

Mediator Preparation and Opening



There are a lot of topics that relate to pre-mediation which we don't have enough time to cover, including...

Assessing whether mediation help with this situation

How people find a mediator (and what mediator would be best for this case)

Explaining mediation to people exploring whether to mediate

Determining whether the people want to mediate

Determining whether you are the right mediator for this case

Choosing a location for mediation

Preparing Yourself, Co-Mediators

What You Can Do to Prepare for Mediation

Minimize your own stresses, so that you are free to concentrate for the full session, not dashing in or dashing away or waiting for a vital phone call.

Try to be rested, to have eaten well.

Review notes and information (though some mediators prefer to go in with a “blank-slate” mind). Plan how you’d like to open.

Give yourself plenty of time to set up and shift your attention to the mediation. Be forewarned that parties sometimes arrive quite early!

If interpreters or other support people will be helping with the mediation, talk with them in advance about how you would like to work with them.

Preparing Yourself, Co-Mediators (cont.)

Arranging the room

The room is the stage of the mediation theater. You want to create a pleasant atmosphere that helps everyone settle into a serious and cooperative session.

If you aren't familiar with the place, arrive extra early—it can take a while to make a space comfortable. If a facilities person is on duty, check in with them. Locate the building's entrances, elevators, and bathrooms.

Set up the furniture and flip chart if you're using one. In large rooms, make a cozier space at one end of it. Prepare a waiting area for Separate Conversations. Clear away extra chairs and clutter.

Put out water, and consider also providing drinks and snacks.

Preparing Yourself, Co-Mediators (cont.)

Arranging the room - seating

Think about where everyone should sit and how to place people before anyone arrives. Seating topics:

Everyone can see everyone else and the board or flip chart.

Members of one party can sit together.

The seating suggests mediator impartiality.

There's a table between them if they have a history of intimidation or fights.

Do you have a second room available for private meetings

Preparing Yourself, Co-Mediators (cont.)

Arranging the room - seating

Think about what kind of mood the seating pattern might create.

Do you want a friendly “living room” circle of comfortable chairs or a business-like conference table?

Are the mediators presiding at the head of the table or sitting around it with the participants?

Should the participants be directly opposite each other or at a softer angle?

Should you have them start out in the same room or separate rooms

Preparing Yourself, Co-Mediators (cont.)

If you are working as a pair or a team, prepare enough that you can genuinely and easily use “we.”

In addition to going over the particulars of the upcoming mediation, you’ll probably want to discuss working together:

Divide up tasks

Preparation: Talking with referral sources, pre-session work with the parties, managing fees and paperwork, setting up the space.

Session: The Opening bullet points, timekeeping, recording on the board or chart, writing up the agreement.

Preparing Yourself, Co-Mediators (cont.)

Coordinate your facilitation

Your facilitation styles, pace, models, and philosophy.

Who will take the lead when, how to signal or pass the ball.

When is it okay to consult with each other openly at the table, when do you prefer a private conversation?

Anything you'd like the other mediator to observe or help with, in terms of improving your own skills.

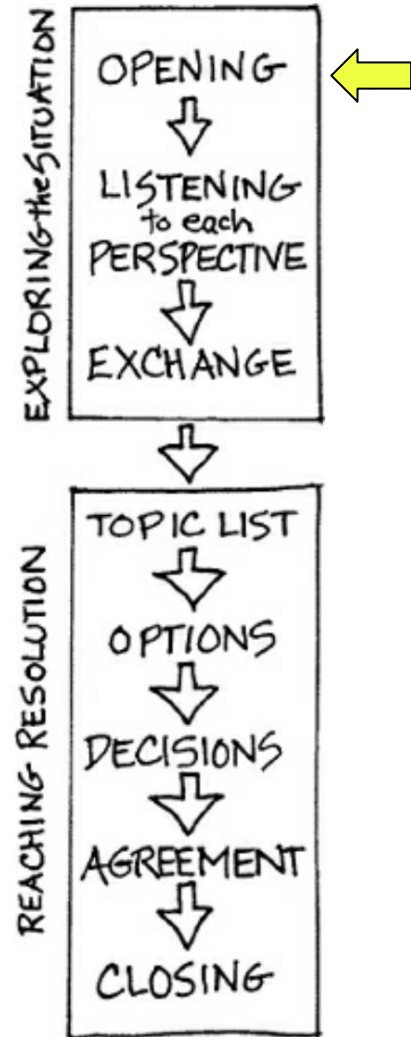
Mediation Opening

What is the purpose of the “opening”?

