Concept should be briefly presented, as both belong to general knowledge of mediation.

Orange Example

Two small children fight bitterly over an orange. The mother comes and should settle the dispute. The standard solution looks like this: the mother takes a knife and divides the orange in half. A mother trained in mediation and the Harvard Concept proceeds differently. She asks her children: "Why do you want the orange?" One child's answer is: "Because I want to eat it, obviously." The other's answer is: "I want the peel to bake a cake." Suddenly a problem solution is possible that lets both opponents win and completely satisfies them. "Win-Win" in Harvard Concept language. The innovative approach of this concept lies in the mother asking why the children want the orange. Both children assert the same position: "I want the orange." Knowing the interests of the disputants and if these interests are not absolutely identical, one can search for innovative solutions for the overall problem, namely to best satisfy the actual interests of both children. One child gets the orange flesh to eat, the other gets the grated peel for cake baking.

Harvard Concept

The negotiation concept was developed in the 1970s at the renowned law faculty of Harvard University in the US. It refers to a fact-based negotiation method (principled negotiation) that can be applied to any type of negotiation, whether private between spouses, friends, business, or in international contexts. Professors Roger Fisher and William Ury, later with Bruce Patton, scientifically and meticulously studied negotiation processes and published these research results under the popular science title "Getting to Yes" in 1981.

The research subject was analysis of negotiation processes and strategies and deriving action recommendations for negotiators.

The core message of the concept is that neither *hard bargaining* (building extreme positions, holding them long, wanting to win, ego of the negotiating person identifies with represented positions) nor *soft bargaining* (avoiding personal conflicts, preferring to make concessions) leads to superior results.

Interest-based negotiation is the third alternative. This negotiation style is hard on the substance but soft on the people involved.

Four principles form the foundations of successful negotiation according to the Harvard Concept:

1. Separate negotiation partners and negotiation problem.
2. Distinguish between positions and interests, focus on interests
3. Develop decision options/alternatives
4. Insist on applying neutral criteria for judging settlement proposals.

Some add a 5th principle:

5. Know your own BATNA (Best Alternative to a Negotiated Agreement) This concerns one's own action alternatives in case of non-agreement. Knowing and possibly improving these grants power in negotiation.

To 1. Separate people from factual problems

In conflict situations, there's always entanglement of factual and relationship levels. Demands are made only because a person sits on the other side of the table whom one doesn't particularly appreciate, has been annoyed with, or for completely different reasons. Separation of persons and negotiation content is required.

To 2. Focus on interests, not on positions

The central statement of the Harvard Concept is that parties usually only superficially argue about their demands. Actually, negotiations are about parties wanting to satisfy the needs behind their demands, their interests. If parties succeed in focusing on their interests in negotiation, if these are uncovered, then a qualitatively better agreement can often be found. Ask "Why," recognize that there are diverse interests, consider basic human needs: security, economic livelihood, sense of belonging, being recognized, self-determination.

Talk about own interests, recognize others' as part of the problem.

To 3. Develop decision options

An option in the Harvard Model sense is any conceivable possibility for satisfying an interest. Even far-fetched, absurd options, brainstorming, no evaluation: the logic behind it: the more options negotiation partners find, the more likely that one of these options satisfies both parties' interests. Be creative - find options! Enlarge the negotiation pie.

Diagnosis: 4 main obstacles regarding developing a variety of decision options:

1. Premature judgment
2. Search for "the" right solution
3. Assumption that the pie is limited
4. Idea that others should solve their problems themselves

Recipe:

1. Separate finding options (brainstorming) from judging options
2. Increase number of options
3. Seek advantages for both sides; main concerns

To 4. Insist on applying neutral evaluation criteria

This is important in distribution battles; in our orange example: both children want to eat the orange.

Independent of actual distribution, the distribution principle is negotiated; i.e., the "how" of distribution. This can be an expert opinion on an object's value. Or as in the instructive orange example: one divides, the other chooses. This standard is bindingly negotiated. Only in the second step is it applied.

Appropriate and objective standards must be found and applied for evaluating all available action alternatives.

The Harvard Concept recommends:

- In a first step, parties should agree on a neutral standard by which distribution will be made.
- Only afterward should this standard be applied to the concrete distribution problem.

Overview of the Five Phases of Mediation

Phase 1: Opening and Framework Agreement

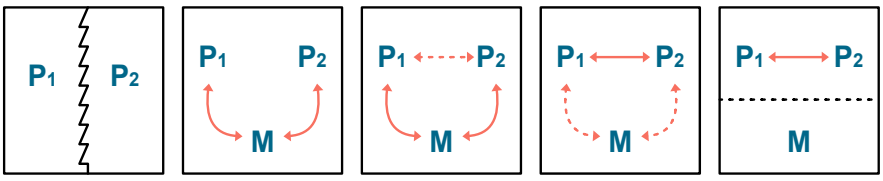
Phase 2: Situation Assessment, Topic Collection

Phase 3: Processing Conflict Areas, Interest Clarification

Phase 4: Solution Options and Their Evaluation

Phase 5: Agreement, Settlement

Please note: The **Court-Annexed Mediation Guidelines, 2024 of Tanzania** refer to four phases of mediation (1. Introduction; 2. opening statements; 3. developing options, 4. settlement agreement). In order to integrate the five phases of this manual into the four phases according to the guidelines on must view phase 2 and 3 of the manual as part of phase 2 of the guidelines of Tanzania.



5 Phase Model of Mediation

First overview of the 5 phases

Part 5: The Phase Model - Deep Dive

Phase 1: Opening and Framework Agreement

In Phase 1, opening the mediation process, the mediator's primary task is to establish a trusting atmosphere to create a good working level. Furthermore, conflict parties must be familiarized with the special features of the mediation process. It's important that all participants, including lawyers if they participate, become aware of their own roles and those of others.

1. Creating Working Level

Parties are usually initially uncertain about what this process will bring, nervously anticipate meeting the conflict party, and have doubts whether mediation will succeed. Therefore, the mediator's goal should initially be to give mediands security. An initial conversation about whether the party found their way well, whether they have peace for this conversation, etc., i.e., some small talk, can be helpful. From this, the mediator can illuminate the party's basic mood and especially build a trusting communication relationship. This is called "rapport" in psychology - a resilient connection within a relationship aimed at exchange. The mediator pays particular attention to non-verbal expressions.

The mediator greets those present - by name, not plaintiff/defendant. They establish seating arrangement. They can proceed differently here. Usually they seat parties at the roughly round table to their right/left side, to demonstrate that they are the most important people in this process. Then the mediator introduces themselves, possibly also saying how they should be addressed. **Important:** no one in the room wears a robe, neither lawyers nor judge-mediator.

2. Information about the Process

Few conflict parties know the special features and course of a mediation process. For this reason, the mediator presents general principles of the mediation process. These have been explained in detail and should only be mentioned again here. These are the *impartial attitude of the mediator*, who especially as a judicial mediator will not decide the conflict. The *confidentiality* of the process must be explained in two respects: first the confidentiality of the judicial mediator, who doesn't pass on the content of the mediation process to third parties, especially not to the judge who will decide the dispute. On the other hand, confidentiality among parties, which is negotiable. This means parties can decide themselves whether they want to keep the content of the mediation process confidential. For this case, they should make an agreement about how far confidentiality should reach. Should family members or business partners be allowed to be informed about it? Do they want to make an oral agreement about this or even create a written agreement? For formulation suggestions see above (...).

