



*Humboldt Mediation Services, Inc.*

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**HUMBOLDT MEDIATION SERVICES, INC.  
MEDIATOR TRAINING MANUAL**

**PREPARED BY**

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With a Little Bit of Help from Their Friends

*• To establish simple, efficient and confidential forums for the resolution of conflicts between people in the community • To divert from the courts those cases more appropriately handled in a neutral and non-threatening forum • To encourage people to deal with problems they have unhappily tolerated • To allow those in conflict to take responsibility for resolving their disputes before they escalate to an irreconcilable situation • To train members of the community to serve as mediators.*



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## Introduction

Welcome to a new paradigm shift. Embracing the principles of peaceful conflict resolution is a step toward peaceful coexistence within our community and in the world. The **HMS** training manual suggests attitudes and techniques to assist in the management of one's own disputes, and in the work of providing "third-party" assistance to others. Although many methods exist for alternative dispute resolution, **HMS** trains volunteers to serve on panels of several mediators operating as a team. The method taught here is modeled after the Community Boards process.

Completion of this training will not automatically make you a professional mediator. As of this revision, there is no regulation of professional mediators. However, an effort to professionalize the field of mediation has inspired proposal of several laws which will help to regulate the future of mediation. Community-based mediation organizations, and people who have received training from such organizations, may be exempt from the new legislation. Community mediation groups such as **HMS**, therefore, have a responsibility for self-regulating to assure quality conflict resolution services.

## History & Structure of HMS

The creation of alternative dispute resolution programs in various parts of the United States in the 1970's inspired some of us in the Eureka-Arcata area to develop a plan for our own locale. We were particularly impressed by the outstanding successes of the Community Boards Program of San Francisco in developing community support and in evolving and refining a mediation

### Acknowledgments

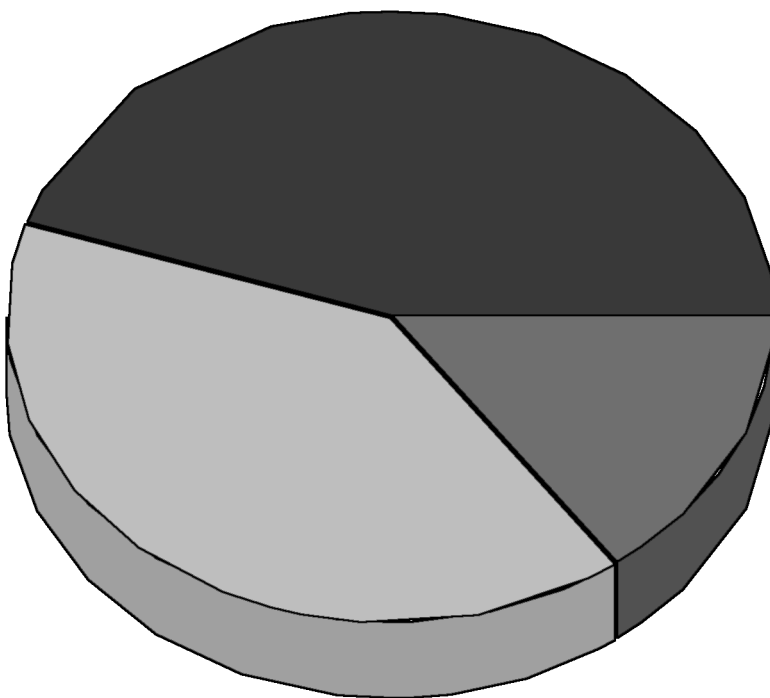
Materials in the **HMS** training manual were compiled from a variety of sources. Much of the information is from Community Boards of San Francisco's Conciliation Handbook; some is from the Dispute Settlement Center of Chapel Hill, North Carolina. We have also been inspired by, borrowed materials from, or used as a resource, training manuals from: the Sacramento Mediation Center; Dispute Resolution Services, Los Angeles; Community Mediation of San Diego; ISDOR Mediator Certificate Program, Humboldt State University; Cascade Alternative Resolution Services; and other fine training manuals in use at community mediation centers around the nation.

We are grateful for the writings of Roger Fisher & William Ury; their excellent "how-to" guides for resolving conflict are highly recommended. Special thanks to: Chip Sharpe, Mark Schafner, Kathy Ehnebuske, Steven Brown, Pat Richter, Michael Doyle, David Straus, the members of the **HMS** Board of Directors for valuable input, and to the many **HMS** volunteers who have used this manual and offered countless suggestions and feedback.

process for neighborhood volunteers. We felt a strong affinity for their emphasis on individual and community education and empowerment, as well as their focus on respect, clear communication and understanding as prerequisites for reaching agreement. We received from them advice, training and training materials.

Humboldt Mediation Services was established in 1983 for the purposes of: 1) assisting people who wish to resolve conflicts; 2) offering an alternative to court adjudication; and 3) educating the community in the particular skills and general values of peaceful, effective conflict resolution. **HMS** offers mediation services for individuals and organizations throughout the county. We work confidentially and inexpensively. Fees are by donation and based on a sliding scale; no one is refused services for lack of funds.

Types of conflicts heard by HMS and % of caseload



- Between neighbors: fences, children, noise, property rights, dogs, etc. 45%
- Child custody, divorce, other family matters 40%
- Miscellany: tenant/land owner, inter-/intra-organization, business, etc. 15%

In 1985, **HMS** was chartered as a nonprofit organization in California and granted 501(c)(3) tax-deductible status by the IRS. Our by-laws permit a twelve-member board of directors. We have generally operated with from six to nine directors, all of whom are trained in the Community Boards process and have served as volunteer mediators. Volunteers also staff our office and serve on committees.

About half the cases assigned to case developers result in a hearing. Most of the others that do not come to mediation are because of reluctance of the second party, although some are conciliated in case development. Of those brought to mediation, 80-90% result in written agreements satisfactory to both parties.

During our first five years, most of our financial support came from the volunteer (less than 10% came from donations by disputants). Since 1988, grants of various sizes from the Humboldt Area Foundation, The Arcata Foundation, The Bertha Russ Lytel Foundation, River Community Homes and the Arcata Economic Development Commission have permitted us to equip and operate an office and improve our services.

In December, 1986, Senate Bill 2064 was added to the California Business Professions Code (Sections 465ff), permitting counties to support dispute resolution programs such as **HMS** with a portion of civil court filing fees. In July 1989, after two years of meeting with county officials and drafting proposals, Humboldt County became the seventeenth county in the state to establish a Dispute Resolution Program account. This annual funding assists **HMS** in employing a part-time program coordinator and maintaining an active countywide program.

## **Definition of Terms**

**Alternative Dispute Resolution (ADR):** Conflict resolution methods (mediation, conciliation, arbitration) that are alternatives to litigation, whereby third party neutrals guide disputing parties in a particular process toward resolution. These alternatives are frequently more cost-effective and more timely than litigation.

**Arbitration:** Decision by an unbiased third party who hears both sides of a dispute. Arbitration is binding if parties agree beforehand to accept the decision; if non-binding, parties reserve the right to reject the decision.

