The Mediation Process: Practical Strategies for Resolving Conflict

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THE MEDIATION PROCESS
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DEDICATION

For Susan, my life and professional partner—in play, learning, and peace-making—and Ben and Bess, my parents, who gave me their values and supported my aspirations throughout their lives.
All interpersonal relationships, communities, organizations, societies, and nations experience disputes or conflicts at one time or another. Conflict and disputes exist when people or groups engage in competition to achieve goals that they perceive to be, or that actually are, incompatible. Conflict is not necessarily bad, abnormal, or dysfunctional; it is a fact of life. But when it goes beyond competitive behavior and acquires the additional purpose of inflicting serious physical or psychological damage on another person or group, it is then that the negative and harmful dynamics of conflict exact their full costs.

Conflicts and disputes do not inherently have to follow a destructive course; they can lead to growth and be productive for those who are involved. Whether this happens or not often depends on the participants’ ability to devise mutually acceptable procedures for cooperative problem solving, their capacity to lay aside distrust and animosity while they work together to resolve differences, and on their ability to develop solutions that satisfactorily meet their individual and common needs and interests. Many people in conflict are unable to do this on their own. They often need the help of a third party, an individual or group of people who are not directly involved in the conflict, to assist them to reach mutually acceptable solutions.

Mediation, one form of third-party assistance, has long been used to help disputants voluntarily settle their differences. It has been effectively practiced in almost all periods of history, in most cultures, and used to resolve a wide variety of types of disputes. Until relatively recently, however, there have been few works that detail what mediators actually do to aid people in conflict to reach agreements.

For the past thirty-five years, I have been actively engaged as a mediator of international, public policy, environmental, ethnic, organizational, personnel, community, and family disputes, and as a conflict management consultant, trainer, and designer of dispute resolution systems. My practice has taken me across the United States, more than fifty countries in Africa, Asia, Latin America, North America, the Middle East, Eastern
and Western Europe, and the South Pacific, and to multiple indigenous communities. This broad experience has convinced me that there are some common mediation principles and procedures that can be applied effectively to help address and resolve a wide range of conflicts in many contexts and cultures. My belief has been confirmed by the expanding experience and literature in the field of mediation.

There is a continuing need for integrative “how-to” books on the various ways that mediation is and can be practiced. *The Mediation Process: Practical Strategies for Resolving Conflict* is my contribution to meet this need. It integrates the practice and research of others and my personal experience and describes some of what we have learned about the mediation process as it has been applied in diverse contexts and settings. The contents for this fourth edition have been greatly expanded and significantly rewritten since the first, second, and third editions, to encompass some of the exciting new developments and applications of mediation in the commercial, interpersonal, and public disputes arenas, and incorporate some of what I have learned about the practice of mediation in different cultures. The book outlines how mediation fits into the larger field of dispute resolution and negotiation and presents a comprehensive, stage-by-stage sequence of activities that can be used by mediators to assist disputants to reach mutually beneficial agreements.

**Audience**

This book has been written for several important groups of people. First are potential or practicing mediators who are or will work in a wide variety of arenas and who have repeatedly expressed a need for a comprehensive description of mediation theory and process. The book should be helpful to future or current practitioners in international, public policy, environmental, organizational, community, family, and interpersonal mediation, as well as in many other areas of practice.

Second are professionals—lawyers, managers, therapists, social workers, planners, and teachers—who handle conflicts on a daily basis. Although these professionals may choose to become full-time mediators, they are more likely to use mediation principles and procedures as additional tools to help them within their chosen fields of work. The material presented here will aid any professional who wishes to promote cooperative problem solving between or among people or groups with whom he or she engages.

Third are people who have to negotiate solutions to complex problems. Because mediation is an extension of the negotiation process and,
in fact, is a collection of techniques to promote more efficient negotiations, an understanding of the mediation process can be tremendously helpful to people directly involved in bargaining. Mediation can teach negotiators how to be cooperative rather than competitive problem solvers, facilitative negotiators, and how to achieve win-win rather than win-lose outcomes. An understanding of mediation can also aid negotiators in deciding when to call in a third party and what an intermediary can do for them. For readers who want more information on negotiation, I suggest reading *The Handbook of Global and Multicultural Negotiation* (San Francisco: Jossey-Bass, 2008) written by my colleague Peter Woodrow and me, as a companion volume to *The Mediation Process*.

Fourth are university, professional school, or college faculty members and students, and trainers and trainees presenting or participating in academic programs on dispute resolution or shorter mediation training programs. This book is suitable for use as a text in mediation, conflict resolution, law, business, management, planning, social work, counseling, education, sociology, and psychology seminars or training programs. Undergraduates as well as graduate students will find it useful in learning mediation and dispute resolution concepts and skills.