Voluntariness is another principle that can be explained so that every participant can exit the process without this being associated with a disadvantage for them. *Self-responsibility* as a principle expresses that parties represent themselves and their interests and negotiate solution options independently, with the mediator's support. Behind this is the idea that conflict parties are "experts of their own conflict" and can find the best solution for their conflict with support from the impartial third party. *Being informed* means that mediands can only negotiate on equal footing if each of them has sufficient knowledge of the factual and legal circumstances of the conflict.

3. Role of Lawyers

Lawyers also have a different role in mediation negotiations than they're used to from court proceedings, because they too must take a restrained attitude. They are their party's confidant, they know the legal and factual problems of the case. In the mediation process, however, it's different from court proceedings where lawyers usually represent the interests of their silent clients. Here parties should speak for themselves and speak for themselves, and their lawyers have more of an advisory and supportive function. For lawyers, it's important to receive time specifications for mediation duration and breaks and possibly separate rooms for consultation with parties.

4. Inquiring about Parties' Motivation

It makes sense, after explaining the above principles, to address parties directly and ask them about their expectations of the process and a possible result. Such a question enables parties to express something personal, possibly something about the burdens the conflict brings. It symbolizes that parties are at the center of the process and encourages them to present themselves. It's especially important that parties know that their cooperation is crucial in this process and that there's only a solution with their consent.

Summary:

Content: - Setting: Determining participants and seating arrangement - Greeting/introducing - Presenting the process (confidentiality, roles, procedure, objectives, possibly clarifying mandate) - Parties' motivation and expectations - Organizational matters (time frame, breaks)

Goals: - Create trust, establish contact - Information about the process - Establish responsibilities - Motivate parties for self-responsible conflict resolution or determine lack of mediation suitability (contraindication e.g., with lack of self-assertion, massive communication disorder, lack of voluntariness, wrong idea about the process) - Clarify process interests, dispel concerns

Introductory Questions: - What do you expect from today? - What would be a good result for you? - Have you had experience with mediation before? - Do you have any questions about the mediation process?

Tip: - Direct questions to parties as much as possible - Take time, especially for motivation inquiry, as many problems in mediation can be prevented here and roles defined.

Phase 2: Situation Assessment, Topic Collection

In Phase 2, the goal is to create as comprehensive a collection as possible of those dispute points that should be discussed in mediation and especially for which there must be a regulation so the conflict is resolved. A "topic" is something like a headline, formulated neutrally and openly, that characterizes the regulation subject. Parties, if they're not specifically prepared for this, won't be able to directly name topics. They'll either describe the life situation or name their position ("what they want to have"). It's then the mediator's task to formulate a topic, a neutral headline, from what's presented and offer this formulation to the party as a "topic."

There are *clarification-needing* topics that must be expressed but for which there can be no regulation (e.g., the timeline of a crisis; the parties' relationship in the past). These points need clarification in terms of presenting each side's view, but not regulation. Important are the *regulation-needing* topics - those for which parties must find a regulation so the conflict ends.

These topics are collected; parties alternately name their topics. Topics can basically be noted on a flip chart because they're topics that concern both sides and for which both must find a regulation. In exceptional cases (highly conflicted parties), the mediator can also initially begin with two topic lists but must later combine them.

Following collection, parties must decide which topic they want to begin with (this is the first agreement!).

Summary:

Content: - Presentation of parties' perspectives - Collection or development of topics (both regulation-needing and clarification-needing) - Systematization of topics - Visualization - Development of agenda

Goals: - Get to know facts and people - Clarify and structure situation as much as possible - Establish agenda

Introductory Sentences and Questions: - For which topics/circumstances are you seeking solutions? - What are your topics and points you want to regulate here? - What other aspects also play a role? - For which disputed topics do you strive for consensual solutions? - How does the conflict present itself from your perspective? - What topics would you like to discuss? - Please tell me what you see as the core point of your conflict. - Please describe the situation that brought you here in three minutes.

Tip: - Parties often express positions rather than topics. In this case, the mediator can try to work out the underlying topic through questioning: "What point do you want to negotiate with xy/What exactly do you want to regulate for the future?", or paraphrase: "So you're concerned with regulating ... for the future?" If this doesn't work: Parking lot! - Give the listening party paper for notes if they show a tendency to interrupt - Especially with deep-lying conflicts, consider future reference in questioning, as otherwise there's danger that past topics will be processed -> can touch therapeutic area. - Either determine who starts, or let parties decide (style question) - Always leave topic list hanging - Suggest topics that can be taken from the file

Exercise: "Dansi Tena" - 1st role-play only playing phases 1 and 2?

Evaluation in plenary

Phase 3: Processing Conflict Areas, Interest Clarification

In Phase 3, it's about determining parties' interests and needs. It's the *heart of mediation.* The mediator's task here is to lead parties away from their positions, which usually mutually exclude each other, to the underlying interests. Contradictory positions usually harden and are repeatedly named when the interest behind them isn't recognized and the need expressed remains unsatisfied.

Although participants often urge to skip this phase and move directly from topics to collecting solution options, they experience interest determination as unnecessary and time-consuming detour. However, only disclosure of mutual interests allows real understanding mediation, on whose basis solution options can be developed that can sustainably satisfy both conflict parties. The apparent detour is worthwhile.

What is an interest? Interest is generally understood as what someone cares about, what's important or useful to them. It's a motivation for people's decision-making. *Interests are concretized needs.*

According to a table by communication scientist Patera, three basic needs are assumed: attachment and relationship, security, and development.

Basic categories of needs and interests

Bonding, Relationship	**Safety**	**Development**
Be noticed	Security, protection	Strength, performance, competence
Acceptance	Stability	Autonomy
Belonging	Clarity	Freedom
Understanding	Transparency	Self-worth
Solidarity	Balance	Authenticity
Support	Protection	Creativity
Consideration	Constancy	Integrity
Honesty	Orientation	Change
Welfare		Change
Harmony, Peace		Sense
Trust		
Contact		
Closeness, intimacy	Order	Personal growth

Patera

Through the overarching category "need," one arrives at the party's concrete concern, the interest. The terms in the table are suggestions for interest formulations.

The mediator's task is to hear out or inquire about respective interests from parties' word contributions, then formulate them exactly themselves.

Whether a concern formulated by parties is an interest in this sense can be affirmed if the following points are fulfilled:

- The concern is *positively* phrased; it becomes clear what the respective conflict party wants; negative formulation leaves too many possibilities open and doesn't reveal what the party strives for
- The concern must be tangible, i.e., formulated in sufficient detail
- The concern must be solution-open, i.e., there must be more than one possibility to fulfill the concern
- The concern must be emotionally relevant for the party

Interests are inquired about and noted separately for each side.