**Conciliation:** The effort or process of building or rebuilding relationships by bringing disputing parties together to discuss their conflict, to improve communications and correct perceptions, thus becoming agreeable or reconciled. San Francisco Community Boards

emphasizes a conciliatory approach rather than mediation because: (1) there is such a wide variety of third party interventions typically called “mediation;” and (2) some forms of mediation focus directly on the settlement of the conflict rather than the quality of the relationship between parties.

**Impartiality:** Neutrality or not taking sides. Even if the mediators are not able to remain perfectly objective and unbiased, the process is impartial by providing the parties equal opportunities to express thoughts and feelings, and by offering equivalent feedback and support to each party. An impartial third party is a person who is not party to the dispute and serves the conflict resolution process without bias.

**Mediation:** Facilitation of the negotiations between disputing parties by an impartial third party. The third party (mediator) helps parties express views, clarify understandings and word agreements. Decisions are made by disputants, not by mediators. Mediation is often defined as collaborative problem solving.

**Negotiation:** Problem solving communication that is usually facilitated, in an effort to achieve an agreement concerning a desired outcome. Interest-based negotiation is a process that works to satisfy as many interests (needs) as possible for all negotiators.

**Panel Hearing:** The mediation process used in this training to help resolve disputes which consists of a team of mediators, or Panelists, trained in the Community Boards process.

**Validation:** To acknowledge the value of a disputant’s feelings and needs, and to demonstrate through your words and your empathy that you view the disputant as a valuable person. It isn’t necessary to agree with someone’s position in order to validate concerns and issues.



## I. COMMUNITY BOARDS

Conflict is part of our reality. People often accept conflict because no resolution seems possible. How, or even if, we resolve our everyday conflicts or our long term disputes directly affects the quality of our lives. What can be done? Ignoring the problem may make the situation worse or even lead to stress or violence. The authorities may be called too late, and the court system is impersonal, expensive and time-consuming. The Community Boards process offers an alternative.

Community Boards began in San Francisco in 1977 by Raymond Shonholtz and people from the Visitation Valley neighborhood. As a former attorney and assistant law professor, Shonholtz wanted to provide an alternative to the traditional justice system, and believed that:

“Few cases really require the expensive, formal process of the law, with lawyers arguing on behalf of their clients in front of a judge. Yet because there was no other way to resolve conflicts, people with a dispute with a neighbor, roommate, landlord, tenant or family either had to tolerate the problem or use the formal court system.”

Funded by private foundations, Community Boards was the nation’s first neighborhood-based justice system, with trained volunteer conciliators providing a free, fast and effective alternative to the police and the courts. The Community Board Center for Policy and Training was established in 1982, in response to requests for assistance from communities throughout the United States. Center staff provide technical assistance and materials to help people develop conciliation programs by training volunteers in the Community Boards process.

Volunteers perform most of the work of Community Boards, serving as Panelists, Case Developers and Trainers. **HMS** receives referrals from community residents, neighborhood organizations, churches, schools, the courts and District Attorney’s office, and others.

## ***HMS Roles***

**Case Coordinators** serve as the organization's initial contacts, fielding calls for mediation services. They provide information, contact volunteers to serve as Case Developers and Panelists, help schedule mediation sessions, and assist with follow-up.

**Case Developers** help disputants identify issues and interests prior to a Panel Hearing. They educate people about the value of the process and encourage them to express and resolve their dispute using mediation. Ideally, HMS Case Developers serve on mediation panels as Panelists rather than simply briefing the Panel and then leaving. Trust is built during the case development process and we have found that disputants appreciate seeing a familiar face on the Panel. Section III focuses on detailed procedures for case development.

**Panelists** are trained volunteer mediators who work in teams of three to four at a Panel Hearing. They provide a safe place and an impartial process where people in conflict can resolve disputes. HMS Case Coordinators always work to team more experienced Panelists with those less experienced. Newly-trained volunteers participate on Panels as observers. Performance evaluations occur during post-hearing de-briefings, and via Trainers. Although everyone is capable of learning the process, not everyone is ready to become a team player on a mediation Panel.

**Trainers** instruct new volunteers in the Community Boards process and help evaluate performance of new trainees. HMS Trainers also provide specialized training in a variety of communication/facilitation methods.



## **Community Boards Values**

Community Boards was founded on five values that guide the process and help unify communities. These values support cooperative work and understanding as people of different ages, races, sexual preferences, lifestyles and ethnic backgrounds live and work in the same community.

### ***1. Acceptance Of Positive Side Of Conflict***

Conflict is inevitable. Our culture often promotes the attitude that conflict is wrong and should be avoided at all costs. Every conflict

offers a chance to learn and perhaps to improve a situation or a relationship. Conflict can effect change, promote communication, and provide an opportunity to explore creative problem solving.

### ***2. Peaceful Expression of Conflict***

The expression of conflict in a safe and peaceful environment lays the groundwork for its resolution. Expressing conflict is healthier than “burning up”

inside, living in quiet fear or acting violent. When people are able to express conflicts, their chances to reduce tension and reach mutual agreements are greater. Deeper issues which divide people can be identified, helping to make communities safer and saner places to live.

### ***3. Individual and Community Acceptance of Responsibility for Conflict***

Through Community Boards, the community demonstrates responsibility by making a forum of trained residents available to people in dispute. This work reverses the growing trend toward “professional” or outside handling of local problems. The forum provided – the Panel Hearing – allows for full expression of conflict by disputants themselves. The hearing offers them support and skills to resolve their own disputes at the time of the hearing and in the future. Face-to-face resolution of a problem between people who have accepted responsibility for their conflict is likely to last.

### ***4. Voluntary Resolution of Conflict***

Voluntary dispute resolution encourages cooperation and makes communities better places to live. Voluntary agreements represent the self interest of each disputant and are thus more likely to be honored. The Community Boards process encourages the widest range of participation, since everyone involved is encouraged to attend. No one is forced to participate, and mutual resolution means that both people win.

### ***5. Community Diversity and Tolerance for Differences***

Community diversity – be it cultural, ethnic or lifestyle differences – is part of what makes life exciting. That very diversity, however, may lead to conflicts, disagreements or misunderstandings. Respect for differences and a willingness to learn from other people are values encouraged by the Community Boards process. The traditional justice system seldom has the capacity for building respect or tolerance. Without these underlying values, all the laws in the world will not create a better community.

#### **The Process**

**Opening: Welcome**

**Phase I: Issues**

**Phase II: Understanding**

**Phase III: Empowering**

**Phase IV: Agreement**

**Closing: Thanks**

**Review: Process, not  
content**

## II. COMMUNICATION SKILLS

### Communication and Dispute Resolution

Communication problems are at the root of most conflicts. As conflicts develop, so do frustration and anger, and the situation can quickly become destructively competitive. Instead of communicating, each person works to defeat the other. By the time a dispute has reached this stage, people may have fought, yelled, or perhaps just walked away thinking, *“I don’t know why I waste my time. I just can’t talk to that person (those people).”*

As communication breakdown increases, a conflict worsens. Successful resolution happens if people are able to talk about, listen to, and understand each other’s issues and feelings. We define communication as: bringing people together to exchange thoughts and feelings that lead to understanding. Effective communication is essential in conflict resolution.

