

## Chapter 7

# Communication Skills for Mediators

## Active Listening

Mediators are facilitators of the communications between disputants as well as good models of effective listening and communication. In order to establish and maintain rapport and to guide the mediation process, careful, accurate listening by the mediator is essential. Active listening involves:

- Listening for the purpose of hearing - not to answer
- Understanding the meaning behind the words
- Understanding the substantive content of what is being communicated
- Attuning to the emotional component of communications
- Providing skilled feedback to convey understanding.

## Listening to Non-Verbal Communications

The mediator has to be aware of his/her own non-verbal communications while, at the same time, be able to take into account and understand the non-verbal communications of the disputants. Non-verbal communications tend to be more spontaneous and under less conscious control and therefore can provide a more accurate portrayal of where the disputants are coming from than verbal communication alone. The mediator needs to be aware of the following:

- Of all communications, the higher percent is non-verbal.
- Words can conceal as well as reveal and therefore the added awareness of the non-verbals can be a real asset for the mediator.
- Verbal and non-verbal communication can be either congruent or incongruent. Incongruent communication begs for more exploration from the mediator through the use of open questions and paraphrasing. When there is incongruence between the verbal and non-verbal communication, people tend to believe the non-verbal.
- Non-verbal communications may not have the same meanings for all people. There may be cultural differences in the meanings of non-verbal communications that need to be understood by the mediator.

- Use your body to convey that you are listening. Eye contact, leaning toward the speaker and nodding your head all convey that you are listening.
- Watch the parties' non-verbal communications. The mediator needs to observe what the speaker's body is saying, as well as observing how the listening party is reacting. How do the parties react while the mediator is speaking?

## Paraphrasing

One of the primary goals of paraphrasing is to develop and maintain rapport with the disputants. Paraphrasing is a form of active listening in which a sincere attempt is made to understand what the party(s) are saying and to provide feedback which clearly conveys that they have been understood.

### Definition

- Paraphrasing means to state, in one's **own words**, in a **brief sentence**, the **facts and feelings** that were heard as a result of listening to the party(s) speaking. Paraphrasing is interactive and takes place throughout the presentation by the parties.

### Purpose

- To **convey that you understand** what the party has been saying.
- To **clarify** in your own mind what the disputant is saying. If you have missed or misunderstood something important to the speaker, a paraphrase gives him/her an opportunity to clarify.
- To **get more information**. Often paraphrasing encourages the speaker to say more about a situation and its importance.
- To convey acceptance and **acknowledge** the disputant(s) experience and feelings.
- Paraphrasing can be used to **manage communication** when one person tends to talk a lot. It provides a way to acknowledge the speaker, convey understanding and then to shift to the other party.
- Paraphrasing can be used to **slow things down** when the party(s) are moving faster than the mediator(s) can realistically follow.
- To **help both parties understand each other**. Paraphrasing is as much for the benefit of the party who is listening as the party who is speaking.
- To **reframe or launder trigger words** and hot issues.

### Pitfalls to avoid (To maintain impartiality)

- Agreeing with one or both parties
- Including your own opinion of the situation
- Judgments or evaluative statements
- Giving advice
- Inserting, “but . . .” at the end of a paraphrase
- Paraphrasing at inappropriate times. Good times to offer paraphrases are when there is a pause, a shift in the subject matter, or at the conclusion of a statement.

## Summarizing

Summarizing involves pulling together, in condensed form, the key points of what another has said. It is distinguished from paraphrasing in that it deals with more information at once.

### When to Summarize

- **At the conclusion of one party rendition of his/her perception of the situation.** Always summarize the key points made by the party who has just spoken prior to inviting the next party to speak. Your summary becomes a point for transitioning from one party to the next.
- **At the conclusion of Stage 2** (Understanding the Parties and Identifying the Issues) it is important to pull together in summary form the key points of what both parties have said. At this point the summary can be placed into writing, on an easel page.
- In the Problem-Solving stage, **when the parties are identifying possible options**, it is important to pull together in summary form all the key parts of each option as well as pulling together the range of possible options.
- **When preparing to write the Memorandum of Understanding** or Agreement, the mediator needs to summarize all the solutions the parties have come up with.
- A useful time to summarize is **when the mediator(s) are confused** and have a difficult time to make sense of things. This gives the parties an opportunity to help the mediators put things into perspective.

### Some Guidelines

- As in paraphrasing, the mediator needs to **avoid providing advice, evaluation or judgments.**
- **Focus on the issues, solvable problems and proposed solutions** and not on personalities.

- Invite the parties to **confirm whether the summary is accurate and complete**.
- Make sure that all **parties are summarized equally**. Otherwise they could see the mediator as biased toward one party at the expense of the other.

## Reframing

Reframing is restatement or paraphrasing words, phrases or ideas into neutral, non-judgmental or even positive terms.

Skillful reframing enables people to hear information and understand problems differently. It can also be a demonstration of the impartiality of the mediator. While the mediator hears what the parties are saying, he/she does not agree or disagree with what is being presented. If the mediator uses the hot button words of one of the disputants, it may appear to the other party that the mediator has bought into what is being said about him or her.