**Overview of the Contents**

*The Mediation Process* is divided into five sections and appendices. Part One, “Understanding Disputes, Conflict Resolution, and Mediation,” provides an overview of dispute resolution procedures, defines mediation, presents a variety of mediator orientations toward providing dispute resolution assistance, and describes how mediation is practiced around the world. Chapter 1, “Approaches for Managing and Resolving Disputes,” describes a spectrum of dispute resolution approaches and procedures, and when each may be appropriate means for the resolution of conflicts.

Chapter 2, “The Mediation Process: Mediator Roles, Functions, Approaches, and Procedures,” describes three broad types of mediators—social network, authoritative, and independent—the kinds of relationships they have with disputing parties, and their orientation toward providing mediation assistance in terms of eliciting input from disputants or being directive. It examines potential areas of mediator focus—substantive issues in dispute, enhancing negotiation procedures, or the psychological/relational concerns of disputants—and a number of “schools” of mediation related to each.
Chapter 3, “The Practice of Mediation,” provides an overview of the different types of disputes where mediation is being applied, and examples of the diverse practices of the process around the world. Chapter 4, “Conflict Analysis,” provides a detailed framework and process for analyzing and understanding multiple potential causes of conflicts as well as factors that promote collaboration. It presents core concepts related conflict drivers, “dividers,” and “connectors” (factors that push disputants apart or pull them together) and information about issues, needs, and interests as well as potential options and outcomes of mediation.

Chapter 5, “Negotiation and Conflict Resolution,” defines negotiation and explains how it is the context for mediation. It presents various negotiation approaches and procedures focused on relationships, positions, needs, and interests that are commonly used by negotiators to try and achieve their goals and desired outcomes.

Part Two, “Laying the Groundwork for Effective Mediation,” focuses on work conducted by mediators separately with parties to help them determine whether mediation is the appropriate method to use to resolve a specific dispute and, if so, how to prepare for joint engagement. Chapter 6, “The Mediation Process,” provides an outline of mediation procedures that will be explored in detail in the rest of the book. Chapter 7, “Making Initial Contacts with Disputing Parties,” explores various means of mediator entry. Chapter 8, “Collecting and Analyzing Background Information,” presents a range of methods, procedures, and skills that are useful for gathering data about the parties, issues and needs, and interests involved in disputes. Chapter 9, “Designing a Plan for Mediation,” explores considerations of mediators and disputing parties as they prepare for direct engagement.

Part Three, “Conducting Effective Mediation Meetings,” includes seven chapters focused on how to conduct mediation sessions with parties principally working together. Chapter 10, “Beginning Mediation,” focuses on the mediator’s opening comments or statements in a joint session, and how they are used to promote productive talks. Chapter 11, “Presenting Parties’ Initial Perspectives and Developing an Agenda,” explores how mediators help parties to begin talking, identify topics for future discussions, and order them into a sequence that will help promote productive deliberations.

Chapter 12, “Educating about Issues, Needs, and Interests and Framing Problems to Be Resolved,” presents a range of procedures for how to elicit detailed information about parties’ issues, and understand the
critical needs and interests that are important to them. It also introduces procedures for describing them—either framing or reframing—in a manner that makes them more amenable to joint problem solving.

Chapter 13, “Generating Options and Problem Solving,” explores a range of procedures that can be used by parties to develop possible solutions to their dispute. Chapter 14, “Evaluating and Refining Options for Understandings and Agreements,” presents methods that mediators can use with parties to help them to assess the viability and acceptability of some of the potential solutions or outcomes that they have developed.

Chapters 15, “Reaching Understandings and Agreements and Achieving Closure,” and 16, “Implementing and Monitoring Agreements and Understandings,” focus on the final stages of the mediation process: reaching accords and executing them. They explore in depth how mediators help parties reach substantive, procedural, or psychological/relational closure, write agreements, and promote voluntary compliance with the terms of their agreements.

Part Four, “Strategies for Responding to Special Situations,” contains two chapters. Chapter 17, with the same name as this part of the book, explores how mediators use private meetings; handle time and timing; work with cultural and gender-related issues; manage and exercise power and influence; develop grand strategies for responding to past, present, and potential future conflicts; and help parties with differing beliefs or values to productively engage with each other. Chapter 18, “Strategies for Multiparty Mediation,” examines intermediary strategies for assisting in disputes that involve multiple participants—teams, groups, or large numbers of individuals.

Part Five, “Toward an Excellent Practice of Mediation,” includes Chapter 19 with the same name as this part of the book, focuses on the process, issues, and problems related to the professionalization of mediation and how the practice has become a profession. It looks at the development of literature in the field, educational developments, qualifications of trainees and trainers, and the development of ethical codes and standards.

At the conclusion of the book are several appendices that present Professional Practice Guidelines: Model Standards of Conduct for Mediators, a sample Mediation Services Agreement, a Checklist for Mediator Opening Remarks/Statement, and a sample Settlement Documentation Form. There is also an extensive list of references for readers’ further reading and research.