When people decide to communicate they may want to inform, understand, learn or share feelings. This process involves work; people in dispute must be sincerely willing to do the work that promotes effective communication. They need to give, receive and clarify information from others. If that willingness is not present, efforts to communicate are futile.

Respect is necessary for successful communication. Each person must show the other that their communication is important and that they can learn from the other. Without respect, there is no equality; without equality, honest and effective communication is not possible.

### Effective Listening

During emotional discussions, strong feelings of anger, anxiety, fear or excitement cause people to stop listening. The more emotional investment one has in a conflict, the easier it is to stop communicating. This lack of effort may result in getting locked into a position, such as:

*“I know I’m right – no matter what she says.”*

*“I am his supervisor. What could he possibly know?”*

In these situations people have become less committed to hearing the other.

Mishearing also happens whenever emotions color a conflict discussion. What one person thought they heard was not really what the other person meant. People usually speak the truth as they see the truth. Effective listening is the key to understanding: listening that enables the listener to fully hear and understand also creates an environment where the speaker is encouraged to participate. Effective listening opens us to the communications process. We can learn to deal with biases, emotions and attitudes which rob us of the growth and satisfaction enjoyed by people who are really communicating.

### **Active Listening Responses**

Active listening responses can include paraphrasing, responding to feelings, accepting, understanding and encouraging.

Mr. Jones says: *“If Smith doesn’t stop letting his dog run loose, I’m calling the police.”*

**Paraphrase.** Focus on the main idea and restate that idea in your own words. Restating lets the speaker know that you understand the main points and realize the situation is serious. The speaker then feels understood and supported.

*“Things are getting worse between you and Smith.”*

*“This situation is getting serious.”*

**Respond to Feelings.** Focus on the feelings behind the speaker’s statement and acknowledge them. Acknowledging emotions lets the speaker know their feelings are important and are being heard.

*“You’re really getting angry with Mr. Smith, aren’t you?”*

*“It sounds as if you’re really fed up and frustrated by this situation.”*

**Accept and Understand.** Accept feelings without agreeing with or approving of them.

*“I can see that you’re really upset with Mr. Smith.”*

*“You’re angry because he keeps ignoring your complaint.”*

**Encourage.** Ask questions which encourage the speaker to go into detail.

*“Can you tell me a little bit more about how his dog affects you?”*

<p><b>IMPORTANT:</b> Sincerity is essential, without which active listening responses can sound extremely patronizing to the speaker. Sincere use of these skills greatly enhances the quality and effectiveness of the communication process.</p>
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## On Listening

Listening, like mediation, is an art. Good listening – listening with understanding – is indispensable to the mediation process.

### Listen attentively

#### Verbal component:

Concentrate on what is being said. You must be alert, interested, and hear exactly what the party is saying. This may involve seeking clarification when the party says something you do not understand. Ask what is meant rather than pretending to know the meaning or assuming you understand.

Demonstrate interest by encouraging the speaker to elaborate and by letting the speaker know you are listening using expressions such as, “*I see,*” “*Yes,*” and “*Tell me more.*” These “minimal encouragers” should not imply that you necessarily agree with the speaker but rather that you are listening carefully to what is being said. The briefer these kinds of encouragements are, the less the speaker’s chain of thought is broken.

## MORE EFFECTIVE LISTENING TECHNIQUES

**STOP TALKING:** You cannot listen while talking.

**EMPATHIZE:** Put yourself in the other’s place to understand what they are trying to communicate and why it matters to them.

**ASK QUESTIONS:** When you do not understand, when you need more explanation, when you want to show that you are listening, ask. Do not ask questions to embarrass or debunk the speaker.

**BE PATIENT:** Do not rush. Give people the time they need to speak.

**CONCENTRATE:** Focus your attention on the words, ideas and feelings related to the subject.

**LOOK AT THE OTHER PERSON:** Careful observation focuses your concentration. Faces, eyes, posture and gestures are important communication clues. Let the other person see that you are listening.

**PUT YOUR EMOTIONS ASIDE:** Try to remove your own worries, fears, problems and anger from the discussion. Your emotions may keep you from listening well.

**ELIMINATE DISTRACTIONS:** Put down papers or pencils. Do not jingle change in your pocket, rap on the desk or stare at the ceiling.

**GET THE MAIN POINTS:** Concentrate on the most important ideas. Details can be important, but focus on them only to determine if they support or define the primary ideas.

**SHARE RESPONSIBILITY FOR COMMUNICATION:** Only part of the responsibility rests with the speaker. Ask for clarification if necessary.

**REACT TO IDEAS, NOT TO THE PERSON:** Do not let your reactions to the person influence your interpretation of what they say. The ideas may be valid, even if you do not like the person or the way they look.

## **Physical component**

Concentrate on physically giving the speaker your attention by leaning forward, maintaining eye contact whenever possible and minimizing your own activity. Give the speaker your energy. Facial expressions, nodding, and other physical signs showing consistent interest help the speaker gain confidence in you.

## **Listen with understanding**

This facet of effective communication is closely related to accepting the speaker and involves an attempt to place yourself in the speaker's position, and to appreciate what the dialogue means to that person. Try to understand not only what is being said, but the person speaking as well. Try to be appreciative of the events and experiences that have led this person to make these comments.

## **Be comfortable with silence**

Silence is sometimes an awkward gap in conversations, but do not be afraid of small silences in mediation. Silence

gives everyone an opportunity to allow feelings to be felt or to organize thoughts regarding what has already been heard. The speaker will usually fill the lag, sometimes by elaborating on what has been said, or by giving more information.

## **MORE EFFECTIVE LISTENING TECHNIQUES**

**DO NOT ARGUE MENTALLY:** When you are trying to understand another, refrain from mental arguing while they are speaking. Internal arguing sets up a barrier and prevents you from really listening.

**LISTEN TO HOW SOMETHING IS SAID:** Attitudes and emotions may be more important than words. We often concentrate on what is said and miss the importance of understanding emotional reactions and attitudes.

**DO NOT ANTAGONIZE THE SPEAKER** The speaker may hide their ideas, emotions and attitudes if you are antagonistic. Be aware of the effect you are having on the other person and adapt. Arguing, criticizing, taking notes or not, asking questions or not, may disrupt the speaker.

**LISTEN FOR THE OTHER'S PERSONALITY:** Discover what the speaker likes and dislikes, their motivations, values and ideas.

**AVOID ASSUMPTIONS:** Do not assume others use words the same way you do. Do not assume that you understand. Do not imagine they avoid looking you in the eye because they are lying; that they are trying to embarrass you by looking you in the eye; that they are distorting the truth because they do not agree with you. Do not decide they are unethical because they are trying to persuade you, or that they are angry because they are enthusiastic.

**DO NOT CLASSIFY THE SPEAKER:** Too often we classify people as certain types and then try to fit everything they say into our classifications. Knowing the politics, religious beliefs or jobs of speakers may be useful, but remember that people are unpredictable.