The Opening creates the “framework” for the mediation, setting a tone and building shared expectations.

It's the time to: Let parties get used to sitting in the same room with people they may dislike or fear.

Give mediators a feel for the participants, their mood, their self-awareness, and their communication patterns.



Mediation Opening

The parties are thinking things like..

“Will the mediator really listen to me?”

“Is this mediator capable of dealing with my spouse?”

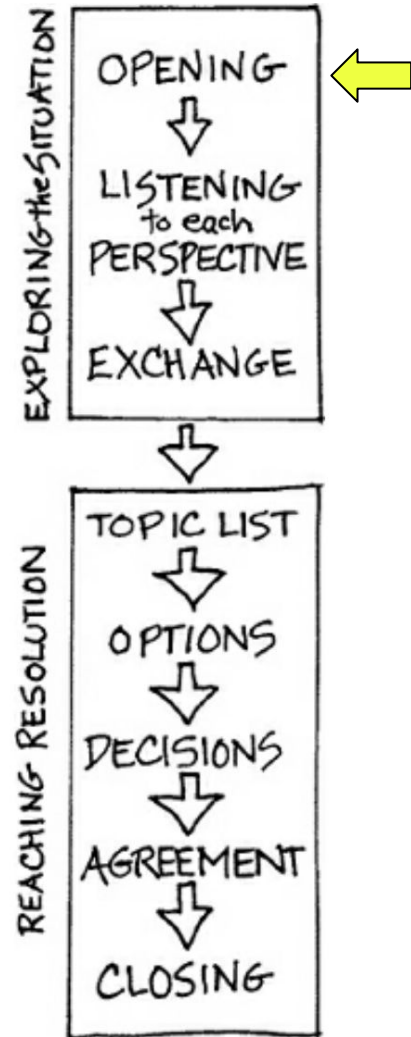
“What is going to happen, and how am I supposed to participate?”



Mediation Opening

What are the typical steps to “Opening”?

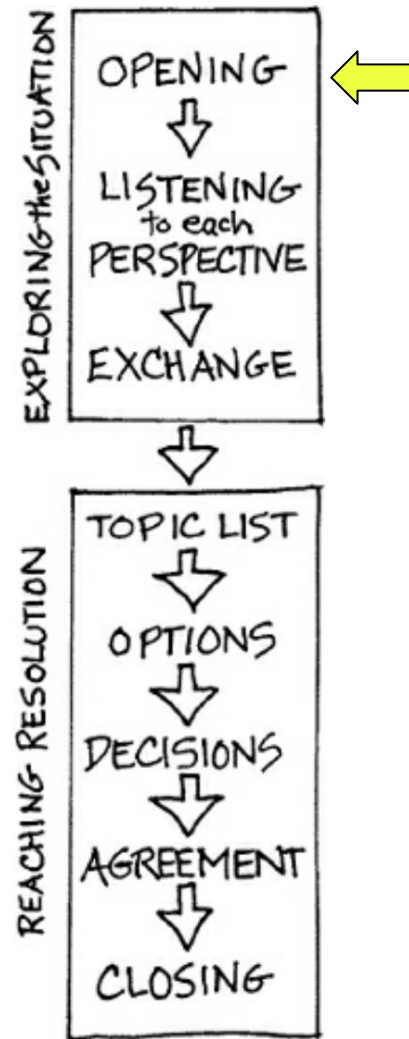
1. Welcome
2. Logistics
3. Orient them to the process
4. Confirm their willingness to go ahead