After this, an essential second step can occur in this phase: *perspective change.* The mediator asks the respective opposing side whether the expressed interests and needs of the opponent are comprehensible to them. Each conflict party has listened during the mediator's interest work with the opposing side and ideally gained insights. There's now a chance that both sides are ready to go along with a change of perspective and view the conflict from the other side's perspective. However, the mediator should be careful here and sense whether conflict parties are ready for a perspective change. A perspective change initiated too early can harm understanding mediation and the mediation process. If parties can think themselves into the other side with the mediator's support, an essential step toward understanding mediation has been taken. Parties can then move to the next phase of developing solution options.

Summary:

Content: - Conflict processing: clarification of differences, misunderstandings, anger, disappointment - Supporting conflict parties to become aware of their own needs/interests and make them transparent to the other side - Development of mutual understanding

Goals: - Get from positions to interests (opening for different solution options) - Perspective change; understanding for different viewpoints - De-escalation - Build reference and evaluation system for Phase 4

How to formulate interests:

Interests must be concretely formulated and related to concrete situations; they express what's important to a person in a concrete situation. Behind every interest is a need. Basic needs are: attachment (appreciation, belonging), development, security (economic livelihood), self-determination. Parties' interests must always be visualized separately from each other.

"Checklist" - Interest formulation must strike **emotional resonance** with parties - Formulation must be **open** for multiple solution approaches - Formulation should be **positive** - Formulation must be as concrete as possible (**tangible**) - It must be an **own** interest of the speaker.

Introductory Questions: - What exactly does xy mean to you? Why is this so important to you? - Do I understand you correctly that xy plays a big role for you? - Topic x: What's important to you about it? - What does (the garden property) represent for you? - What's really behind your wish..? - Can you express what it's really about for you? - What do you wish for the future with…? - If you make a regulation for…, what must be considered from your perspective? - Possibly: what did you understand from the other's interests?

Tip: - Definitely actively listen to parties/sit attentively/show appreciation - Strengthen parties, i.e., don't lecture or admonish, but empathically receive disruptions - Everyone can only report on own interests and must be protected doing so – prevent comments from other side; addressing emotions are massive interventions -> possibly individual conversation - There are multiple interests and needs for almost every position, superficial, background, and deep; they don't all always have to be worked out. The further one asks, the more one penetrates to basic needs. - Pay attention to emotions: They reveal basic needs; loop emotions and thus make them visible - When approaching therapeutic boundaries, respect protective boundaries - Often interests repeat with different topics

Exercise: Participants continue playing the role-play with **Phase 3**

Day 3

Part 1: Welcome

Part 2: Continuation of the Phase Model

Phase 4: Collecting and Evaluating Solution Options

The worked-out interests and needs of parties serve as basis for creative search for possible solution options. Usually the search for solution options begins with simple *brainstorming*. "Quantity over quality" is the motto with which the mediator asks parties to call out all ideas that come to mind, which are noted unsorted. The requirement is: no one may evaluate or comment on others' suggestions. Suggestions don't need to be coordinated with lawyers or third parties; no one is ultimately bound by them. Card query comes into consideration as another method. Each party receives about 5 cards and writes 5 solution options on them. There's also the *brainwriting* method. Those present receive a sheet with columns corresponding to the number of present people with three lines drawn. In five minutes, each person writes three ideas on the sheet in the first column. Then the person passes the sheet to the next person, who proceeds the same way, until all columns are full. This way, foreign ideas are adopted or inspire new ideas.

Furthermore, there's the *headstand method.* The mediator's question is: "What can you do to make the conflict even worse?" They ask parties to name at least five measures of this type. These are noted. Then they ask based on these measures: "What could you do instead?" And so positive options can be generated.

Summary:

Content: - Development of solution options - Evaluation of solution options based on interests - Feasibility check - Compilation of solution packages - Agreement

Goals: - From destruction to construction - Release creativity - Direct view forward - Achieve value creation - Ensure sustainability

Introductory Sentences and Questions: - I'd like five options from each side - What ideas do you have for a solution? - What spontaneously occurs to you for solving the conflict? - If you don't agree – how will the future shape up for you? - What don't you want under any circumstances? - Write down covered: wish result, pain threshold, and result acceptable only considering "annoyance factor" - What must you do for mediation to fail?

Tip: - Don't have "own" solution in mind -> parties have outcome responsibility! - Include lawyers - Active body posture – "conductor" - Don't allow evaluations - Don't overlook negative options

Creativity Exercise: "the deserted island"

Participants are divided into 2 groups; each group receives a flip chart and a pen.

The question is: Imagine you were on a deserted island and only had a belt with you? What would you do with it? The task is to collect as many ideas as possible within 5 minutes. The group with the most ideas wins.

Evaluation: What do we need to be creative?

- Time specification, tempo
- Competition/goal
- Standing, walking
- Group work/exchange
- Inspiration
- Pictures – other sensory powers
- Associate without judgment
- Imagination
- Humor

Methods in mediation for creativity: - Headstand method - 5 options

Phase 5: Conclusion of Agreement, Settlement

Phase 5 of mediation begins after parties have agreed in principle in the negotiation phase. Parties must now implement the achieved agreement into a final agreement. Usually this is a legally binding settlement contract. Contract formulation is an integral part of mediation and not a subsequent appendage. The mediator must clarify typical contract design questions with parties: the contract must be clearly and unambiguously formulated. The contracting parties must observe legal limits that must be maintained for contract validity. The contract should ensure that parties actually fulfill their obligations undertaken therein and provide enforceability if necessary.

If parties are accompanied by lawyers, lawyers will actively participate in contract design in this phase. Parties will consult with them and thus arrive at a binding settlement text.

If parties aren't accompanied by lawyers, requirements for the mediator are higher. They must work toward informed consent by parties. This doesn't mean they should legally advise parties. The mediator isn't a judge; it's not among their duties to know the legal situation regarding the concrete case. The principle of mediation impartiality also forbids the mediator from making themselves guardian and protector of only one party's interests. However, the mediator should point out to parties not advised by lawyers the possibility of obtaining external legal advice before they implement the negotiated agreement into a binding contract. If parties don't make use of this and therefore waive claims in ignorance of the legal situation, this is a consequence of parties' autonomous decision. But there are limits: If the party's settlement agreement is against the binding law or even violates criminal law provisions the mediator has a duty to point this out and he is prohibited to record any such agreement.

Content: - Recording the procedural settlement or extrajudicial agreement - Preliminary agreement on further procedure and review of implementation

Goals: - Ensure permanence of agreement (reality check)

Questions: - Who exactly? What exactly? By when exactly? How exactly? Enforceability? - What else belongs in the agreement? - Don't be afraid of declarations of intent - What does the implementation roadmap look like? (E.g., preliminary agreement on site visit for fact clarification; regular meetings of owners to improve communication behavior – as detailed as possible) - How satisfied are you with the agreement?

Exercise: Play the role-play "Dansi Tena" to completion. Formulate the settlement text.

Part 3: Deepening Interests

"Checklist" - Interest formulation must strike **emotional resonance** with parties - Formulation must be **open** for multiple solution approaches - Formulation should be **positive** - Formulation must be as concrete as possible (**tangible**) - It must be an **own** interest of the speaker.