## Examples of Reframing

- **From negative** (“she is never there when I need her.”) **to positive** (“You would like to have her help.”)
- **From past** (“He didn’t . . .”) **to future** (“He’s lying.” to “You see it differently.”)
- **From a focus on the other person** (“She never . . .”) **to focus on the speaker** (“You are interested in . . .”)
- **From a focus on a problem** (“The problem is the bad performance evaluation she gave me.”) **to focus on the issue** (“The issue is the outcome of the performance evaluation.”)
- **From a position** (“He has to pay me \$5,000.”) **to an interest** (“You want to be compensated for your efforts.”)
- **From a complaint** (“He doesn’t listen to me.”) **to a request** (“It sounds like you want to be heard.”)

## Think of ways to reframe the following:

- “He just wants to get rid of me.”
- “He is under the total control of his mother all the time.”
- “He has never showed an interest in caring for the children before.”
- “She wants to take me for all I’m worth.”
- “He (my supervisor) is always looking out for himself.”

## The Use of Questions

Good mediators learn to ask a lot of questions. Questions are used to help the parties to explore, analyze and become specific. Questions help the mediator understand each party, their interests and aspirations. However, some kinds of questions are useful in mediation and others are not.

### Closed Questions

Closed questions are **appropriate when certain specific information is needed**. However, closed questions are needed far less than what many mediators reflect in their practice. The inappropriate use of closed questions can lead to some undesirable consequences.

#### Closed questions:

- Require a specific answer
- Focus on a particular point in the discussion
- Give the other person a clear idea of what you want to know
- Help eliminate misunderstandings
- Guide discussion toward a specific problem

#### Closed questions can:

- Be seen as threatening
- Arouse defensiveness
- Result in getting less information.
- Result in the mediator imposing his/her own agenda

### Open-ended Questions

Open-ended questions are useful in exploring the disputants' perspectives and understandings. The use of open-ended questions helps guard against the mediator(s) inadvertently imposing their own issues and agendas into the mediation process.

#### Open-ended questions:

- Ask for an opinion, an explanation, or the reasoning behind a decision
- Allow a wide range of answers
- Can require several sentences or a longer explanation.

**Using open-ended questions helps you be seen as:**

- A more objective mediator
- Fair and unbiased
- Inclined to listen to all points of view
- Not inclined to evaluate situations prematurely.

**Leading Questions**

In mediation, leading questions are never appropriate. Leading questions takes the process where the mediator wants to go rather than where the disputants need to go.

**Practice: Open, Closed, and Leading Questions**

Identify the question type in the examples below. O-Open, C-Closed, L-Leading.

<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Would you say that you were pleased with the outcome?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Isn' it true that you made the phone call?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Don't you agree that a crime has been committed?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Did you pick up the children last night?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	You reacted negatively to her response, did you not?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	How did you react when he told you?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Was your supervisor nearby?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Was your supervisor upset with you?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Have you thought about possible options?

<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	How would you describe the incident Friday afternoon?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	How do you see things differently from Jane?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	How old was your son when you separated?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	How much is the house worth?
<input type="checkbox"/> O	<input type="checkbox"/> C	<input type="checkbox"/> L	Can you tell me more about your performance evaluation?

### The Use of Questions to Draw Out Parties

The mediator’s use of questions helps organize, influence and give shape to the mediation process. Questions can be used to gather information, understand the parties, learn how they perceive their situation, and develop and evaluate options. Particular types of questions are useful at different stages of the mediation process. The following are illustrative of the types of questions that are useful in different stages of the mediation process. Also, think about additional questions you might ask.

#### Introduction/ Orientation

- What would you like to accomplish here today?
- Can you tell me why you chose to come to mediation?
- Do you have any questions about my role as a mediator?
- Do you have any questions about the mediation process and how it works?
- Do you have any other questions?
- \_\_\_\_\_
- \_\_\_\_\_

### Understanding the Parties and the Issues

- Is there anything more you would like to say about that?
- What are the concerns you would like to see addressed?
- Is there additional information you would like to have?
- How does that affect you?
- Can you tell me why that is important to you?
- \_\_\_\_\_
- \_\_\_\_\_

### Problem Solving/ Developing Solutions

- What ideas do you have?
- What do you think of the idea?
- What are the ways you can gain what you need?
- What keeps that from happening?
- How would you like for things to be in the future?
- \_\_\_\_\_
- \_\_\_\_\_

### Writing the Memorandum of Understanding

- Who will be responsible for making that happen?
- By when do you want this to be accomplished?
- Are there other people who can help you with this?
- Can you tell us what you mean by “soon”?
- How would you like your idea to be stated?
- \_\_\_\_\_



- \_\_\_\_\_

### **Encouraging Reflection and Introspection**

Many types of questions are appropriate in any stage of the mediation process. Especially useful are questions that promote reflection and introspection. While paraphrasing is useful in this regard, the use of questions can be equally valuable and productive.

- Have you been hearing anything in a different way?
- Is there anything you would like to clarify?
- How does that affect you?
- Would that make any difference to you?
- What part of that is the most important to you?
- \_\_\_\_\_
- \_\_\_\_\_