Mediation Opening

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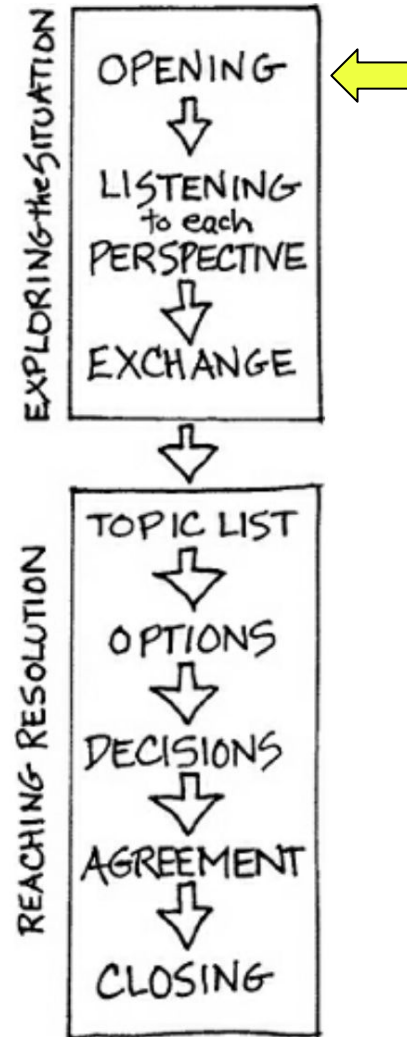
Mediation Opening

Welcome the parties and attorneys.

Greet each person by name. Make small talk with care. To avoid suspicions of bias, refrain from lively chatting with the first arrival and keep somewhat of a physical distance.

Set them at ease, but don't discuss the dispute or the other parties. Draw in new arrivals right away—We were just talking about. . . and move to get started with the session.

If one party doesn't show up, don't discuss substantive issues with the people who did come if there's any chance you might mediate this situation later.

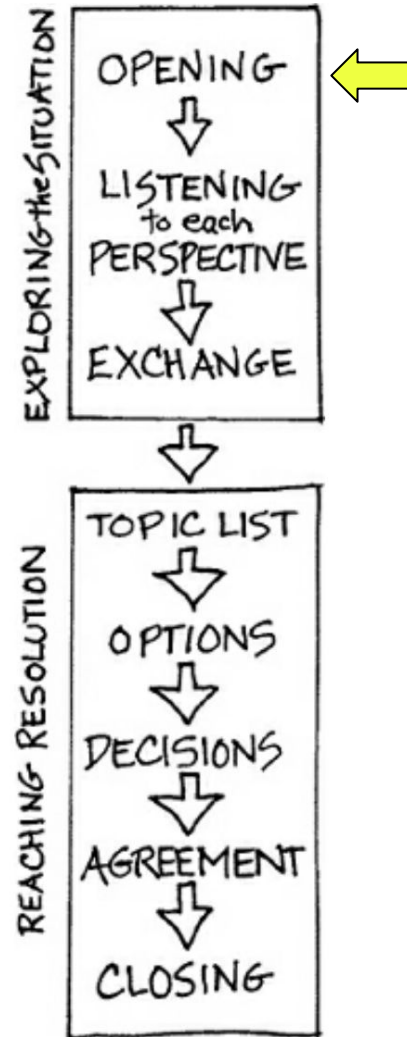


Mediation Opening

Welcome the parties and attorneys (cont.)

Thank them for being willing to come. Reassure them that although mediation may not be easy, in your experience it can often make difficult situations much better.

This is often a good time to introduce yourself in more detail and explain why you appreciate mediation as a process.



Mediation Opening

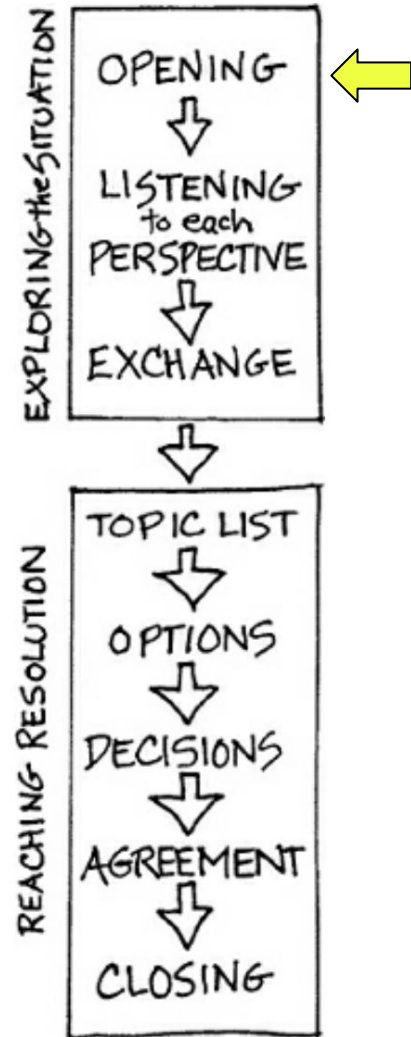
Logistics Checklist

Mediation Time frame

Electronic devices

Facilities

Payments (if any)