**AVOID HASTY JUDGMENT:** Wait until all the facts are known before you make decisions.

**RECOGNIZE YOUR OWN PREJUDICES:** Be aware of your feelings toward the speaker, the subject or the occasion and allow for these biases.

Keeping the speaker as comfortable as possible is important. If the speaker appears embarrassed by the silence, a clarifying question or other verbal response may give them needed encouragement.

When you are listening and trying to build trust, you are listening for signals. Mediators think ahead. How does the person feel about this dispute? Does it seem irreconcilable, or are there little indications that a compromise is possible? What is being said that may be helpful later?

## Listening Responses

A listening response is a comment or action which conveys the idea that you are interested, paying attention and wish the speaker to continue. The response is made quietly so as not to interfere with the speaker's train of thought and is usually made when the speaker pauses.

### Types of Listening Responses

**Nod:** nodding the head and waiting.

**Pause:** looking at the speaker expectantly without saying anything.

**Encouragement:** *"I see..."*, *"Go on..."*, *"Yes..."*

**Echo:** repeating the last few words the speaker said.

**Mirror:** reflecting to the speaker your understanding of what has just been said, in your own words; e.g., *"You feel that..."*

### Helpful Verbal Responses:

"I know you are all responsible and reasonable people and you want to do the best thing for everyone concerned."

"Let me make sure I understand what you are saying..." (then paraphrase).

"Now, this is just a thought..."

"I understand your concern and I..."

"Your ideas on this would certainly help matters."

"Correct me if I'm wrong, but do I understand you to be saying...?"

"I'm sure you must already have some thoughts on the matter."





## ????????? OPEN ENDED QUESTIONS ??????????

Open ended questions usually begin with “**What...?**” or “**How...?**” & are used for gaining more information & understanding. They allow a person to speak about their experience and are more effective than questions that can be answered using “Yes/No”.

Examples include:

### **DISCOVERING:**

- How do you see the situation?
- How has it affected you?
- What more can you tell me about that?

### **UNDERSTANDING:**

- How did you feel about that?
- What did it mean to you when . . . ?
- When that happened, how did you feel?

### **EVEN GREATER UNDERSTANDING:**

- What’s it like being . . . ?
- What do you need to feel better about this?
- What do you especially want to understand about you in this situation?
- How do you suppose you came to have such different views of the same situation?

### **WHAT’S NOT BEING SAID:**

- What do you think is going on?
- What do you imagine might be happening?

### **SO WHAT? NOW WHAT?:**

- How would you have preferred to handle this?
- How would you respond to a similar situation now?
- What could you do that might help resolve this?

**IMPORTANT:** For greater “open-endedness,” avoid questions such as:

- “Why . . . ?”
- “Do you think . . . ?”
- “What really happened?”

= Rephrase “**Why . . . ?**” questions into “**What . . . ?**” or “**How . . . ?**” questions whenever possible!

????????????????????????????????????????????????????????????????????????

## **Validation**

Validation is the natural outcome of active listening and can be used effectively at any time during the mediation phases.

Mediators usually offer too little validation. Many disputants have had their self image shaken because of their present conflict; validation can help them feel heard, justified and sane.

Validation is a very positive, reinforcing action. Synonyms for the verb “validate” include: support, confirm, approve, sustain, legitimize, justify, corroborate, authenticate. In mediation, “to validate” is to give credibility to a disputant’s needs and feelings and to demonstrate – through your words and your empathy – that you see the disputant as a good person.

If empathy is an internal process – an emotional understanding of another – validation is its outward expression. The first step in validating is to empathize: try to understand how a person feels and experiences their conflict. During a mediation you may feel empathy and understanding for the parties, but unless you are able to reflect that understanding – through the use of clear and specific validations – the parties may not even know that you are empathizing. They need to see and hear empathy in your words, facial expressions and body language.

Parties in conflict often see each other as villains, ogres or robots incapable of feelings. To validate a disputant is to describe them in relatable, very human terms. To validate is to demonstrate that we see the good qualities in each of the disputants. Validating one party can simultaneously help the other, as each indirectly shares another viewpoint of the situation.

### **Examples of Validation**

“I hear you saying you’re not the kind of person that normally flies off the handle about any little thing.”

“You feel that twenty years of living in this neighborhood ought to be worth something.”

“You’re a responsible person and feel that your opinion should be taken seriously.”

## How to Validate

Genuine validation contains an affective quality that is reflected in your tone of voice, facial expressions and body language. Validation may occur immediately after a statement or series of statements, during any of the process phases and any number of times and can be a summary of what you feel and hear from a disputant's words. Each party should receive some validation from someone on the Panel during each phase.

Validations must be sincere and show the disputant's **positive intent, portray the disputant in a positive light, and/or provide a context for the disputant's feelings and concerns.**

During mediation, our perception of a conflict may be so cloudy or confused that we have difficulty locating positive intentions, cannot identify what the person was experiencing during critical times, or cannot see the person in a positive light. If you find yourself in this situation, try asking more open-ended questions to get at the heart of issues.

### A Basic Model for Validation

This model is very similar in content to "I" Statements. The difference is that you are giving voice to another persons perception of the situation.

“So you feel **(EMOTION)**, when **(SITUATION)**, because **(REASON)**.”

You can also add, if appropriate:

“ and you would like **(FUTURE CONDITIONS)** .”

Remember validation is not an exact science. As with the previous “Examples of Validation” these statements will most likely get an affirmative response from the disputant you are addressing. These are not open-ended question but are closed ended statement that are ment to support and cheerlead the disputants positive intention to engage in this present conflict for the betterment of all concerned. If you analyze the previous statements/validations you will see how a disputant can move into an attitude of increasing possibilities.

## Results of Effective Validation

- Disputants know that their issues and feelings have been heard
- Frustration and anger can be dissipated as disputants feel that, “*At least someone understands me*”
- Second party can indirectly hear first party’s feelings and concerns
- Mediator is better able to summarize and clarify the situation in a positive light
- New information and shared understandings can be restated and clarified
- Disputants are better able to understand the positive intention(s) behind specific action(s)

The following is an example of ineffective validation. Why?

“So, Larry, when Nancy’s music woke you up, you called the police.”

This example does not put Larry in a positive light, does not show his positive intentions, or provide a context for his feelings and actions so that both he and Nancy can see his actions as justifiable.

Here is the same example using more effective validation:

“So, Larry, when Nancy’s music woke you up at 1:30 A.M. for the third time that week, you felt angry and frustrated knowing you would be going to work the next day tired. Since you already tried to communicate with her, you felt she should have shown more consideration for your schedule.

So you called the police hoping she would understand how strongly you felt.”

The less effective example is adequate, but with a few specific open-ended questions the mediator is better able to include Larry’s positive intentions (“*...to communicate with Nancy...*”), and to put Larry’s feelings and actions into a context that may be more understandable to Nancy.