Exercise: Trainers act out conflict; participants are divided into three groups; one collects factual information, the next hears out conflict parties' emotions, the third group formulates interests according to checklist.

Part 4: Toolbox Part II

Question Techniques

Questions are an important control tool in mediation. Superficially, answers that convey substantive statements and advance conversation appear more significant. On closer examination, however, it's the questioner who controls the conversation flow. "*Whoever asks, leads the conversation.*"

This also applies in mediation. Through questions and a questioning attitude, the mediator significantly controls parties through the mediation process. The right questions at the right time are thus of great importance for successful mediation. Since the mediator is neutral/impartial and pursues no own interests, they're answered more unbiasedly than the opposing party.

Typical Questions:

1. Open Questions

Open questions require a detailed answer from the addressee, whereby they only generally specify the substantive focus of explanations. They serve information gathering and leave important freedom for the answer.

Open questions are often so-called "W-questions": Why, who, what?

2. Closed Questions

Closed questions greatly narrow the answer space. They aim at brief, exact answers that convey precisely the information the questioner wants to receive. They serve control and determination and should therefore rather stand at the end of a conversation section. They can usually be answered briefly and concisely with a *yes* or *no*.

3. Scale Questions

Scale questions belong to open questions. Scaling helps get out of an seemingly irreconcilable yes-no, all-or-nothing pattern. Participants recognize they're neither 100 percent nor zero percent for or against something. Seemingly irreconcilable polarizations are dissolved and open up spaces previously thought impossible.

Examples: On a scale of 0-10: how high is your willingness to find a fair solution? How satisfied are you with the solution?

4. Solution-Oriented Questions

Solution-oriented questions are careful and often indirect; they're process-oriented, concrete, and relate to parties' control area. They're questions about expectations, about future ideas.

Example: What exactly would have to change? How should the other party behave for it to be acceptable for you? What would tell you that something has changed for the better?

Reframing

This technique is often used to express empathy and simultaneously filter emotions from statements. The mediator mirrors a heard statement back to the speaker in a form that contains certain classification or evaluation. They place it in a somewhat broader context and thus relativize it somewhat.

The technique of normalizing serves to relieve conflict parties who feel ashamed or isolated, e.g., with bizarre incidents, expressed emotions, or behaviors perceived as socially inadequate. For mediands, this technique often causes opening and gives hope that problems aren't discriminated against but described as frequently occurring and especially solvable ("...it's normal that..; I often experience in my mediations that...; ...this is often observed..."). Caution is advisable insofar as differences mustn't be trivialized and problems mustn't be devalued.

Visualizing

Visualization serves focusing and clarification, structuring and documentation. A matching understanding of facts can be promoted thereby. Visualization should occur in phases 2 (topic collection), 3 (processing conflict areas), and 4 (solution options and their evaluation).

In Phase 2, conflict material often goes chaotically; parties "jump" from topic to topic; here it's important to name and visualize topics so conflict parties have security that everything will be "processed." Conflict material can be structured. Visualization offers space for clarification, e.g., through timelines, technical drawings, or floor plans. Parties begin to work with rather than against each other.

In Phase 3, conflict parties' interests should be visualized separately from each other. If multiple interests are in the room, visualization is important because at the solution level, interest satisfaction should be balanced.

In Phase 4, visualization serves primarily overview and documentation for the next appointment or the settlement to be concluded.

Means of visualization: - Flip chart: listing, conflict sketch, timeline, etc. - Mind map with cards - Clustering - Setting up with figures - Etc.

Tip: Always write with blue or black and use other colors for underlining.

Day 4

Part 1: Introduction

Part 2: "Out of the Robe" - The Role of Law in Mediation

The almost always underestimated and frequently misunderstood role of law in mediation should be presented and explained here. As judges, we know law primarily as a legal decision standard and bring great trust to it in this function. In mediation, law plays a different role than in proceedings because the mediator has no decision-making authority and therefore cannot decide based on legal situation, and because parties don't only view legal situation as standard for agreement but also the interest situation beyond that.

Mediation is not an unjuridical procedure, as classification of this procedure in the category of "alternative dispute resolution procedures" might suggest. Law is a constant companion of mediation. Law sets the framework of mediator activity and mediation procedure principles; law contains a reservoir of gained justice concepts that serve parties for alternative and risk assessment; law offers fallback options at procedure level with other dispute resolution procedures for all constellations where private autonomous (justice design) fails.

Dealing with "Law" in Mediation

"Law is an elephant. As soon as it enters the room, it threatens to dominate mediation" (Jack Himmelstein, US-American mediator).

Judicial mediation is usually preceded by legal processing of life facts by participating lawyers who filed a lawsuit or response on behalf of their parties. In these briefs, juridical thinking is basically geared toward contentious proceedings. Lawyers select the favorable position for them from their clients' presentations and advise clients on how to best win the lawsuit. Parties also assume they're in the right and will win the lawsuit accordingly.

This can create "over-optimism" in both conflict parties that they will prevail in proceedings. A certain power position arises in both parties and their lawyers that they don't want to give up.

Both sides also see themselves as being right and connect this with their position being "correct" and the other side just needing to understand this.

At the same time, parties have experienced that agreement on purely legal basis wasn't possible in previous negotiations. Perhaps they also see that a solution on purely juridical level wouldn't sustainably solve the actual conflict. The life facts presented in the lawsuit are only an excerpt from conflict reality and may be narrowed by law spoken by the court to this excerpt.

Aspects that may be insignificant for legal subsumption but quite significant for parties' sense of justice cannot be considered. Parties thus become "spectators of their own conflict" and have no influence.

Legal situation isn't ignored during mediation. Strengths and weaknesses of legal standpoints should also be discussed in this dispute resolution procedure. Knowing and being able to assess their legal situation is an essential component of *mediands' being informed*, one of mediation's basic principles.

Law also offers orientation within solution options. Based on law, solution ideas can be constructed that largely cover parties' needs while being legally binding and enforceable.

Law threatens to dominate mediation, says Jack Himmelstein.

Many mediators often see "law" as disruption or danger because it could prevent opening a larger solution framework. Integrating law into mediation poses a great challenge for both mediator and parties and their lawyers in two respects: ***whether*** law should be discussed in mediation and ***how*** it's discussed.

Law must be discussed in mediation because it's part of parties' life reality. They've been legally advised about their chances and risks and went to court so advised. Law also has the function of balancing power inequalities and thus limits parties' framework conditions. Knowledge of legal framework conditions applying to the concrete conflict is part of an informed decision. We as mediators strive for parties to include well-founded resolutions in their decisions. Therefore we want them to have as comprehensive understanding as possible of law's influence on this decision. Law is moreover expression of social sense of justice and therefore serves as fairness control. In evaluating agreement drafts, knowledge of legal regulations is of great importance for assessing admissibility.

How law is discussed is possible in different ways.

The mediator can clarify and illustrate that parties make their decisions based on different aspects, namely on two conversation levels, legal and personal-business. For some, practical economic circumstances are important; for others, personal relationships; for some, needs and interests, while others give law the most weight. There are thus, besides law and the principles expressed therein, other orientation points for parties that the mediator can clarify: justice, parties' and other persons' interests and needs, relationships, practical and economic circumstances, previous agreements.