Mediation Opening

Orientation to the process

Mediator role & confidentiality

Participant role & confidentiality

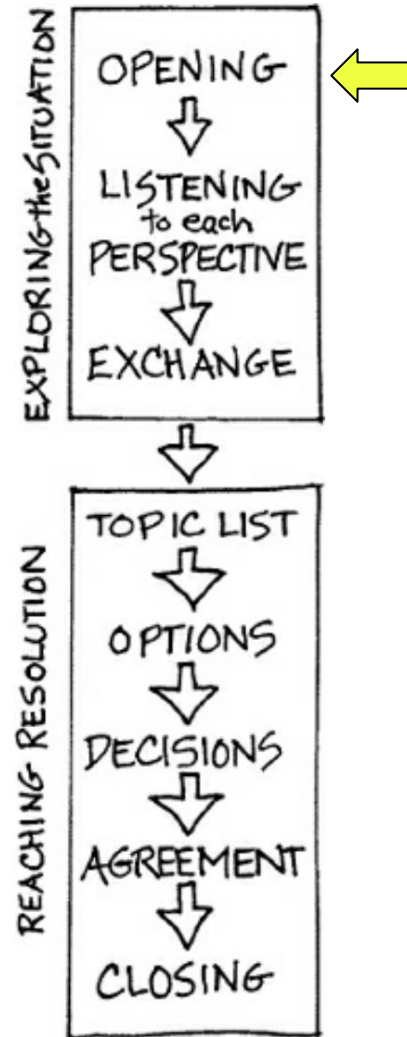
Structure of the session

Breaks

Separate Conversations

Review and sign the Agreement to Mediate

Confirm willingness to go ahead with mediation



Mediation Opening

Mediator Role

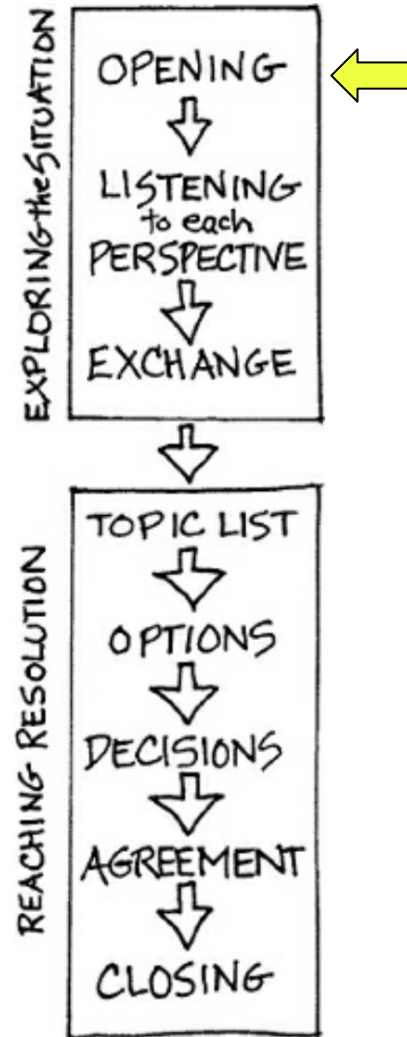
Explain that a mediator helps people to talk with each other productively and to find their own solutions.

You will structure the process and facilitate the session(s), in consultation with them.

Mediation cannot determine what really happened or assign blame.

You will help them brainstorm and think things through, but you will not advise them about what they should do.

You will not give legal advice. You will not make any recommendations to them or to the court.



