



TURNING
CONFLICT INTO
OPPORTUNITY



PREPARING YOUR CLIENT FOR MEDIATION

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&
CONFLICT COACHING

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WHY PREPARATION IS WORTH IT

A senior litigator once told me: “My clients were ready to settle when they were more upset at my fees than they were at the other side.”

No one wants to reach the point where their clients are unhappy or dissatisfied. To prevent that from happening every litigator should keep in their back pocket a **plan for settlement**.

Settlement planning should run parallel to litigation as early as possible, and mediation is an effective and cost-efficient option. Taking the time to prepare your clients for mediation can significantly increase settlement rates, maximize their return, and bring greater satisfaction with the process.

Preparing your client will empower them to participate fully and effectively in their mediation.

Your client may ask “what’s the point of mediation when I already know everything the other side is going to say and its wrong?” This can be addressed by noting there is much to gained and little to be lost by simply trying.

There are two major challenges present in this conversation:

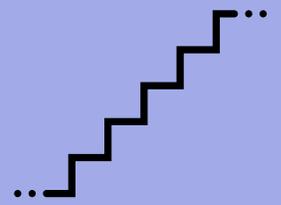
First is the challenge of getting the other side to table. Consider the best time to reach out to them, how to present the invitation as a position of strength, and how to ensure they play fair.

Second is the challenge of getting your client prepared to be effective in the mediation and willing to work through their own preconceptions about the other side.



Preparation will address the roadblocks and barriers of getting the other party to the table and willing to participate.

6 STEPS TO PREPARE YOUR CLIENT FOR MEDIATION



STEP 1 UNPACK YOUR CLIENT'S STORY

It is no surprise that people become attached to their **story of what happened** and are then caught up in **what they made it mean**. Your focus with your clients has been on the litigation steps required to support their case—but for the sake of negotiating a timely resolution a different approach is helpful.

Meet with your client and work together through their story from beginning to end. Take a blank page and on the **left side capture the facts**. Support them to be clear about what really happened. Every case, no matter how complicated, can be reduced to 10 or fewer key facts.

At the same time on the **right side of the page capture the meanings** from your client's story. These are the judgements, interpretations and assumptions that drive your client's emotions and are the foundation of most of the conflict.

Discuss with your client the status of proof for the facts and challenge the meanings that are not fact-based. Help your clients to establish what information is necessary to bring forward and how it will be shared.

Work with your client to **acknowledge their emotions**. Have them try to step back from those emotions and look at their story as objectively as possible.

Facts	Meanings

STEP 2 UNPACK THEIR CLIENT'S STORY

You now want to get your client to put themselves in the other side's shoes. Get them to make their best guess as to **how the other side sees the facts** and capture it on the left side of another blank page.

On the right side of the page have your client make their best guess as to the other side's meanings, their judgements, interpretations and assumptions.

This is a challenging task but critical to effective negotiations. When approaching any conflict there will always be some major points of resistance. It's hard to shake the mentalities of "I'm right and I know it" and "they're wrong and impossible to work with". This requires getting your client to accept that "being right" and "getting what they want" can be two separate things.

You want to help your client be as honest with themselves as possible in both these steps.

STEP 3 GET STRAIGHT ON THE FACTS

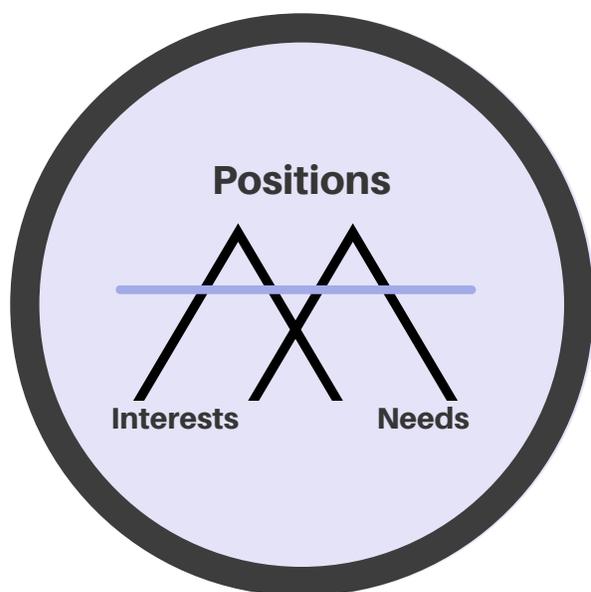
With your client, compare the facts on both pages and identify what are likely to be **areas of agreement and disagreement**. For those areas of disagreement, explore how you will deal with establishing proof on your part and consider what facts will be difficult or impossible to prove.