The mediator can also conduct a legal conversation with parties and their lawyers about the possible outcome of the dispute before a court. It's important that the mediator takes only a moderating role and takes no own legal position. With such a conversation, they should provide parties with information about a legal alternative, namely court proceedings. If such a conversation is conducted jointly with both parties and their legal representatives, the gap between both viewpoints can be reduced. If it becomes clear that it's very unlikely that both lawyers' views are correct because both are certain of their legal victory, parties may turn to each other to find solutions together. Content of the legal conversation can also be discussing principles and values underlying laws together. This can make clear that these values correspond to what matters to parties on a deeper level. It can also reveal that parties' subjective standards of "right" and "just" are different and don't correspond to legal situation.

Ultimately, parties decide themselves about law's significance in mediation; they should just do so knowing all legal implications.

Exercise in groups of 4: *Should a mediator give their own legal assessment of the concrete case when asked by parties?*

The Role of Lawyers in Mediation

Lawyers have a different role in mediation than in court proceedings. In judicial proceedings, parties have themselves represented by their lawyers and let them speak for them. In mediation proceedings, parties are in the foreground and should work out their solution themselves. Their lawyers are in the background and advise them legally when necessary.

No mandatory legal representation is provided for mediation proceedings in court. Parties can attend mediation appointments without legal assistance. In proceedings where mandatory representation applies in Germany, however, a settlement is only an enforceable title if lawyers are present during recording and consent.

Even in cases where no mandatory representation exists for contentious proceedings, attention should be paid for power balance reasons that not only one side is legally represented.

Regardless, lawyers are of great importance for acceptance and implementation of mediation proceedings in judicial context:

- They are contact persons for the deciding judge and mediator and encourage parties to implement judicial mediation proceedings.
- They are their clients' confidants and important emotional support in mediation proceedings, especially during breaks.
- They know the facts exactly and can help close factual gaps in mediation conversation.
- They know the case's legal problems and can advise their clients.
- They make valuable contributions in developing solution options and formulating the final agreement.

Lawyers should therefore be introduced with appreciation into their new role within mediation proceedings already in Phase 1 during opening. This is important because parties then no longer expect their lawyers to speak for them, but their own cooperation matters. It's always important to keep in mind and respect the special mandate relationship between party and their lawyer. In Phases 2 and 4, mediators should point out lawyers' help in collecting options and especially in formulating the final agreement. For breaks, lawyers should get the opportunity to consult confidentially with their clients in closed rooms or separate areas.

Part 3: "The Inheritance" Role-play (with Lawyers) Play Through Completely

Part 4: Closing Round

Day 5

Part 1: Welcome

Part 2: Suitability of Conflicts for Mediation

"Parties are experts of their conflict. If they're enabled with a third party's help to speak constructively with each other, they'll find the best possible solution for their conflict."

This approach is basically correct. But not all conflicts are suitable for treatment in mediation. Then the required prerequisites in parties for working well in mediation are usually missing, or the conflict has reached a level where only authoritative decision makes sense.

Parties' Intention and Ability to Mediate

There are certain requirements that parties in a mediation process must fulfill. To find out whether these requirements are met, the mediator should be aware of them and inquire in stage 1 about parties' motivation and intention to participate in the mediation process.

Parties must be: - Motivated to mediate, to try to find a solution for the conflict - Responsible for decision-making - Willing to deal directly with the other (including conflict) - Willing to work toward mutual and acceptable decisions.

This motivation and ability of parties should be inquired about at the beginning of mediation. If a party doesn't participate voluntarily or only wants to get information from the other side to be better equipped in court proceedings, there's no motivation for mediation to find a solution for the conflict.

If a party seeks a solution on purely legal level and needs judicial decision for this, they're not ready to work together with the other side to find an interest-based solution.

If parties aren't able during proceedings to overcome their communication obstacles with the mediator's help, mediation may be contraindicated. Parties who can't make decisions for themselves and take responsibility due to psychological limitations aren't well placed in mediation. Here it would be conceivable that third parties or legal representatives (example: a guardian) responsibly accompany them in mediation.

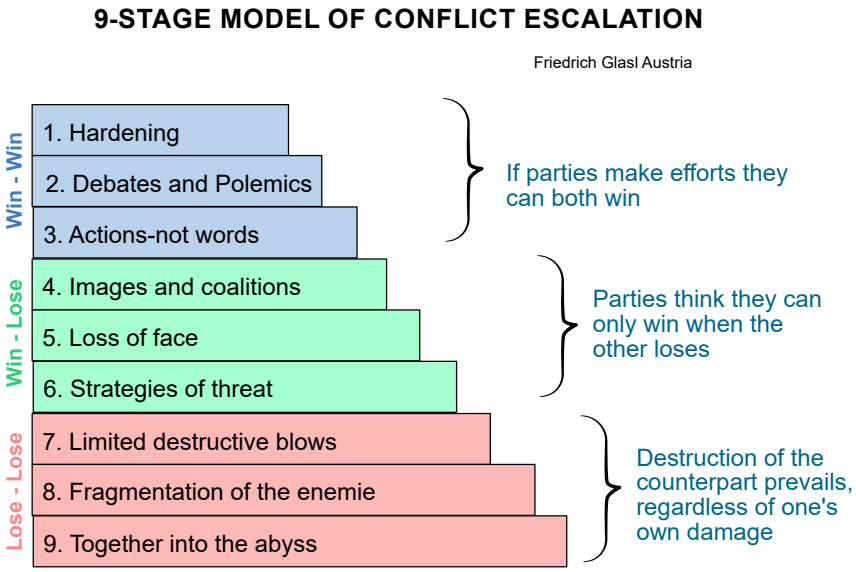
Is the Conflict Still Accessible to Mediation?

Friedrich Glasl, a conflict researcher from Austria, developed the so-called phase model of escalation in 1980 to classify conflict severity. Glasl assumed that participants who can clas-

sify their conflict at a certain level can already react better to conflict course based on this analysis.

The model is also helpful for mediators to classify roughly what level the conflict is at and how to evaluate solution chances accordingly.

Glasl divides the nine conflict levels into three phases with three levels each:



In the first three levels of the escalation ladder, feelings like disappointment to suspicion prevail. Conflict parties' leitmotif is to prove to the other that they're right. In this first phase, it's still possible to reach both parties argumentatively so they can solve their conflict without damage *(win-win)*.

1. **Hardening:** Face, gestures, body posture show tension, anger, impatience in participants; uncontrolled expressions occur.

2. **Polarization and Debate:** Differences of opinion lead to argument; sharp arguments, know-it-all behavior, black-and-white thinking, tactical speaking to win.

3. **Actions Instead of Words:** Pressure on the other is increased to prevail; conversations are broken off; non-verbal behavior dominates verbal. Mistrust outweighs trust; rapid conflict escalation through unilateral actions.

4. In the next three conflict levels, strong emotions from disillusionment over deep mistrust to bitterness and anger are in the foreground. Here there's a strong need to devalue the conflict partner, deny them moral integrity, and thereby justify own attacks and threats. Leitmotif here is victory over the other (win-lose).

