

# Conflict Management

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# What is Worksite Conflict?

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- A condition between workers who are:
  - Interdependent in some way
  - Acting in ways that create a business problem

# The Costs of Unresolved Conflict

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- Lost work time and productivity
- Lost employees / high turnover
- Damage to organization reputation
- Sabotage, theft from site, injuries
- Lowered job motivation
- Health costs due to stress
- Legal costs due to litigation

# Is Conflict always a bad thing?

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- Can be opportunity for growth or learning
- Inspires creativity
- Can bring up alternative ways of thinking and behaving we had not considered before
- Can challenge us to value differences
- Sometimes people need to seek job fulfillment elsewhere
- Can improve communication

*“Two heads are better than one only if they contain different opinions”*

# The Ingredients of Conflict

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- Differences in perceptions
- Differences in values
- Differences in power
- Differences in opinions
- Personality clash
- Rule breaking
- Need for attention

# Conflict Prevention – Mediation without an event

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- Effective decision-making and problem-solving tools
- Stress Management techniques
- Effective management
  - Be sensitive to the relationships among your employees
  - Encourage employees to come talk to you
  - Be proactive and role model effective approaches to conflict
- How do people want to be treated?

# Benefits of Conflict Resolution

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- If worksite conflict is managed and resolved, team members' commitment to the organization increases

# Approaches to Resolving Conflict

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- CONQUEST – power play, win/lose, adversarial, autocratic, demand/threaten
- AVOIDANCE – conflict will go away if I ignore it, time will heal all wounds
- BARGAINING – a game where demands are traded and success relates to how much each party concedes, haggling
- BAND-AID – a quick fix, only dealing with surface issues
- ACQUIESCE – go along to keep the peace, may lead to passive aggression

# The Win/Win Approach

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- Cooperative approach
- Go back to underlying needs
- Recognize individual differences
- Openness to adapting position
- Empowers participants
- Gains commitment and increases motivation
- Helps people learn to work together

# Interpersonal Conflict

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- Common source of worksite conflict
- Relating well to people is a critical factor success in most jobs
- Flexibility to other's style (not manipulation or conformity)

# Emotions During Conflict

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- Anger
- Fear
- Hopelessness
- Frustration
- Disappointment
- Paranoia / suspicion
- Jealousy
- Shame

# Human Needs Affecting Conflict

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- Power
- Approval
- Inclusion
- Justice
- Identity

# Dealing with Interpersonal Conflicts

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- Be aware of “fight or flight” response
- Openly address conflict
- Be sensitive to potential damage
- Use a problem-solving approach – look for SHARED GOALS
- Listen
- Be Flexible

# The Art of Active Listening

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- Many interpersonal conflicts would not arise if we treated our co-workers with the same basic courtesies we extend to customers
  - No interrupting
  - Reflect back understanding of views
  - Ask clarifying questions
  - Really listen, don't prepare your rebuttal until you have HEARD the other person
  - Use of "I" statements

# Clearing the A-I-R

## **A**ppreciate

Explicitly tell others you want to hear their point of view

“I appreciate the opportunity to discuss this problem with you”

## **I**nquire

The other person has the floor – be an active listener

“Let me make sure I understand your position:...”

## **R**espond

Now you have the floor

“Now that I have a sense of your point of view, let me explain where I’m coming from”

*From worksite Wars*

# Questions to Take You Below the Surface

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- Can you tell me what bothered you about what I did?
- What is the most important thing to you in solving this problem?
- Would you be willing to start again right now and do it differently?
- What would it take for you to let go of this conflict and feel that the issue has been completely resolved?

# Timing: When Do You Mediate a Construction Dispute?

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- a. Pre-litigation?
- b. Post-petition?
- c. Pre-discovery?
- d. Post-discovery?
- e. Pre-trial?
- f. Post-verdict? (appeal)?

# Introduction to Mediation

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- Usually a process involving a neutral third party who helps disputing parties find solutions to contested issues
- Mediation is an emerging field of professional practice
- Steps in mediation

# Mediation Process

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- Dialogue is directly between the disputants, about the specific issue to be resolved
- Cardinal rules:
  - Stay in the process (no walk-aways)
  - No one-sided solutions (no power plays)

# Mediation Steps

- Hold preliminary meetings with disputants
  - Hear each person's side of the story
  - Define the problem
  - Explain the rules
  - Assess each party's willingness to resolve the conflict
- Hold three way meeting
  - Encourage conciliation
- Be quiet
  - Don't give advice or opinions
  - Don't propose solutions
- "Let's Make a Deal"
- Follow Up

# Team Conflict Mediation

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- Prevent problems in mediation meeting
  - Personalization – don't allow people to use person insults and derogatory language
  - Withdrawal – don't allow any one person to remain passive
  - Scapegoating – don't allow subgroups to “gang up” on others
- Brainstorming Options
  - Silent, individual generation of ideas
  - Round robin
  - Voting and ranking options

# Good Mediation Agreement

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- Balanced
- Behaviorally specific
- Written

# Sample ADR clause (mediation)

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*“In the event of a dispute or controversy arising out of the interpretation or performance of this Agreement, the parties hereto agree to submit any and all disputes to mediation before a mutually agreed upon neutral third-party mediator prior to either party filing a demand for arbitration or a lawsuit in a court of competent jurisdiction. The fees and expenses of the mediator will be borne equally by the parties, and the mediation will be conducted in Houston, Texas. If the parties cannot mutually agree upon a mediator, any sitting Civil District Court Judge in Harris County may appoint one.*

