Glossary

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**Active Listening**
A communication strategy whereby the listener gauges the emotional intensity of the speaker an re-states to the speaker what was heard for verification. Active listening builds trust, confirms what was said, demonstrates empathy that enables the neutral to filter negative/explosive comments.

**Administrative Conference**
An independent agency of the Federal government that seeks to encourage procedural innovation at the legislative and agency levels. Its purpose is to promote the use of ADR and to improve the procedures of federal agencies so that they may fairly and expeditiously respond to the needs of the public.

**Agenda**
A list of statements of issues gathered from the parties’ opening statements., during caucus - without violating confidentiality, or during the mediation session that restates in the affirmative the needs of the parties. The agenda is the road map for problem-solving and possible settlement.

**Alternative Dispute Resolution**
Also known as ADR. Mediation, arbitration, ombudsmen, med-arb or summary jury trial. These strategies are alternatives to traditional litigation. Either mechanism usually involves a third party neutral intervenor to facilitate agreement between the parties outside the judicial forum.

**Arbitration**
An ADR mechanism used extensively in commercial and labor management disputes. The process is closely akin to adjudication, but usually less formal, faster and less expensive. The parties may select an arbitrator, who may have expertise in issues relative to their dispute, to render a decision based on the arguments and the evidence presented. Most states have enacted statutes that govern the validity and enforceability of an arbited agreement.

**Authority**
Decision-making responsibility that has been legally or consensually vested in an individual or organization.

**Avoidance**
A negotiation strategy in which a negotiator or opposing party decides that non-engagement, usually through silence, gains him the advantage of avoiding an unfavorable settlement or increases the probability of achieving a desirable concession from the opponent.

**Bargaining**

A negotiation strategy which offers trade-offs between the parties in order to reach an agreement.

**Bargaining Range**

The spectrum of possible settlement options, excepting a stalemate or breakdown of negotiations.

**BATNA**

An acronym for Best Alternative To a Negotiation Agreement, in which negotiators compare outcomes if there is no agreement. Usually the neutral may ask a party during caucus, “What will you do if we can’t settle this dispute (i.e. reality check)?”

**Binding**

Parties agree to adhere to a decision or agreement.

**Caucus**

A private meeting between the mediator and one of the disputants, usually called when the mediator senses that there are hidden interests or information that doesn’t surface during the joint session. Within a caucus, the mediator attempts to discover those hidden interests. All information disclosed during caucus is confidential and will not be disclosed without permission of the party.

**Common Interests**

Jointly held substantive, psychological or procedural interests held by the parties to the negotiation.

**Competition**

A negotiation strategy in which one party pursues his interests selfishly with no regard for the other party. It’s a win/lose process wherein one party perceives that the contested resources are limited and his needs can only be met if the other party receives less of the limited resource.

**Conciliation**

Mutual, substantive or procedural interests of the parties in the dispute. Usually, identifying common interests facilitates agreement.
**Conflict**

A dispute between two or more parties over actual or perceived competing interests. Rather than be destructive, conflict can stimulate communication, problem-solving, goal identification and constructive resolutions.

**Consensus**

A settlement process where an agreement is reached after identifying the interests of all parties and then integrating these needs to fashion the agreement. All parties may not be equally satisfied or may not be equally supported, but consensus addresses all interests.

**Consultation**

A consensus-building process in which persons or groups exchange problem-solving ideas to reach a collaborative decision. Consultation requires trust, sublimation of self-interest, cooperation, frankness and accurate information exchange.

**Contract**

A legal, formal mutually binding agreement between two or more persons outlining the terms and conditions which bind the parties to performance, subject to review of the courts.

**Court-Annexed Arbitration**

An ADR mechanism by which a judge refers civil disputes to an arbiter who renders a prompt, non-binding decision. Some states require the party who refuses to accept the arbited award to pay court costs for his continued pursuit if he is not awarded a greater award after the trial.

**Dispute**

A conflict or controversy between two or more parties. Usually the dispute evolves over perceived injustices or imbalances. However, a dispute need not be destructive; it can be a catalyst for creative and constructive change.