5. **Concern for Image and Coalition:** Conflict escalation through mutual devaluation; opponent is presented as incapable; each side seeks reinforcement through followers and coalitions.

6. **Loss of Face:** Opponent is vilified and personally insulted, often publicly shamed through defamatory accusations, loses face. Disrespect generates revenge fantasies in the offended.

7. **Threat Strategies:** Power struggle with threats and counter-threats; threatening damage if opponent doesn't yield; high stress through ultimatums on both sides.

8. The last conflict phase is emotionally determined by strong anger and need for revenge. General destruction and annihilation of the other side at any cost dominates in graduated form. This can go so far at the end of the escalation level that own annihilation is accepted (lose-lose).

9. **Limited Destruction Strikes:** Opponent is no longer perceived as human but treated like a worthless thing. Original demands recede into background; direct harm is the main thing; small own damage is perceived as "gain" if greater damage could be inflicted on opponent.

10. **Fragmentation:** Opponent and their supporters should be destroyed; resulting damages can no longer be repaired; financial loss and property damage are sought so opponent can no longer continue living as before.

11. **Together into the Abyss:** If opponent can be defeated, total own damage or own annihilation is accepted. Fighters see no way back; they fanatically steer themselves and others toward doom. No consideration for descendants either.

Part 3: Supervision

Supervision is a form of professional counseling that can be done individually or in groups and that contributes to

- reflect on one's own actions and decisions and gain new perspectives
- discuss professional challenges and conflicts in a protected space
- to ensure the quality of professional action.

All professions with a psychosocial background require the establishment of supervision opportunities in their in-service guidelines.

Judges who, among other things, use mediation as a new method of conflict resolution should also come together in supervision groups – at least at the beginning – in order to gain confidence in the unfamiliar procedure (I.). For experienced judge mediators, it could also be sufficient to come together in groups of collegial advice (II.).

I.

Supervision (analogous to mediation) usually has the following procedure:

1. The case giver tells about the case what the other participants in the supervision should know. This report should be as short as possible and the case giver should give the case a short, concise name/title. This serves as recognition when the case is mentioned again in further supervisions.

2. The participants ask comprehension questions about the case.

3. The supervisor clarifies the assignment with the case giver. What is the case giver about, what questions or concerns does he/she have. What questions does the case giver ask himself, to the mediation or to the parties to the mediation for which he would like to receive answers or suggestions from the group?

4. The participants form hypotheses about the case, including controversial hypotheses. The supervisor notes them. The case giver withdraws for this part of the supervision, remains silent and only listens.
5. The case giver then goes through all the hypotheses and underlines those that he thinks could be true.
6. On the basis of the appropriate hypotheses, recommendations for action can still be made by the participants.
7. Finally, the case giver gives his concluding reflections, what has changed, has something changed in his view of what is happening.

II.

A collegial consultation follows the same procedure as above. The difference to supervision is that no trained supervisor leads the process, but one from the group of participants. A trained supervisor could give more input, such as repeating training content based on the case or enabling new perspectives on the inner experience of the case giver.

Part 4: Continuation Toolbox III

Individual Conversations (Caucus)

Individual conversation harbors great risks - but also great opportunities. The risk is concern about secret negotiations, lack of transparency, and that the mediator loses their impartiality. The opportunity is that things come up in individual conversation that may have blocked mediation progress.

At what part of the mediation should the mediator offer individual conversations to the parties?

It is preferable not to start the mediation procedure with individual conversations because mediation is based on a better understanding of the parties about their different views and interests. The underlying principle of mediation is improvement of understanding of the parties. This can be achieved primarily by parties listening to the mediator questioning the other party about the differences in views and interests. Only when this process is blocked or at a later stage of the mediations procedure a mediator should suggest individual conversations.

The following prerequisites are mandatory for conducting individual conversations:

- Parties' Consent

Individual conversation of a party with the mediator always requires that both conflict parties have expressly consented to such conversations beforehand. Unilateral contact by a party with the mediator is inadmissible because it questions the mediator's neutrality.

- Temporal Classification: After Initial Joint Negotiation

Individual conversation occurs temporally almost always after joint substantive negotiation. Parties must first gain clarity about how the opposing side sees the conflict and in which points

different views and interests exist. The mediator can suggest such individual conversation but should ensure this suggestion doesn't come too early when sufficient momentum still exists in joint conversation for collaborative development of solutions.

- Set Duration: Waiting Time for Other Party

While the mediator conducts individual conversations with one side, the other party must wait for negotiation progress. To keep this time manageable, the mediator agrees on conversation duration. They signal neutrality by investing equal time in both individual conversations.

- Conduct Individual Conversations with Both (All) Parties

Basically, individual conversations with equal duration should be conducted with both or all parties.

- Agree on Special Confidentiality

Essential feature of every individual session is that the mediator treats conversation content confidentially. Assured confidentiality creates protected space where a conflict party can express themselves freely. Without express release declaration, the mediator isn't authorized to communicate information, views, or suggestions revealed to them to the other side.

- Design of Individual Conversations

At the beginning of each individual session, parties often try to convince the mediator of their view's correctness and win them over. The mediator shows with mediation techniques of "active listening" and "looping" that they understand the viewpoint and helps the party become more aware of their own situation. This doesn't mean the mediator signals agreement or positively supports the viewpoint. They should expressly point this out. Individual conversation also doesn't serve to tell parties what they should do.

Depending on individual conversation's concrete content, the result can be that the mediator encourages the party herself to disclose this content to the opposing side. The result can also be that the confidential conversation should not be disclosed to the other side. For the mediator this knowledge might be helpful to conduct the final settlement agreement. Often a perspective change becomes possible for the first time in such confidential conversation, i.e., the party can take the opposing side's viewpoint.

Opportunities and risks can be summarized as keywords:

- Greater openness
- Process acceleration
- M. as devil's advocate: playfully represent opposing view
- Danger: Mediator's power increase
- Telephone game problem
- Endangering impartiality

Involving Third Parties

Third parties, i.e., juridical or natural persons, can be included in judicial mediation negotiations. This is basically advantageous because it may enable the parties' conflict to be solved at all, better, or more thoroughly.

A party's desire to involve third parties also harbors problems to consider:

- Judicial mediation proceedings are not public

- Third parties can only participate if all participants agree
- Confidentiality also applies to participating third parties

Often clarifying with parties whether a third party should be involved contains initial clarification of the entire case. Here too, it's important to clarify parties' interests and needs regarding this one question.

Following constellations should be distinguished:

1. Third Parties as Support/Assistance for Party

The accompanying lawyer is also supporter and assistance in this sense. If additional third parties should participate as psychological support, it should be clarified how they relate to the opposing party, why presence is important, whether alternatives exist (waiting outside and being available during breaks). Numerical balance of parties is important.

2. Third Parties as Experts/Informants for a Party

In this context, it's often necessary to clarify whether the person is then still available as witness in contentious proceedings. Basically, a person present in judicial mediation proceedings isn't "burned" as witness, i.e., they can appear as witness. However, this witness's statement must be evaluated in context that they were present at mediation.