- Both parties are able to see themselves in a positive light despite the conflict
- Shared feeling of optimism is established

## Advanced Tools for Validation

**Storytelling.** Actually a very validating summarizing technique, storytelling establishes a context in which the events of a conflict occurred, and can re-frame negative experiences so that positive intentions and understandable needs are heard by all parties. Storytelling can be helpful in engaging everyone’s imagination so that they can begin to see the situation differently and get a sense of the bigger picture. The following example demonstrates storytelling:

*“Let’s see if I understand. You come home after working a ten hour day to support the family. You feel like you shouldn’t be bothered with minor house repairs as soon as you get home. But you’re patient, so you work on them anyway. You’re angry when John doesn’t seem to appreciate all the extra effort you feel you’re putting in. You see yourself as a hard worker and feel that because you get upset with him about this doesn’t mean that you’re lazy.”*

**The Big Picture.** Formulate a one-to-three-word description of the conflict in your mind (e.g. lack of understanding, need for respect, fear of attack, miscommunication, fear of rejection) and focus on this unspoken theme in your validations. In the following example, The Big Picture theme is “fear”:

*“Kimberly, I heard you say that you thought you overreacted when you called the police, but I’ve been listening to you for awhile now and I’ve been impressed by how you choose your words so carefully. You don’t strike me as someone who tends to overreact. Can you tell us about what prompted you to call the police that night that you heard someone banging on your door?”*

**The Need for Equal Validation.** Validation must be given equally to each disputant regardless of whether we would ordinarily agree with them or like them. If the disputants sense an imbalance, they will not believe the Panel is neutral. Empathizing with each disputant – and expressing that empathy aloud – is essential to the success of the mediation process.

**IMPORTANT: Acknowledging experience and reflecting feelings are helpful interpersonal skills. However, they are not tricks or gimmicks. Nor can they be used mechanically. They are helpful only within the context of concern and respect. In human relations, agents of help are never solely techniques, but the person who employs them. Without compassion and authenticity, techniques fail. - Dr. Hiam Ginott**

## **Building Trust**

When parties come to mediation, they are usually angry and distrustful of each other. Although they agreed to come, they may question why they are there, what the process is about and what it can do for them. Mediators must calm anger and build trust. If parties do not trust the mediators, they will be unwilling to take risks with the mediator or with each other, and agreement. Trust must be earned. Even when earned, trust can be easily lost. Trust is fragile and never owned outright. Establishing trust depends to a great extent on the attitude of the mediator – your genuineness, the active and involved way that you listen, and the extent to which you accept the parties even though you may disagree with their values.

### **Ways of earning trust**

- **By explaining the mediator’s function and role.** Explaining your role as a mediator and the role of HMS establishes neutrality. Mediators still have views or opinions about the issues, but the opinions are unimportant to the resolution of the dispute. The important views are those of the parties, and these must be explored. The mediator must assure the parties that the proceedings are strictly confidential, and that you are there to help the parties get what they want, not what you want.
- **By letting the parties explain the dispute.** Most importantly, allow yourself to be educated by the parties, even if you think you know what the dispute is all about.
- **By letting the parties state their positions.** People want to state their positions. A mediator can learn a great deal about issues and priorities simply by being open, attentive and patient.

## Reducing Defensive Reactions

Active listening and ways of asking open-ended questions minimize defensive communication and actively support communication that is open.

- **Describe, don't evaluate.** A mediator should avoid value judgments at all times. Statements like, *"That's not important," "I hate to see a marriage break up,"* or *"Why would you do something like that?"* are guaranteed to stop the flow of communication. Neither interject your opinions nor communicate them subtly.

"Why" questions often suggest disapproval. Keep communication open by using open-ended questions. Say the minimum necessary to keep an exchange going and be descriptive without using value-loaded words.

- **Concentrate on the problem; don't control the process.** Early indications that a mediator is attempting to exercise control can turn parties off even before communication begins. An agreement will never be reached if the mediator seeks to impose control by forming an opinion of the "desired" solution at the outset.
- **Be empathetic.** A mediator must convey empathy and respect to both parties without implying agreement. A mediator must express an understanding of the problems and positions and accept emotional reactions to the situation at face value.
- **Provide a forum, not a court.** People who know the answers put others on guard. A mediator must be open and provisional, and not dogmatic. The parties must live with the agreement, not the mediator.

### Formula For Communication:

**Listen**  
**Empathize**  
**Validate**  
**Clarify**  
**Summarize**



### III. CASE DEVELOPMENT

Allowing people sufficient time to describe their conflict is a first step in peaceful dispute resolution. Case Developers help people identify conflicts and introduce people to mediation. They also model the attitudes and actions that demonstrate the Community Boards Process.

Case development is referred to as “screening” in some community mediation programs as screening may more accurately describe the discovery process that must occur prior to a Panel hearing. Case development is more than convincing someone to try mediation. An important task for case developers is to assess whether disputants are ready for mediation. This is a judgement call and comes with experience. Determining the readiness of prospective parties for mediation can become the real work of case developers. Some types of disputes may not be “mediatable” and parties are best served by referrals to other agencies. (See appendix for a list of Community Referrals.)

Face-to-face meetings with both parties is generally the best method for establishing rapport and building trust. We recommend that two mediators meet with each party during visits. However, large geographic distances, as well as everyone’s busy schedules, make visits difficult. Case development work is frequently accomplished by phone in such situations.

Another school of thought in mediation today is that the process can occur regardless of previous or extensive case development. Perhaps this approach is best left to more experienced mediators. **HMS** recommends thorough case development in most situations.

#### **Essential Questions for Case Developers to Ask**

- What is your view of the situation?
- What issues need to be addressed for this problem to be resolved?
- What issues are most important to you? Why?
- What have you tried so far to resolve the dispute?
- Are there other parties in this conflict?
- What expectations do you have?
- Have there been incidents of threats or physical violence?

#### **Conditions for Mediation/Negotiation**

- Issues are discernible and negotiable
- Participation is voluntary
- Primary parties are motivated to participate
- Participants are sufficiently sane and sober to communicate



## Case Development Goals

- ☞ Educate parties about the HMS mediation process and values
- ☞ Assist each party in clarifying the issues, needs and what they want out of mediation
- ☞ Assess whether the parties are ready for mediation
- ☞ Provide support for people trying the mediation process
- ☞ Help schedule Panel hearings
- ☞ Provide Panelists with information at briefing sessions before hearings by writing a short case report
- ☞ Refer parties elsewhere if the Community Boards Process is not appropriate

**Before examining the step-by-step tasks for case developers, we need to focus on the first four, and more important, case development goals:**

- **Educate parties about the HMS mediation process and values.** Mediation differs from most types of ADR in that “success” generally means building an agreement satisfactory to all parties, or a “win-win” outcome. Conventional ways of resolving disputes focus on justifying actions and proving blame, and proving one party “right” at the expense of the other, or a “winner-loser” outcome. Most people approach mediation from an adversarial position because this is what they know.

For mediation to succeed, each person must be able to at least consider that creating a solution satisfactory to everyone may be a possibility. Parties must be willing to explore possibilities together before **HMS** agrees to mediate. If, instead, one party feels that the only satisfactory resolution to the conflict is if the other party loses, then mediation should not proceed. Case developers need to make sure that parties are clear about this distinction.