*If a party refuses to mediate within thirty (30) days of a written request to mediate by any party to this Agreement, then the non-participating party at mediation may not later recover its contractual or statutory attorney fees in a cause of action seeking relief or legal remedies for the matter giving rise to the mediation request.”*

# Sample Court Order

Cause No. 2006-~~12110~~  
Chowan G...  
vs  
D...  
§  
§  
§  
§  
§  
§ IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
TH JUDICIAL DISTRICT

### ORDER OF REFERRAL FOR MEDIATION

This case is appropriate for mediation pursuant to Tex. Civ. Prac. & Rem. Code Sec. 154.001, *et seq.* JERRY HOOPER is appointed Mediator in the above case, and all counsel are directed to contact Mediator to arrange the logistics of mediation. The Mediator's address and phone number are HOUSTON, TX 713-622-0650

Mediation is a mandatory, non-binding settlement conference, conducted with the assistance of the Mediator. Mediation is private, confidential, and privileged from process and discovery. After mediation, the Court will be advised only that the case did or did not settle. The Mediator shall not be a witness, and the Mediator's records may not be subpoenaed or used as evidence.

Fees for the mediation are to be agreed upon by the parties and the Mediator, and divided and borne equally by the parties unless agreed otherwise. Fees shall be paid by the parties directly to the Mediator, and shall be taxed as costs. Each party and counsel will be bound by the Rules for Mediation printed on the back of this order.

Named parties shall be present during the entire mediation process, and each corporate party must be represented by a person with authority to negotiate a settlement. The mediation must be completed within \_\_\_\_\_ days from the date of this Order or before the trial setting, whichever comes first. Counsel and parties shall try to agree upon a mediation date within the next 20 days. If no agreed date can be scheduled, then the Mediator shall select a date, and all parties shall appear as directed by the Mediator.

Referral to mediation is not a substitute for trial and the case will be tried as assigned if not settled. Disputes as to fees may be submitted to the Court.

Signed \_\_\_\_\_, 2007

Judge J. Brown  
JUDGE J. BROWN  
TH Judicial District Court

099168600

# Rules for Mediation

## RULES FOR MEDIATION

**1. Definition of Mediation.** Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

**2. Agreement of Parties.** Whenever the parties have agreed to mediation they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement to mediate.

**3. Consent to Mediator.** The parties consent to the appointment of the individual named as mediator in their case. The mediator shall act as an advocate for resolution and shall use his best efforts to assist the parties in reaching a mutually acceptable settlement.

**4. Conditions Precedent to Serving As Mediator.** The Mediator will only serve in cases in which the parties are represented by attorneys. The Mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the Mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. In the event that the parties disagree as to whether the mediator shall serve, the Mediator shall not serve.

**5. Authority of Mediator.** The Mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement. If necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the Mediator or the parties, as the Mediator shall determine.

**6. Commitment to Participate in Good Faith.** While no one is asked to commit to settle their case in advance of mediation, all parties commit to participate in the proceedings in good faith with the intention to settle, if at all possible.

**7. Parties Responsible for Negotiating Their Own Settlement.** The parties understand that the Mediator will not and cannot impose a settlement in the case and agree that they are responsible for negotiating a settlement acceptable to them. The Mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The Mediator does not warrant or represent that settlement will result from the mediation process.

**8. Authority of Representatives.** PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT. The names and addresses of such persons shall be communicated in writing to all parties and the Mediator.

**9. Times and Place of Mediation.** The Mediator shall fix the time of each mediation session. The mediation shall be held at the office of the Mediator, or at any other convenient location agreeable to the Mediator and the parties, as the Mediator shall determine.

**10. Identification of Matters In Dispute.** Prior to the first scheduled mediation session, each party shall provide the Mediator and all attorneys of record with an Information Sheet and Request For Mediation on the form provided by the Mediator setting forth its position with regard to the issues that need to be resolved.

At or before the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issues presented. The Mediator may require any party to supplement such information.

**11. Privacy.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

**12. Confidentiality.** Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the Mediator. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this agreement shall pay all fees and expenses of the Mediator and other parties, including reasonable attorneys' fees, incurred in opposing the efforts to compel testimony or records from the Mediator.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding: a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; b) admissions made by another party in the course of the mediation proceedings; c) proposals made or views expressed by the Mediator; or d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

**13. No Stenographic Record.** There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

**14. No Services of Process at or near the site of the Mediation Session.** No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending, or leaving the session.

**15. Termination of Mediation.** The mediation shall be terminated: a) by the execution of a settlement agreement by the parties; b) by declaration of the Mediator to the effect that further efforts at mediation are no longer worthwhile; or c) after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

**16. Exclusion of Liability.** The Mediator is not a necessary or proper party in judicial proceedings relating to the mediation.

Neither Mediator nor any law firm employing Mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

**17. Interpretation and Application of Rules.** The Mediator shall interpret and apply these rules.

**18. Fees and Expenses.** The Mediator's daily fee shall be agreed upon prior to mediation and shall be paid in advance of each mediation day. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including fees and expenses of the Mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the parties unless they agree otherwise.

# Helpful References

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- Conflict Resolution (2001) by Daniel Dana
- People Styles at Work (1996) by Robert Bolton & Dorothy Grover Bolton
- Resolving Conflicts at Work (2005) by Kenneth Cloke & Joan Goldsmith
- worksite Wars and How to End Them (1994) by Kenneth Kaye

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