3. Third Parties with Own Rights/Duties in the Conflict

Third party notice recipients, e.g., parties to recourse proceedings, etc., representatives.

Can expand conflict material with danger of confusion, no limitation to procedural material.

But can also be necessary to find comprehensive regulation. With third party notice also important because of costs.

4. Third Parties as Neutral Decision-Makers

Parties can agree in mediation that they need neutral expertise/decision-maker but don't want to return to contentious proceedings.

Involving experts in mediation is not unusual. Important is agreeing on question(s) the expert should answer, clarifying cost allocation, and whether the opinion should be comprehensive and may be used in possibly subsequent contentious proceedings.

Multi-person Conflicts

Multi-person conflicts should be understood in our context as conflicts with groups of five to 30 persons. Mediations with larger groups will hardly occur. Due to the number of people, the mediator faces special challenges. They must perform organizational effort, take increased structural responsibility, observe group dynamics, and also keep an eye on conflicts between individuals.

Organizationally, appropriate space must be available; it must be clarified whether individual groups send speakers or whether everyone is invited.

Methodologically, the following methods have proven successful in mediation practice:

Card Query

Card query is particularly suitable in Phase 1 (collecting expectations and concerns) and Phase 2 (topic collection) or also Phase 4 (solution ideas).

Each person or small group receives a certain number of cards and pens. The work assignment is predetermined by the mediator and visualized (e.g., collect topics). Design type (keywords) and time frame must be established. Subsequently, cards are hung up visibly for everyone.

Work Groups

Dividing work groups is a method for preparing certain steps, especially clarifying interests within individual groups for preparing Phase 3. Work assignment must be clearly formulated; sufficient group rooms must be available and time frame established.

"Fishbowl"

Mediating multi-person conflict by forming inner and outer circles enables transparent individual clarification with selected persons or representatives for the group. Setting requires small chair circle in room center and outer chair circle for remaining participants in semicircle behind inner circle participants. Mediation conversation only takes place in inner circle. After certain sequences (phases), outer circle is moderated, impressions and statements requested. Considering these statements, conversation continues in inner circle.

Online Mediation

Conducting mediations virtually is requested more frequently than before. It's a low-threshold offer because effort and costs for parties' and possibly their lawyers' travel are eliminated. During Corona times, it became the only possibility to offer mediations.

Basically, mediations should preferably be conducted with parties present. Mediators focus on the procedure's specific transformative potential, aimed at promoting holistic interpersonal contact, empathy and perspective change, based on participants' joint physical presence. These advantages can't or only limitedly come to bear in online mediations.

Synchronous online mediation is distinguished, where all participants are present simultaneously and connected via audio and video, and hybrid online mediation, where some participants are online, others present in person.

Online mediations are more tiring than face-to-face meetings because monotonous focus is directed at the screen, because increased concentration is required for perceiving nuances, facial expressions, and gestures. Therefore, shorter breaks should be taken.

Phase-specific Notes:

Phase 1: Opening

During greeting, briefly describe spatial environment; also important for protocol.

Establish image section (head/upper body).

With many participants: collective muting and word requests by hand signal.

Agree on confidentiality agreement, prohibit recordings.

Phase 2

Visualize topics via whiteboard or write along and display as file.

Phase 3

In this phase, missing real eye contact and whole-body perception become noticeably felt. Define main speaker's video as main image.

To prevent others from drifting, occasionally incorporate "cross-check loops" by asking which elements of what the other side said are comprehensible and which raise questions.

Phase 4

Collect options on whiteboard and let discuss via chat.

Part 5: Blockade Situations

Here typical problem situations should be presented to show exemplarily how to deal with them.

Method: The trainer tandem acts out a conflict and addresses some of the problematic situations presented below. Participants take the mediator role by placing a "hot seat" as mediation chair in front of the parties (here trainers). This is alternately occupied and left by participants.

Phase 1:

What problem situations can occur? - Only lawyer comes - Lawyers begin to take over conversation - Concrete non-negotiable position is highlighted - Time pressure is built - Mediator's qualification is questioned ("do you even have children yourself? How are you trained?") - Party explains during motivation inquiry they want quick simple solution - Party explains during motivation inquiry they only want "justice" - Party explains during motivation inquiry lawyer recommended mediation, they didn't want it themselves - Party explains during motivation inquiry they want other to see they're right - Parties can't even agree on confidentiality question - Parties already get into conflict material during motivation inquiry

Phase 2:

What problem situations can occur? - Lawyer/party attacks mediator in their structural responsibility - Party doesn't follow conversation rules - Wrong people sit at table (representative conflict) - Parties accuse each other of lying - Facts are described so differently that this can't be explained by different perception ("someone is lying") - Parties "jump" from topic to topic - Party doesn't listen to other party/talks with their lawyer - Parties get into verbal argument and express hardly bearable accusations and insults for other side - Lawyers carry out "internal" dispute - "Intellectual gap" between parties - Criminal acts come to light - Conflict touches therapeutic area (personal crisis, personality disorder)

Phase 3:

What problem situations can occur? - Hidden interests - No interests (?) - "It's only about money" - Parties negotiate solutions before interests are clarified

Phase 4:

What problem situations can occur? - Parties/party representatives become position-oriented again without considering previous mediation result - Third party should be included in settlement - Settlement threatens to fail due to costs - No one wants to name a number first

Part 6: Role-play: "Hip-Hop" Role-play Play Through Completely

Part 7: Closing Round

Footnotes

[1] Gender-inclusive language note in original

[2] Fisher/Ury/Patton “Getting to Yes” 1981, 1992

[3] Friedman, Gary; Himmelstein, Jack: Challenging Conflict: Mediation Through Understanding. 2008, American Bar Association, Chicago

[4] Paul Watzlawick; Beavin, Janet H & Jackson, Don D: Human Communication: Forms, Disorders and Paradoxes. 2000, Huber, Bern

[5] Communication scientist Patera reference

Annexture

BASIC TECHNIQUES OF MEDIATION

The mediator has a large number of mediation instruments at his or her disposal in mediation. This includes the whole range of communicative techniques, which also include, for example, the very effective means of the pause in speech or the break in negotiations. By simply standing up, you can attract attention in a derailed conversation situation, and signal affection with the alignment of your body. In the following, some of the basic techniques will be presented without claiming to be exhaustive:

1. Looping (mirroring, active listening)

One of the basic techniques of mediation is active listening, in which the listener signals to the speaker, especially on a non-verbal level, that he or she understands him or her and takes him or her seriously. Both for the leadership and structuring, as well as for enabling the change of perspective and the control of understanding, the mirroring of the statements by the mediator is essential. The mediator summarizes what has been said in his or her own words ("Did I understand correctly that you..."; " So you are of the opinion that..."). "Looping" means that in a further step, the mediator obtains the consent of the conflicting party - usually non-verbally - with his or her reproduction of what has been said, which can correct and supplement at the same time ("loop of understanding").

With the technique of looping, speeches can be limited and the lead can be maintained. The statement can be focused more sharply and the reproduction by the mediator enables a better understanding of what has been said by the other party to the conflict.

The technique of looping, mirroring and active listening is used at every stage of mediation. Parties never find it redundant or annoying when their statement is repeated again; Often they don't even notice it, but above all feel understood.