Mediation Opening

Mediator confidentiality

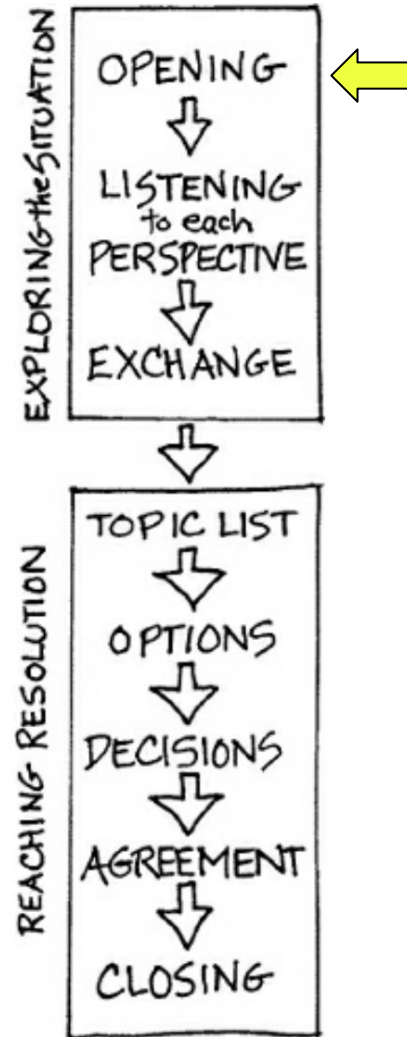
Explain that you will keep all information confidential, including all conversations, the terms of agreement—even that they attended a mediation.

Explain that you cannot be required to testify and that what happens and what people say in mediation cannot be used in evidence in their court case.

Notes and records: explain what information you keep, what you discard and that none of it is allowed to be shared with the court.

Required reports: explain what you will tell the referral source, the person who hired you, the court, etc.

Mandatory reporting: If you are required by your profession to report suspected abuse or illegal behavior, let them know this now.



Mediation Opening

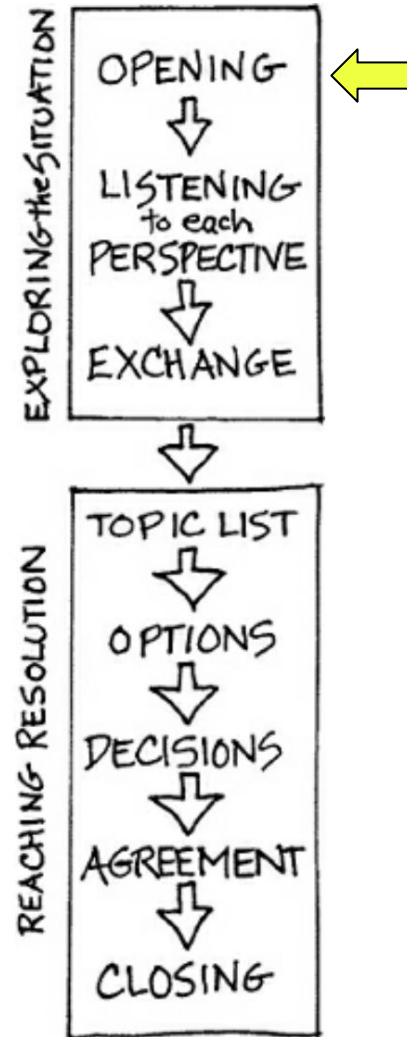
Participants Role

Explain that each participant decides what's important, what their priorities are.

You will not tell them what to decide or press them to sign anything they don't fully agree to. It is their decision, not anyone else's whether to make an agreement or not.

They are free to leave at any time.

They are not required to make an agreement.



Mediation Opening

Participants Role (cont.)

Speaking, listening, thinking: You hope they will feel comfortable and safe enough to:

