

Mediation 101

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#1: What is Mediation?

- A voluntary, confidential process
- Guided by a neutral party
- Bringing people together to:
 - Talk about their issues & differing perspectives
 - Define common ground
 - Work on areas of disagreement
 - Discover options for resolution

#2: Think Mediation

Mediation is:

- Assisted negotiation
- Suitable for almost any conflict
 - Even high conflict
- Timely
- Cost effective
- Even if it doesn't resolve, it narrows issues
- Agreement is binding (unless the parties dictate otherwise)

Family and interpersonal

Employment/workplace

Business/commercial

Community

Real estate/Landlord-tenant

Elder care

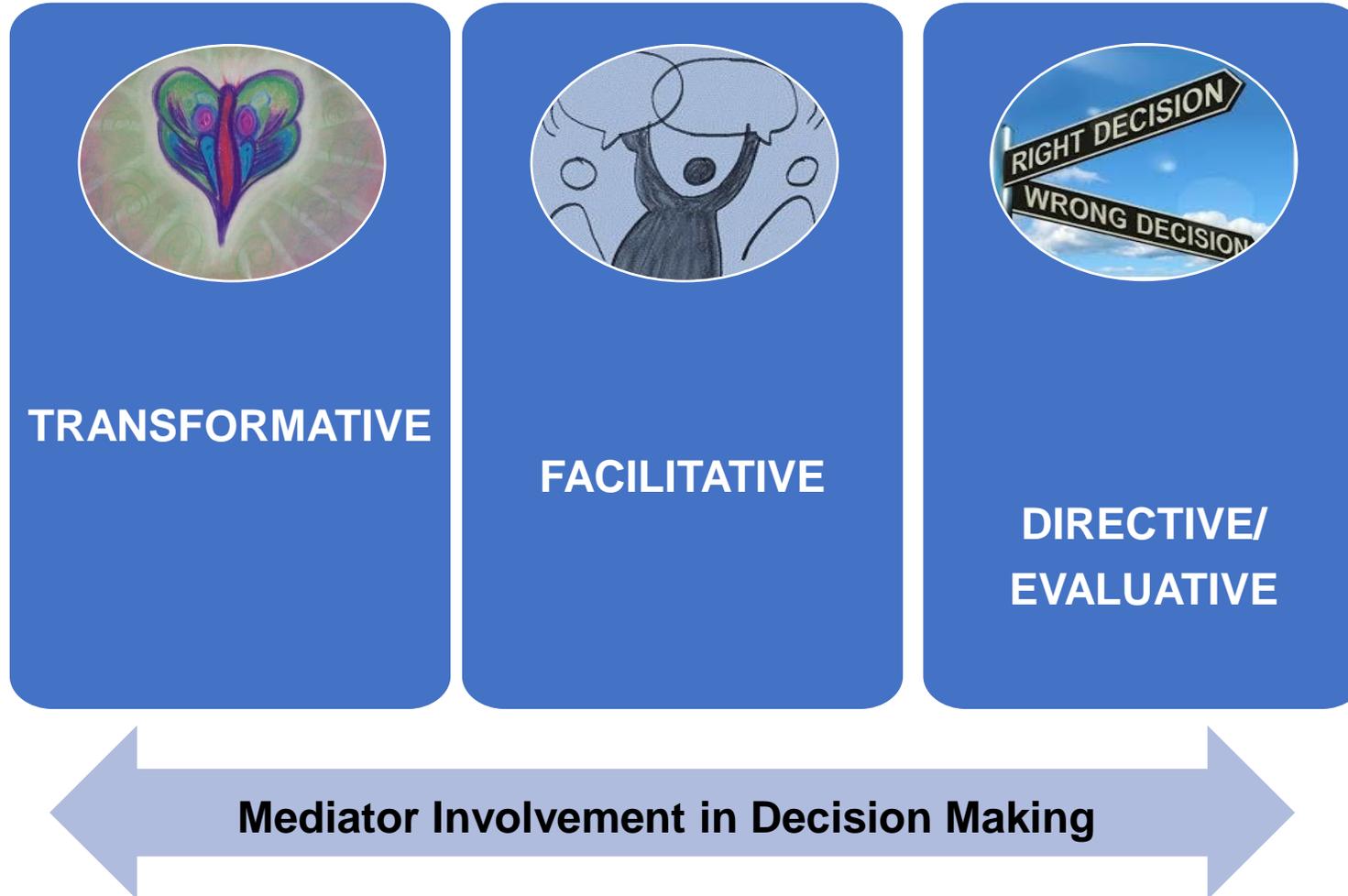
Public Policy

Environment

#3: Find a Trained Mediator

- There is no certification requirement in Nevada for mediators
 - No qualifications
 - No oversight (except in court-connected programs)
 - No consistency
- Look for a mediator who has taken at least a 40-hour course, AND
- Has mediated a good number of cases

#4: Match Your Case to Your Mediator



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- Transformative: Mediator takes a passive role and does not seek to resolve the immediate problem. Mediator allows parties to control process and define issues. Focus: empowerment of parties and mutual recognition by each party of the other's point of view. Relationship is primary goal; settlement is secondary
- Facilitative: Mediator assists parties in having a conversation. Mediator controls the process; parties control the content. Mediator does not evaluate case or give an opinion. Focus: the parties' interests and needs
- Evaluative: Based on settlement conference model. Mediator evaluates merits of the case and may make a recommendation as to the outcome of the case. Focus: legal merits

#5: Prepare Attorney for Mediation: A Conversation

- Make sure attorney understands mediator's style
- Who participates
 - Does attorney need to be there?
 - If not, make a plan
- Authority
- Friends, witnesses, supporters
- Location
- Logistics
- Length of time
- Mediator should explain expectations of attorney participation
 - Collaboration, not advocacy

#6: Strategize with Your Mediator

- Attorney & mediator should contemplate strategies for facilitating the most productive discussion possible
- Assess client's needs
 - Does the client suffer from any personal impediments to effective communication?
 - Capacity?
 - Illness?
- Who should do the talking?
 - Client input is critical, but is the client comfortable talking?
- Joint or separate session?
 - Relationship
 - Degree of conflict
 - Domestic violence

#7: Prepare Client for Mediation

- Attorney should explain:
 - The process
 - Mediator expectations, such as:
 - Listening to other party
 - Attorney role:
 - Explaining facts and applicable law
 - Not a time to advocate
- What are the boundaries of possible settlement?
 - Be prepared to shift those boundaries if new information is relayed

#8: In Mediation: How to Help the Client

- Allow mediator to work as a team with the attorney and client
 - What information is important to share with the other side?
 - Help parties negotiate in a non-adversarial fashion
 - Encourage out of the box solutions
- Mediator can help the attorney/client:
 - Understand client's interest;
 - Explain to the client both pros and cons of settlement and of litigation
 - Keep everyone calm, cool and collected

#9: In Mediation: When it Resolves...or Doesn't

If Agreement:

- Attorneys help with legal/technical language
- Discuss who will draft any court documents and timeline
- How will the agreement be enforced?

If No Agreement

- Attorneys should be prepared to explain what happens next
- Encourage attorneys to continue negotiations
 - Sometimes clients need to process

#10: Consider Mediation Training

- You don't have to be an attorney!
 - Certain qualities make a good mediator
 - Calm presence
 - Good listener
 - Patience
- Builds on a skillset useful for just about anything:
 - Effective communication
 - Understanding client's interests
 - Techniques to get to those interests
 - Handling emotions

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