**Early Neutral Evaluation**

A court-directed resolution process presided over by an attorney, hand picked by the court, who has experience related to the issues of the dispute. The sessions usually take place in the courthouse or an attorney’s office with the parties and their representatives. No rules of evidence and no direct or cross-examinations are allowed. After discussion, the evaluator reviews the case and asks the parties to attempt resolution before his evaluation is considered. If there is no resolution, the evaluator outlines case planning and discovery options available to both parties when they proceed to trial.
### Facilitation

A resolution strategy which is a collaborative process in which the neutral assists a group of individuals or parties with divergent issues to proceed toward closure. The neutral may function as an expert and establish guidelines for procedurals without making substantive contributions.

### Factfinding

Entails the appointment of a person or a group with technical expertise in the subject matter to evaluate the matter presented and file a report establishing the “facts.” The factfinder is not authorized to resolve policy issues. Following the findings, the parties may then negotiate a settlement, hold further proceedings, or conduct more research.

### Hidden Agenda

Interests or issues a party may be unwilling or reluctant to disclose to the other party. Hidden agendas affect the success of mediation. The mediator should try to uncover these issues during caucus or, during a joint session, practice re-phrasing or re-framing to encourage the party to state that issue.

### Impasse

The inability of the parties to move toward agreement. Strategies such as re-framing, reflection, restatement or caucusing may bypass this impediment. (Synonym: stalemate, deadlock).

### Interest

A substantive or procedural need a party must have satisfied in order to end a conflict.

- Substantive - objective needs that a party wants to have satisfied or exchanged as a result of the negotiation (money, responsibilities, resources, time, etc.). It’s what you get!
- Psychological - a party’s emotional needs, such as how one is to be treated, what is necessary for the relationship to continue (i.e., I want to be respected). It’s how people feel!
- Procedural - a party’s needs regarding the process. It may involve specific behavioral rules or processes (i.e., the opportunity to be heard or speaking order). It’s how something is done!

### Interest-based Bargaining

A negotiation strategy used to reach an integrated solution that satisfies as many interests or needs of the parties as possible. It focuses on win/win outcomes.
**Issues**

Topics or problem statements a party wishes to have discussed within the context of the mediation. Issues form the agenda of the mediation.

**Med-Arb**

A dispute resolution process by which a neutral facilitates voluntary agreement. If, however, the parties cannot reach an agreement, the neutral can make a binding decision for the parties. Prior to the session, the parties give the neutral authority first, to attempt mediation, then to make an arbitrary decision if there’s an impasse.

**Mediation**

A dispute resolution process that is voluntary and less costly in time and money than litigation. In mediation, a third party acts as a neutral intervener who assists disputants to reach a mutually acceptable solution. Mediation is a cooperative win/win process.

**Memorandum of Understanding**

An informal, written document that outlines the body of agreement between the parties. It is usually used in divorce mediation or any other technical session that requires submission to legal counsel before the final draft is signed.

**Mini trial**

A structured settlement process in which each side presents an abbreviated summary of its case before senior officials of each party who have authority to settle the case. A neutral advisor presides over the proceedings and will render an advisory opinion if asked to do so. Following the presentations, the officials seek to negotiate a settlement.

**Negative Intimacy**

A destructive emotional bond between the opposing parties or between a party and the dispute which perpetuates the damaging relationship. Usually seen in divorcing couples (i.e., fatal attraction).

**Negotiated Rule-making**

An innovative negotiation process used by government agencies. Negotiated rule-making entails notifying affected representatives of the public who may be affected by a particular regulatory proposal made by the agency. Once notice is properly posted, according to statute or mandate, the agencies and the representatives meet. These parties, assisted by a convener, exchange ideas and negotiate issues pertinent to the proposed regulation. After consensus is reached, the proposal is unpublished for public comment and adoption.
Negotiated rule-making is a premise founded on the notion that if agencies provide opportunities for community feedback, prior to regulatory adoption, it will yield a simpler, quicker rule adoption process that is less subject to judicial challenge than traditional rule-making procedures. (Taken from Vinson Institute of Government, UGA, 1992).