Success in mediation may not mean reaching an agreement at all, but the process itself can be a successful experience.

**Assist each party in clarifying what they want out of mediation.** Each party must clearly understand what they want to create an agreement where each party gets what they really need. Before mediation, each party must determine their needs. The mediation process will offer them opportunities toward better understanding each other. Case developers must assist disputants in re-framing

their frustrations into clear pictures of their wants and needs. Rather than focusing on the nature of the dispute, the details and facts, or disputant's frustrations, case development should focus on preparing disputants for mediation and helping them determine what they want. This is a difficult challenge. Most people are very unclear about what is truly important to them, and tend to harden their positions. They develop an "ideal" solution and then fight for that solution, which usually involves thinking that their conflict would be resolved "if only so and so did such and such."

The mediation process has a much greater potential for success if parties are challenged to examine the needs they are attempting to meet in developing that "ideal" solution. Successful mediations are built on creating agreements that meet both parties' needs, rather than one party convincing the other to accept their position. The resulting agreement may be one that had not previously occurred to either party.

When needs are clear before mediation, they are easier for each party to express as well as easier for both parties to understand about each other (instead of each being vehemently attached to a position).

**Assess whether the disputants are ready for mediation.** Case development success, as originally perceived in the Community Boards Process, was simply convincing people to try mediation. For HMS case developers, success means: bringing disputants to the table ready and able to benefit from the mediation process. Much of the work of mediation is the responsibility of the case developer before the hearing even occurs. Being adequately prepared for mediation is hard work and the hearing is a reward for that hard work. By adequately preparing parties for the Panel process, we insure that mediation functions at its best and that disputants are likely to create lasting solutions.

**Provide support for people trying the mediation process.** Assuming that all of the above criteria are met, disputants still need encouragement to attempt the process, even if they cannot imagine how an agreement can ever be reached. Magic and synergy happen when people come together to clearly express and hear mutual needs, allowing a degree of creativity that neither could achieve alone. Case developers need to raise hope.

## **Case Development Tasks**

### **Visiting the First Party**

After **HMS** receives a case, a Case Developer meets with the first party to learn about the problem and encourage him or her to resolve the dispute at a Panel hearing. Usually an appointment is made with the party ahead of time by phone. A personal visit is preferable.

A visit enables the Case Developer to:

- Understand the issues and identify the parties involved
- Help the person to clarify their needs, interests and expectations of the mediation process
- Tell the person that the Case Developer is a community resident concerned about resolving conflict in the community
- Explain the conciliation process and encourage the person to resolve the dispute at a Panel hearing

### **Preparing for the First Party Visit**

- Review notes on the case and confirm your appointment
- Select tentative hearing dates (take a calender)
- Allow yourself enough time for the visit
- Take appropriate literature about HMS

### **Conducting the Visit**

Introduce yourself and explain your purpose:

- To understand the conflict
- To explain how the conciliation process can help resolve the conflict
- To help identify the person's needs

### **Information to Get from First Party**

Ask the first party for a description of the conflict. Listen carefully and take notes on the issues from his or her point of view.

- Verify who is involved: names, addresses, phone numbers
- Discover what the first party wants: to resolve a problem, better

- communication, etc.
- Determine if/how police or other agencies are involved

### **Information to Give the First Party**

- Advantages of a Panel hearing, in light of the disputant's needs
- Explanation of a Panel hearing
- Panelists will be trained volunteers
- Responsibilities of the first party:
  - ☞ To identify their needs before they arrive
  - ☞ To agree to attend the entire hearing
  - ☞ To agree to adhere to the ground rules
  - ☞ To work with Panelists and other disputant(s) to identify, express and resolve the conflict

### **Concluding the Visit**

If the first party agrees to attend a hearing, set a tentative hearing date. Leave **HMS** materials with your name and the office or case coordinator's phone number. Let the person know when he or she will hear from you.

### **Visiting the Second Party**

The Case Developer meets with the second party in the dispute to present the first party's concerns, to understand the second party's issues, and to encourage conflict resolution at a Panel hearing. The personal visit allows the Case Developer to establish rapport and to:

- Understand how the second party views the conflict and to identify the parties involved
- Help the person to clarify their needs, interests and expectations of the mediation process
- Tell the person that the Case Developer is a community resident concerned about resolving conflict in the community
- Explain the conciliation process and encourage the person to resolve the dispute at a Panel hearing

## **Preparing For The Second Party Visit**

- Review notes on the case and confirm your appointment
- Select tentative hearing dates (take a calendar)
- Allow yourself enough time for the visit
- Take appropriate literature about HMS

## **Visiting the Second Party**

Introduce yourself and explain the purpose of the visit:

- To let second party know a community conflict involves him or her
- To explain how the Community Boards process can help the second party; explain the first party's concerns; mention that he or she wants to resolve the dispute constructively. Make sure that the second party knows that you do not represent the first party, nor are you making the complaint.

## **Information to Get from the Second Party**

Ask the second party for a description of the conflict. Listen carefully and take notes on the issues from his or her point of view.

- Verify who is involved: names, addresses, phone numbers
- Discover what the second party wants: to resolve a problem, better communication, etc.
- Determine if/how police or other agencies are involved

## **Information to Give the Second Party**

- Advantages of a Panel hearing, in light of what you have learned about the second party's needs
- Explanation of a Panel hearing
- That Panelists will be trained volunteers
- Emphasize that community conciliation is a cooperative, positive way to resolve disputes.
- Emphasize the benefits to the second party:

*“Mrs. Johnson, I heard you say that you and Mrs. Perkins have never been able to sit and talk about the conflict. I believe that the Panel process could be an excellent way to begin positive communication.”*

*“Mr. Blake, you said that this dispute has been going on for months, and you are really tired of it. The Panel process is a good way to make some positive changes. We could set up a hearing this week...”*

- Responsibilities of the second party:
  - ☞ To identify their needs before they arrive
  - ☞ To agree to attend the entire hearing
  - ☞ To agree to adhere to the ground rules
  - ☞ To work with Panelists and other disputant(s) to identify, express and resolve the conflict

### **Concluding the Visit**

If the second party agrees to attend a hearing, set a tentative hearing date. Leave **HMS** materials with your name and the office phone number. Let the person know when he or she will hear from you.

### **Sample Opening Remarks for Visiting the 2<sup>nd</sup> Party**

*“Hello, I’m (name) from **HMS**. You may have seen our office in Eureka or received one of our leaflets. I am here because a member of our community is having a conflict that concerns you. They contacted **HMS** because they feel that mediation is the most constructive way to resolve the dispute. We provide an inexpensive (or free, if necessary) mediation service that helps people resolve conflicts in the community without the courts or the police. We are impartial. We don’t represent the other party and we aren’t from any agency. I realize that you probably have concerns of your own. I would like to listen to your concerns and understand how you see the dispute. Then I’d like to explain how **HMS** can help.”*

### **Canceling or Rescheduling**

When a disputant cannot attend a scheduled hearing, your task as Case Developer is to cancel and, preferably, reschedule:

- Make a list of everyone who must be notified about the change:, disputants, Panelists, observers. As each is notified, check them off the list.
- If necessary, contact the people at the hearing site.