Brainstorm ways in which you might **collaborate on establishing proof**. For example, you might agree to a neutral appraisal or expert report when dealing with a disputed fact. You might also consider if objective criteria such as building codes could help.

You and your client should get clear on the best strategies for dealing with the facts in the mediation. This is critical to your risk assessment with your client before and during the mediation.



STEP 4 UNDERSTAND THE MEANINGS



Compare the lists of **judgements, interpretations and assumptions** that are often the source of much of the conflict. Consider strategies for dealing with the meanings and the **negotiating positions** that feed the conflict.

A **position** is a statement of what a person wants not why they want it. The 'Why' is the underlying needs and interests that are behind the position.

You want your client to unpack the meanings for insight into their own **interests and needs** and make the best guess as to what the interests and needs of the other side are.

These are the building blocks of your options for resolution.

STEP 5 GENERATE OPTIONS FOR RESOLUTION

This is a brainstorming exercise with you and your client that explores everyone's interests and needs. It will create a **new set potential options** for consideration in the mediation. Test the options by considering how well they meet the interests of both sides and how well they meet the objective criteria.

For example, there's no use agreeing to a building height that is higher than the applicable building code.

BATNA - This is your **B**est **A**lternative **T**o a **N**egotiated **A**greement. In addition to generating options for resolution, you want to make a realistic assessment of what you can do if you don't get an agreement.

This must of course include litigation risks, and is one of the most important roles of counsel in preparing for mediation.

This is you're measuring stick for success in mediation. Any of the options for resolutions that beat your BATNA are worth considering.



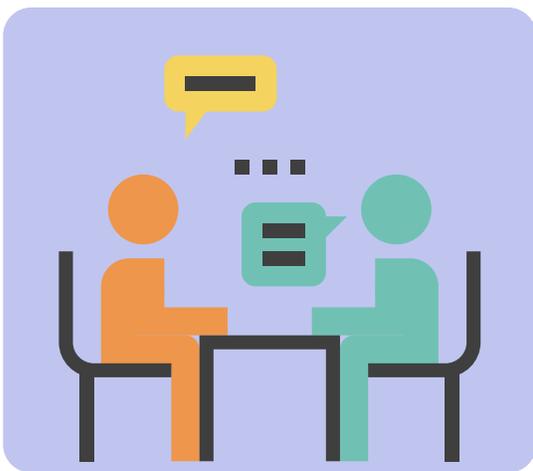
STEP 6 GET THE OTHER SIDE TO THE TABLE

You can now reach out to the other side with an **invitation** to mediate.

Share with them the steps you have taken to prepare, and express your desire to reach an agreement that works for both sides. Be clear that this is in your client's best interest and is not a sign of weakness or capitulation.

This can be as simple as stating that you are exploring **all options** for a resolution.

Your preparation will arm you with the reasoning that you need to get the other side to the table.



WHY DAVID GOULD MEDIATION

My custom designed processes bring the right parties, equipped with the right information, together in a dialogue about future solutions, rather than a **debate about the past** and who is right or wrong.

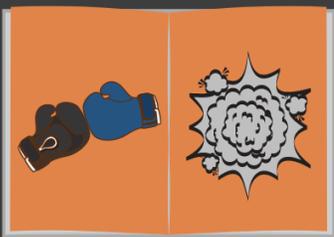
It's important to remember that while mediation is a facilitated negotiation, it is also a voluntary process. The power to intervene effectively is granted by the parties' express agreement.

My approach as a mediator is to strike the appropriate balance between acting as a **facilitator**, a **referee**, and an **evaluator**. Successful mediations are done with the parties, not to them or even for them. Both you and your clients have a meaningful role in the mediation. Neither of you are passengers in the process.

A fundamental part of my process as a mediator is understanding the nature of conflict:

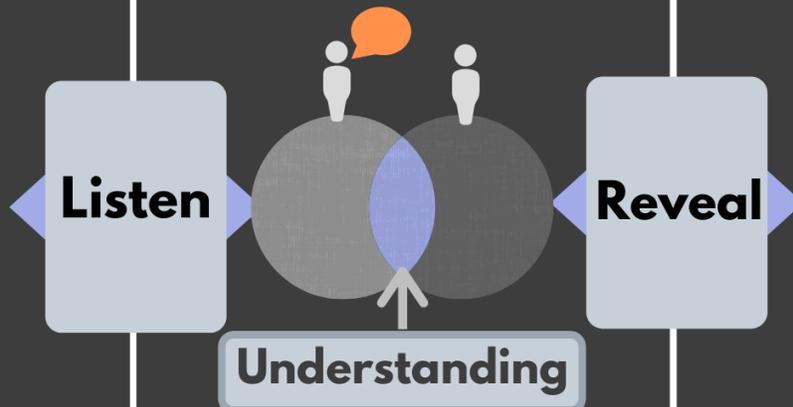
The Nature of Conflict

Past
Conflict is born here



Conflict exists in our stories of the past about what happened to us and what we made it mean

Present
Conflict lives here



Conflict impacts the present when our story triggers negative emotions and we focus on fault and blame.