2. Paraphrase

In paraphrasing, statements of the mediators are summarized and rephrased in such a way that what is said is understandable and acceptable to the other side; e.g.

- accusations/accusations reformulated into "I" messages,
- Blanket judgments differentiated,
- key statements,
- neutralized and reformulated (ab)evaluations,
- verbalizes body language or other non-verbal signals,
- Emotions revealed ("you can tell how you are affected by this matter..."; " You seem very upset..."),
- emotions (e.g. indignation often indicates a conflict of justice, fear indicates threatened security, anger at self-determination under attack and grief indicates a relationship problem),
- The different sides of a message (factual level, relationship level, self-disclosure, appeal) are addressed (especially if you notice that one party to the conflict is particularly receptive to a certain side or one-sidedly focused).

It is important to refrain from any evaluation and always obtain consent for the reproduction of the verbal and non-verbal message.

This technique is also used at every stage of mediation

3. Reframing/ Normalizing

The technique of normalization serves to relieve conflict parties who feel ashamed or isolated, e.g. in the case of bizarre incidents, expressed emotions or behaviors that are perceived as socially inappropriate. For mediators, this technique often causes an opening and gives hope that the problems are not discriminated against, but are described as frequently occurring and, above all, solvable ("... It is normal that.. ; I often experience it in my mediations that...; ... this can often be observed...."). Caution is advised insofar as differences must not be trivialized and problems must not be devalued.

Reframing means that the mediator puts the statement of a party in a different context or frame to enable the party to change his view on the conflict or setting. A very simple example for this might be: the glas is half empty – the glas is half full.

4. Visualize

The visualization serves to focus and clarify, to structure and to document. A consistent understanding of the facts of the case can thus be promoted. Visualization was to be done in phases 2 (collection of topics), 3 (processing of conflict areas) and 4 (solution options and their evaluation).

In phase 2, the conflict material often gets mixed up, the parties "jump" from topic to topic; here it is important to name and visualize the topics so that the parties to the conflict have the certainty that everything will be "worked through". The conflict material can be structured. Visualization offers room for clarification, e.g. through timelines, technical drawings or floor plans. The parties begin to work with each other and not against each other.

In phase 3, the interests of the conflict parties were to be visualized separately from each other. If there are several interests in the room, the visualization is important because the satisfaction of the interests should be compared at the solution level.

In phase 4, visualization is primarily used as an overview and documentation for the next appointment or the settlement to be concluded.

Means of visualization:

- Flipchart: Listing, conflict outline, timeline, etc.
- Mind map with maps
- Clusters
- Line-up with figures
- And so on.

Tip: Always write with blue or black and use the other colors to underline.

5. Questioning techniques

"He who asks, leads the conversation" – through questions and a questioning attitude, the mediator steers through the mediation process. Since the mediator is neutral and does not pursue any interests of his own, he is answered more impartially than the opposing party.

Introductory questions about the respective phases can be found in the handout on the phase model.

Typical questions in mediation:

1. Open-ended or „opening" questions

Open-ended questions require a detailed answer from the addressee, whereby the focus of the content is only given in general terms. They serve the flow of information. Open questions are often so-called "W-questions": Who, how, what why, why, why"

Examples: *What is your view? What do you suggest?*

2. Semi-open questions

Semi-open questions limit the addressed party to a certain aspect, but give room for manoeuvre in this respect. Semi-open questions try to combine the advantages of open and closed questions by making it more difficult for the addressee to evade without already pushing him into a corner.

Examples: *When did the dispute arise? How much damage is involved?*

3. Closed questions

Closed questions very narrow the scope for answers. They serve as targeted information and should rather be at the end of a conversation section, as a yes/no answer is usually expected.

Closed questions often bring "truth to light". On the other hand, they have the disadvantage that the questioner often only wants to have his preconceived opinion confirmed and pushes respondents into a rather passive role, although he is supposed to play an active role in mediation. In any case, an "interrogation situation" should be avoided.

Examples: *Did you say that? Do you agree with this?*

4. Scale questions

Scale questions are "opening" questions. They help out of a "yes-no", "all or nothing" pattern. Those involved realize that they are neither 100% nor zero% for or against something. Progress is noticed and can be promoted.

Examples: *On a scale of 0-10. How willing are you to work out a fair solution that you are both satisfied with? How satisfied are you with the solution?*

5. Scenario questions

Here, instead of a single open question, a scenario is examined step by step. The respondents thus have the advantage of dealing more intensively with the topic These questions also include the "miracle questions".

Examples: *Imagine that they had not signed the contract. What would have happened then? Imagine if you had conducted the negotiations with this knowledge, would you have felt that the agreement was fair?*

Imagine if a miracle had happened and you had contact with your brother again, how would that feel?

6. Circular questions

This is a questioning technique from systemic consulting. The technique consists of asking about the feelings and reactions that a person A develops as a result of B's behavior not directly from A but from or about C.

Examples: *If you were to ask your business partner, how would they describe the problem? In your opinion, how would Mr. XY react to this presentation? What would outside third parties say about it?*

Inappropriate questions in mediation

- Leading questions ("Surely we agree on this point?)
- Evaluative questions ("Wouldn't it have made more sense if you had...?)
- Provocative questions ("As a lawyer here....?)
- Cumulative questions (series of individual questions without an opportunity to answer)

7. The one-on-one conversation (caucus)

The one-on-one conversation involves great risks – but also great opportunities. The risk is the concern about secret negotiations, a lack of transparency and that the mediator will lose his impartiality. The chance is that things will come up in the one-on-one conversation that may affect the course of mediation. blocked.

One-on-one conversation should be used sparingly and not right at the beginning of mediation, at best after an initial joint negotiation; the parties must see how the other side sees the conflict and what the differences of opinion an interests are. Mediation is based on a better understanding of the parties' different views and interests.

Preconditions

- Consent of the parties
- Set duration: Wait time for the other party
- Hold one-on-one meetings with both (all) parties
- Design: agree on special confidentiality; Results should then be carried into the round by the party itself

Opportunities and risks

- Greater openness
- Acceleration of the procedure
- M. as advocatus diaboli: playfully representing the opposite view
- Danger: Increased power of the mediator
- Silent Mail Problem
- Endangerment of impartiality

8. Double

Doubling is a strong intervention that can be used especially in the clarification of interests and should be used with caution. The mediator obtains the consent of the party, crouches down next to it and then speaks for it. “May I just come next to you and say something for you, and then you say if that’s true?” Here, too, attention must be paid to procedural fairness and the other party must also be offered this intervention.

The mediator is supposed to say what the parties really think and feel and have not yet said or have only said in a veiled way. Emotions are clearly named without escalating. Then there is dialogue: the other party to the conflict can take a stand.

Applications:

Blockade situation

Hidden Interests

“frozen” conflicts

Especially when hidden or repressed interests play a role, a lot of tact is required because therapeutic areas are touched. “Double light” is also possible: “People in comparable situations often feel.... It also happens that....It may be that you are now thinking: ... I could imagine, for you also plays a role...”. In this case, it is easier for the parties to the conflict to distance themselves.

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