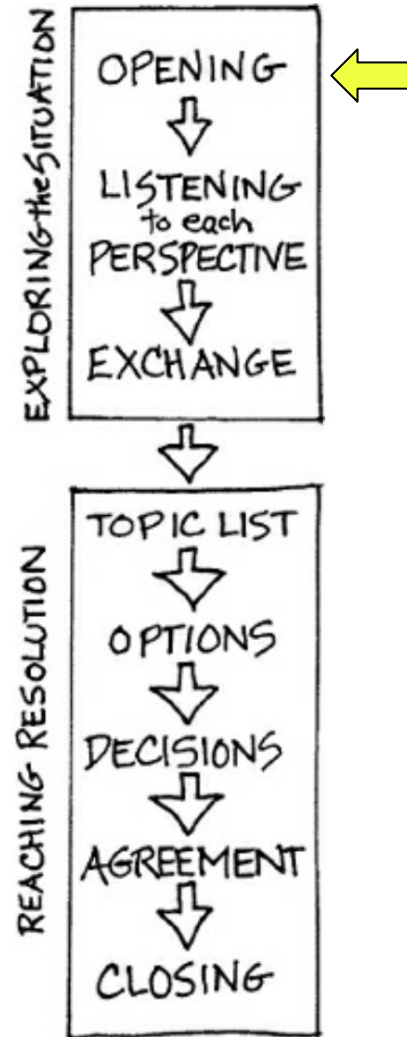
Speak openly about their concerns and share information.

Listen for what's new and important.

Look for ideas that could make the situation better for everyone.

Supporters: Explain when and how attorneys, interpreters, and other supporters may take part.

Share expectations about sharing information, e.g., in divorce mediation, you require disclosure of all finances.

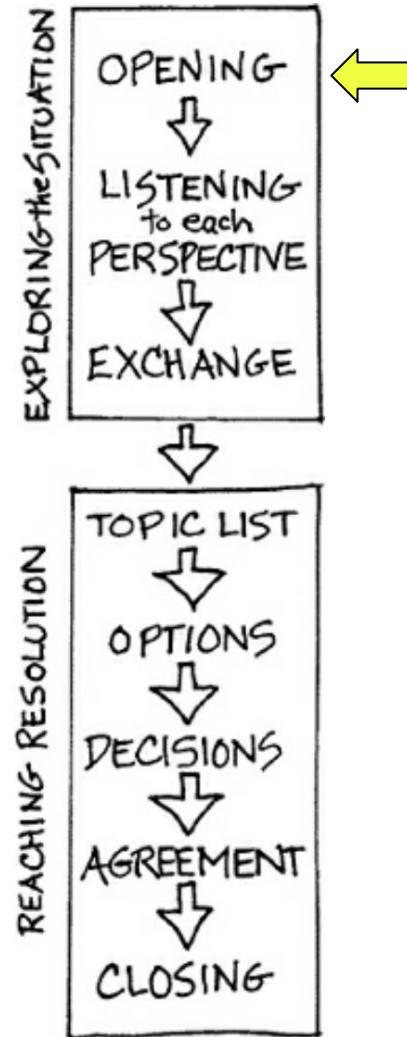


Mediation Opening

Structure of the session

Breaks & consultations: Anyone is welcome to ask for a break, or for time to confer privately.

Separate Conversations: At some stage, you may meet with each party alone. Say this up front, so they aren't taken by surprise later. Explain that anything that someone tells you in a separate room/conversation you will keep confidential unless they give you permission to share it with the other party.



Mediation Opening

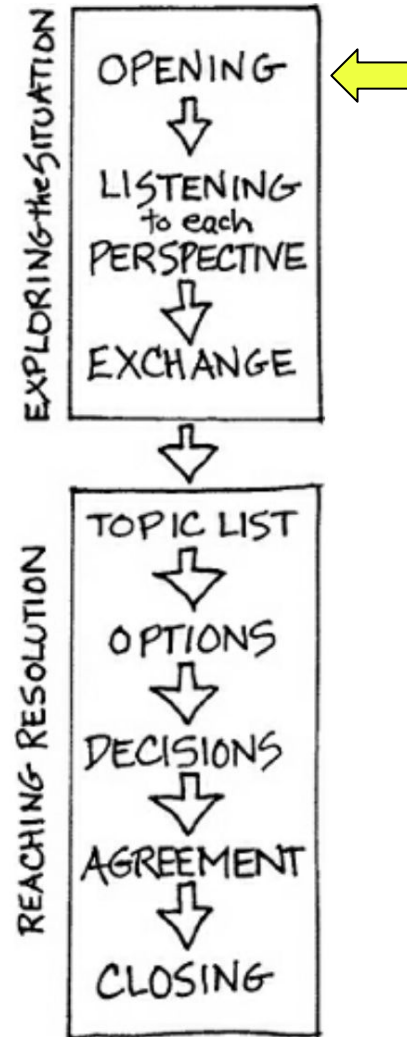
Structure of the session

Example brief overview of what the next steps are in the mediation:

To start, each of you will have a turn to speak one at a time about what you'd like to talk about today and any information you'd like to share about those topics.