Future
Conflict impacts here



Our very identity can feel at risk and our future plans focus on proving we are right, and they are wrong.

I have helped people and organizations have difficult conversations and resolve conflicts as a mediator for over 30 years. In my experience earlier is better and a well prepared lawyer and client are key to a better settlement.

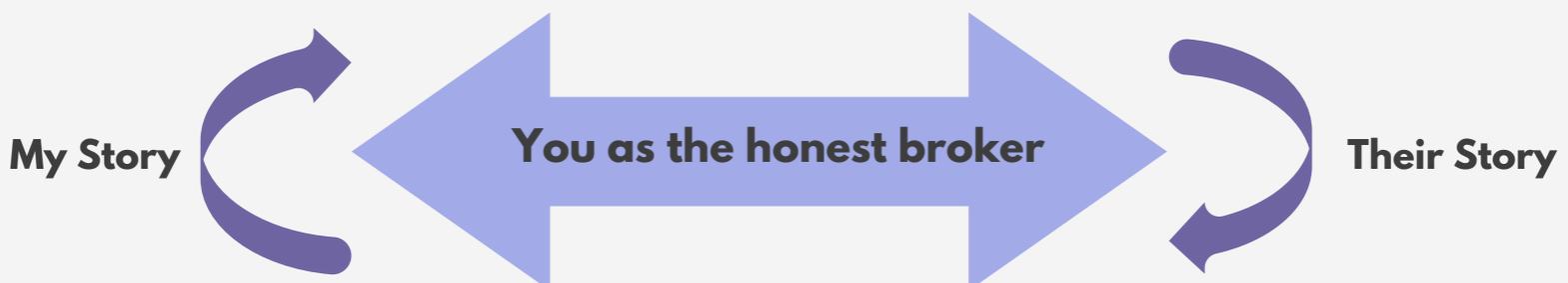
You are certainly not neutral in your client's case, but you can still be an **Honest Broker** of Good Conversation.

Conflicts are always born in our stories of the past about what happened to us and what we made it mean. If the focus of your client is on past faults and blame they will likely be less successful in a mediation.

When you have prepared your client effectively and they begin to understand the underlying interests and needs of both parties, you can enable them to shift the focus of the mediation to options for the future and resolution.

The Honest Broker

An Honest Broker focuses on good process and effective dialogue



Not a compromise between 2 positions on opposite ends, but a higher, middle way that reaches a new plane of possible solutions that meet each sides' unique interests and needs.

WHAT TO EXPECT IN A MEDIATION

You will be asked to...

- 1) Understand and acknowledge the other sides' perspectives.
- 2) Identify and accept the challenges with your case.
- 3) Not compromise, but to find the higher middle way that beats your BATNA.
- 4) Be patient throughout the process.
- 5) Work with and be engaged by the mediator.

This process achieves clarity on the important needs and interests of your clients and the needs and interests of the opposition. These form the foundation for generating options for resolution.

The mediator balances this facilitation role with credible evaluation of the parties' positions and acts as a referee when necessary.

Mediation succeeds when the mediator shifts the parties' focus from past faults and blame to the future and its possibilities.

If you would like to hire me as a mediator or learn more about my process, contact me at:

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FOR A FREE 30 MINUTE CONSULTATION

If you would like to read more from me, visit my website:
davidgouldmediation.com
or find me on [LinkedIn](#)

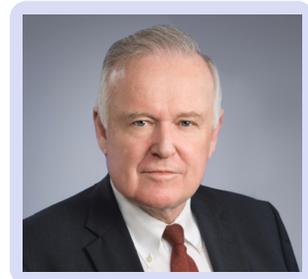


David

David Gould and Bruce Churchill Smith are pleased to announce their association for providing mediation services. To access availability calendars and book a session follow the links below:

<https://davidgouldmediation.com/book/>

<https://www.churchillsmithmediators.com/>



Bruce