**Negotiation**

A resolution process which may include persuasive arguments when the parties seek to resolve a disagreement over competing needs. During the negotiation process there is no facilitator. Rather, discussions are held between the parties or their representatives.

**Offer**

A settlement proposal made by either party which addresses the issues of the dispute.

**Ombudsperson**

(Also referred to as Ombuds or Ombudsman.) An official third party, appointed by an institution to investigate complaints or grievances aimed at the institution by its constituents, clients, or employees. The ombudsperson is often employed by the institution, by a branch of the military or agency of the government. The ombudsperson is responsible for preventing disputes and facilitating resolution. She may advise the complainants of available options and recourses, suggest systemic changes within the institution and advise managers of possible policy violations.

**Opening Statement**

Statements made by the mediator and both parties at the beginning of the session. The mediator’s opening statement delineates the process and sets the tone of session by establishing a climate of trust and cooperation which encourages settlement. The opening statement of the parties identifies their needs and usually sets the agenda for the session.

**Option**

A substitute procedure or suggestion or solution that may satisfy the needs of the parties.

**Peer-based Mediation**

Mediation practiced in a school by trained student mediators where the disputants are their peers. Usually used for minor disciplinary incidents such as malicious gossip, girlfriend/boyfriend jealousy, fighting, name calling, racial slurs, harassment, arguments and classroom disruption.
Position
Statements of the parties that identify a specific need (i.e., I want the house).

Positional Bargaining
A negotiation strategy in which the interests or positions are sequentially presented in set order where the first issue represents the greater demand and all subsequent issues are listed with the last being the least important issue.

Procedure
Sequential steps ordered to achieve a desired outcome.

Process
An aggregate of procedural steps or a format to achieve a desired outcome. Process refers to how and the way something is done, not what was done.

Proposal
A suggestion or option as to how best to proceed during the negotiation session. It is usually an offer to do something. (Taken from Vinson Institute of Government, UGA, 1992).

Public Dispute
Controversies that affect the public. Public disputes generally involve local, state or federal agency policies challenged by affected members of the community. Usually the agency has the ultimate decision-making authority (i.e., land use, re-zoning, eminent domain).

Reality Testing
A mediation strategy, usually applied during caucus, by which the neutral asks the party to consider the true consequences of a proposal or demand. The mediator can suggest that the party consider their BATNA. Reality testing is sometimes used to determine what the parties really want or if they know what their demands mean.

Reframing
A communication strategy a mediator may use to extract then re-state in a more positive, palatable, win/win manner some inflammatory, negative, toxic language used by a disputant. Reframing makes it easier for the parties to agree.

School-based Mediation
Mediation practiced in an educational environment. It encompasses the administration, staff, teachers, students, and community.
Self-executing Agreement

An agreement that is wholly executed at the end of the session or an agreement that is self-evident that the parties will abide by the written terms of the agreement.

Settlement

The agreement.

Settlement Conference

A resolution process usually chaired by a lawyer or judge who acts as a third-party neutral to facilitate agreement between the parties. She may offer suggestions during the process. Although the neutral does not make the decision, she may, if requested by the parties, make non-binding recommendations.

Strategy

A conceptual plan that outlines the steps to be taken to attain a desired outcome. It is an if this-then this response to another’s actions.

Summary Jury Trial

Consists of a summary trial before a jury drawn from the regular panel list. The trial can be completed in one day. Both attorneys make a brief presentation resulting in advisory verdicts. The verdict may be accepted by the parties or may provide the basis for further settlement discussions. If either party rejects it, a regular jury trial can be obtained, but often this process leads to settlement. (Taken from Vinson Institute of Government, UGA, 1992).

Win/Win Negotiations

A negotiation strategy coined by Fisher and Ury that features non-adversarial bargaining. The principal tenet of this strategy is that the parties seek outcomes that satisfy their needs and the needs of the other party. It is a process that promotes trust and builds or preserves relationships.