Next we'll clarify the topic list and prioritize them and ask follow up questions to understand the circumstances better.

We'll brainstorm different options for possible agreements for each topic and you'll have time to think about them and consult your attorney.



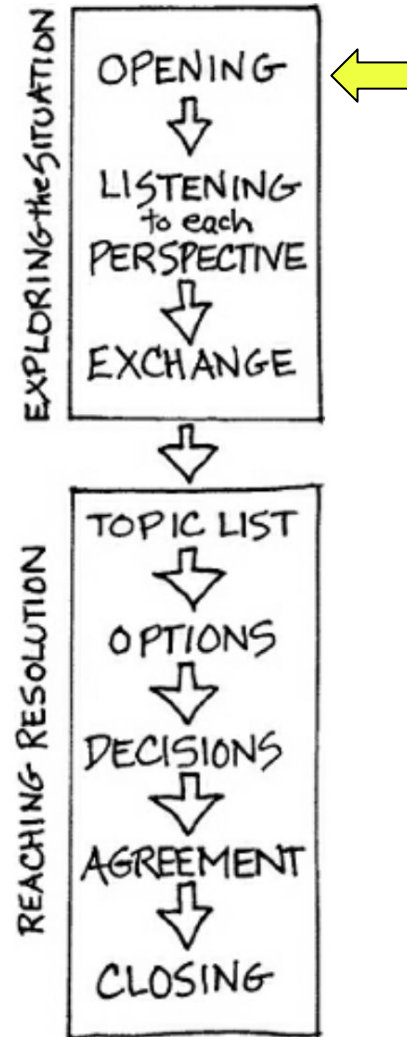
Mediation Opening

Structure of the session

Example brief overview of what the next steps are in the mediation: (cont.)

The goal today is to hear from each of you and do our best to share information and brainstorm and see if there are any agreements that you could live with, but, again, it's only an opportunity to see what we can come up with and it's not a pressure environment. We won't push you to make an agreement. We are just exploring what might work for everyone.

You can always decide you don't like any of the options or that you just need to think about it.



Mediation Opening

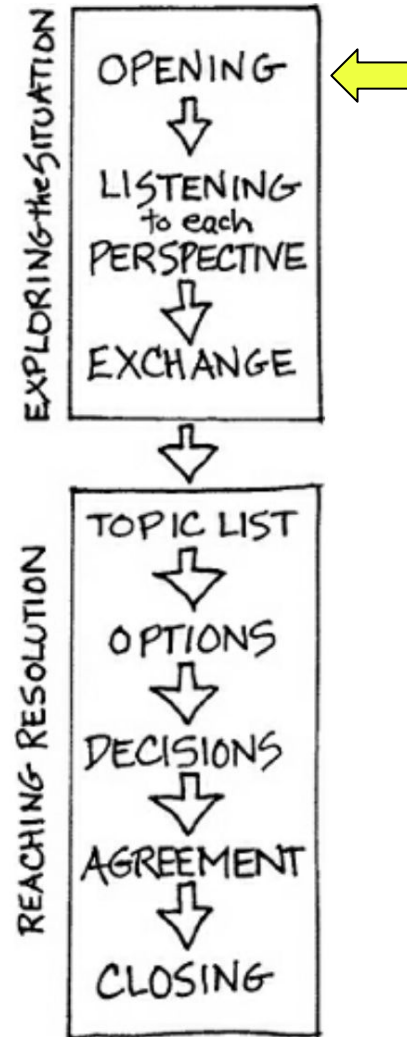
Structure of the session

Willingness to go ahead

Ask if they have any questions about the process. (This seems to work better than asking whether they have worries or hesitations.)

Be open to adjusting your process if you think their ideas will work and you're comfortable doing it.

Ask, Are you willing to give this a try? Get clear assent from everyone.



Mediator Preparation and Opening

Questions?