- If necessary, post a sign at the hearing site indicating that the hearing has been canceled or postponed.

When a disputant does not arrive at the scheduled time, contact the person to determine the problem. If you cannot, then determine if a hearing with the people who did show up is of value. If not, cancel the hearing. The case will be reviewed later to determine how to proceed.

**About Donations for Services:** We operate on a sliding scale and no one is refused mediation because of an inability to pay. We find that parties are more committed to attending scheduled hearings when they have paid a deposit. The office or Case Coordinator can handle the money issues.

### **Getting Cases to Hearing**

As a Case Developer, you can bring more cases to hearings if: (1) you follow certain procedures; (2) you fully understand when people in conflict will use mediation; and (3) you learn to overcome some common obstacles.

### **Case Development Procedures**

- Visit the parties as soon as possible while the issues are fresh and people are still emotionally committed.
- Support and encourage parties to use mediation. People in conflict need strong support to resolve their disputes through the Panel process.
- Help the parties to see that they are involved in a valid conflict that needs to be resolved.
- Present the mediation process in light of their needs. People will use the Panel process if they see clearly how the hearing will benefit them.
- Show people that cases similar to theirs have been resolved through mediation. People need to know that the process is successful and can help them. Mentioning cases similar to theirs can increase their confidence and the likelihood of their following through.
- Let the people know that you live in the community and care about what happens here.

- Use all the resources available to you as a Case Developer. Draw on the experience of staff, trainers and other volunteers. Reread this manual. Practice your opening remarks with a sympathetic friend or co-worker.
- Remember that your most important goals are to help disputants to identify their needs and to examine their expectations of the mediation.

### **When People in Conflict Will Use Mediation**

Your job as a Case Developer is to convince disputants of these benefits by understanding the nature of the conflict, helping them to identify what they want and need for resolution, and showing how the community conciliation process will help them directly.

- The benefits of resolving their dispute through conciliation are apparent.
- They believe that conflicts are resolved by using the Panel process.
- They are convinced that their conflict should be resolved and that mediation is their best alternative.
- They realize that **HMS** responds to their dispute quickly and at little cost.
- They see that the Case Developers really believe in the Panel process.
- They understand that the hearing will provide a safe environment for them to discuss the conflict.
- They see that the Case Developers are community people.
- They know that HMS will do follow-up after the hearing to see that the agreements work.



## **Overcoming Common Obstacles**

### **One of the Parties Believes that a Case Developer has Taken Sides.**

The Case Developer must not hear one side of the story and accept it as truth if he or she is to be effective and impartial toward the other party. When the Case Developer is fair, unbiased and nonjudgmental, the disputants will trust him or her. To avoid bias:

- Avoid cross examination, blame or fault finding. Mediators do not determine who is guilty, or who is right or wrong.
- Be supportive and validating without agreeing.
- Avoid judging or jumping to conclusions. Remember there are at least two sides to every dispute.

### **The First Party Wants the Case Developer to Resolve the Conflict.**

Joe, the first party, says:

*“Look, Ms. Case Developer, why don’t you go over to my neighbor’s house and tell him to knock it off with all the loud parties and music. Then the problem will be solved.”*

As the Case Developer, you need to say that the dispute is between Joe and his neighbor, not between you and the neighbor. Therefore, the two of them must resolve it together. The only lasting resolution is the one they develop together.

### **Parties Realize that Resolving the Conflict Will Involve Work.**

Each party must identify their needs before mediation, as well as their expectations of the process. Each party must attend the hearing and willingly participate. The hesitant person may back out of a hearing by saying: “I’ve been putting up with my neighbor’s barking dog for a year, so I guess it’s not that serious. Tell you what, if it gets worse, I’ll give you a call.”

If you realize someone is hesitating, try these techniques:

- Emphasize that the party has tolerated the problem for some time, lost

sleep, been anxious or angry, that the conflict is not going away, and that they have a valid conflict that needs to be resolved.

- Emphasize that by coming to a Panel hearing a long- term conflict could be resolved in two to four hours.
- Be supportive, validating and persistent. Respond to obstacles calmly and patiently.

### **The First Party Is Afraid of Retaliation.**

Retaliation is a valid concern. A disputant may say something like:

*“You don’t know these people, they may be crazy or something. If I try to go to one of these hearings, they may harass me even more.”*

- Most people who are concerned with retaliation are already being bothered, harassed or scared. Help the person understand that even if they do nothing, the harassment may continue anyway.
- Reassure the person that you will approach the second party in the most positive manner possible, so that they understand that the first party intends to cooperate and help resolve the conflict peacefully.
- Explain to them that the process will not involve the police and that the conflict will be handled within the community.
- Remind them that **HMS** has handled similar cases successfully, and without retaliation.

### **One Party Decides that Court is the Only Way to Handle the Dispute**

Most people make the litigation decision without understanding the time, money and frustration involved in going to court. Satisfaction is not necessarily guaranteed.

- Emphasize the benefits of the Panel process, which is inexpensive or free, simple, quick, with results often satisfactory to all parties.



- Explain that a Panel hearing does not negate their legal rights; they can still go to court if the conciliation process is not satisfactory.

### **One of the Parties Says that the Other is Unreasonable, that He or She Just Can't Talk with "Those" People.**

Even if a resolution is not reached, both parties will benefit from communicating with each other in a supportive environment.

- Ask if the conflict is important enough to seek a resolution.
- Explain that trying the process is better than doing nothing, and that you will strongly encourage the other party to use the Panel process.
- Emphasize that using the Panel process is a cooperative and positive way to help the community.

### **One of the Parties Never Quite Accepts the Panel Process, But Still Agrees to Attend the Hearing.**

Make sure that all persons in a conflict understand clearly what is expected of them in the hearing. Get firm commitments from them ahead of time. You can then ask if the person will really attend the hearing:

*"I have the feeling you are saying 'yes' to get rid of me. If the conflict is important to you, please come, but if you aren't serious, I don't want to waste my time or other concerned people's time."*

- Requesting a Deposit: When people are financially able to make a donation for mediation services, obtaining a deposit is a further guarantee that they will attend the hearing.

### **The Parties Aren't Sure the Hearing Can Accomplish Anything.**

- Talk about some community cases that have been successfully resolved by the mediation process.
- Mention some statistics regarding the success rate for Panel hearings. (For example, in San Francisco, 92% of all Community Boards hearings reach resolution).

## **Case Developers Begin To Do the Work of the Panel.**

Sometimes simple conflicts caused by mis-communication are satisfactorily resolved by the Case Developer during the case development process. However, by the time a person has called HMS, a dispute is usually too complex to be resolved during case development. If you spend too much time with the parties allowing them to vent all of their issues and frustrations, they may no longer feel the need to attend a hearing, and the possibility for resolution ends. Remember the primary goals of case development:

- **Educate parties about the HMS mediation process and values**
- **Assist each party in clarifying the issues, their needs and what they want out of mediation**
- **Assess whether the parties are ready for mediation**
- **Provide support for people trying the mediation process**

## **Case Developer's Role in Pre-hearing Briefing.**

Before each Panel hearing, the Panelists and Case Developer meet briefly to share information and prepare for the hearing. The Case Developer's responsibility is to come prepared to present the information in the form of a brief case report:

- ☞ Explain who the disputants are and how to pronounce their names
- ☞ Explain the main issues, needs, and expectations of each party
- ☞ Explain any special circumstances, including particular needs during the hearing (such as: wheelchair access; language difficulties, etc.)

## Common Objections to Mediating & Recommended Responses

From: Victim Witness Program; Tucson, Arizona (1981)

### What Parties May Say:

“I’m scared of him/her.”

“I won’t sit there and be insulted.”

“It’s all worked out.”

“I know he/she won’t come.”

“I won’t believe the agreement; he/she lies.”

“It’s their problem, not mine.”

“I don’t want to talk; I want them punished.”

“I can’t be in the same room with them.”

“It’s beyond the talking stage.”

“What about after the meeting?”

“I’m afraid of retaliation.”

“I don’t want counseling.”

“We have different schedules?”

“I don’t want to get back together.”

“My attorney is handling it.”

“We’re going to court already.”

“If mediation doesn’t have legal standing, why should I come?”

### Recommended Responses:

Assure of safety & ground rules.

Remind party of ground rules.

Cement agreement; get specifics; learn a new technique.

“Let me ask him/her.”

“What can you lose by trying? What do you have now? Their participation may insure success.”

“This could escalate into your problem” (i.e. law enforcement involvement). Address specific concerns that you hear.

“We are not law enforcement; punishment adds fuel to the fire; punishment doesn’t address the issues; mature way to handle it; good examples for kids.”

“We will help you control yourself; we can adjust the meeting, take breaks, give you a way out. What if you had to see them in court?”

“What stage is it in? What are your alternatives?” (If court, mention problems: time, delay, costs, no direct participation, etc.)

“Participation often equals compliance; we will follow-up.”

“Is that any worse than your fear now? Our past experience shows otherwise.”

“Mediation is not counseling.” (Explain differences).

“We are flexible: mornings, afternoons, evenings, or days off. What if you had to go to court?”

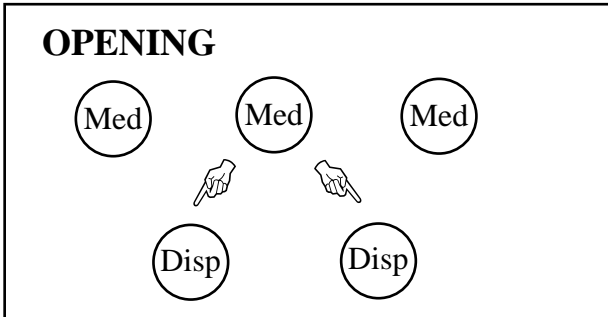
Explain goals: not reconciliation, just peace between parties.

“Contact your attorney about this. Have them call me. Attorneys often encourage mediation.”

“Court may not solve the problem; explore all options.”

“Agreement created voluntarily are often more successful than legal judgements. Agreements can be reviewed by attorneys and can sometimes be entered into the legal record.”

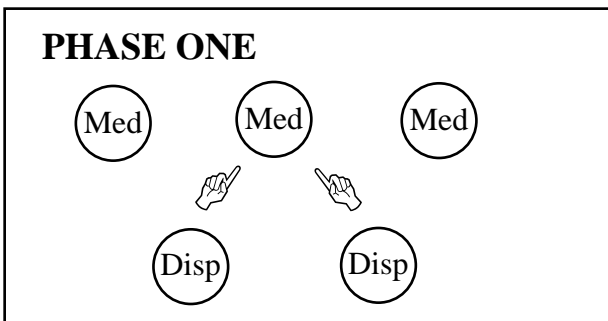
# PANEL HEARING SUMMARY



**PURPOSE:** Welcome people formally and explain the nature of the hearing and the ground rules.

- HOW:**
1. Panel welcomes everyone.
  2. People introduce themselves.
  3. Chairperson makes opening remarks.
  4. Panelist reads case report.

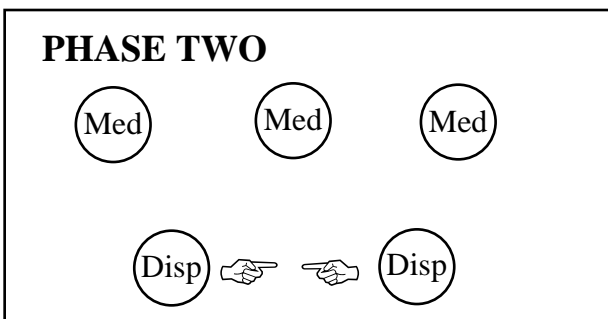
Help the parties  
define the problem



**PURPOSE:** Help the people define the conflict and express how they feel about it.

- HOW:**
1. Ask first party to define the dispute briefly and express feelings about it.
  2. Ask second party to define the conflict briefly and express feelings about it.
  3. Ask questions that clarify and focus the issues and help people identify their feelings.  
Use effective listening skills.
  4. Summarize the main concerns of each person.

Help the parties  
understand each other.

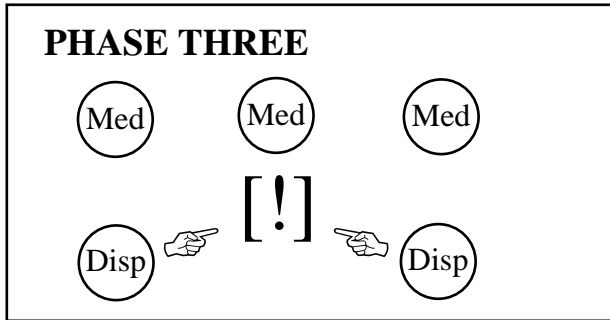


**PURPOSE:** Help each person understand how the other experiences the conflict.

- HOW:**
1. Select one issue or concern and encourage the people to talk about it. Help them stay focused.
  2. Facilitate the conversation. Have them talk about each issue listed in the Phase One Summary.
  3. Acknowledge the points of understanding the parties express and progress they make.

# PANEL HEARING SUMMARY

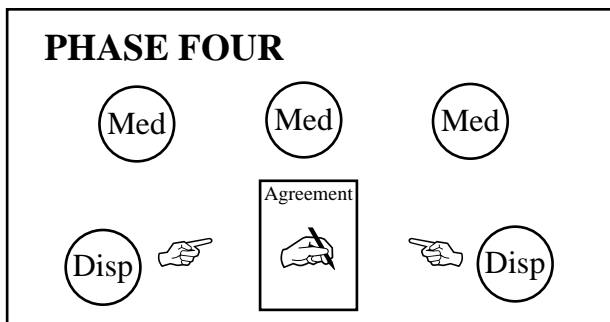
Help the parties acknowledge their new understanding and agree to work on a resolution.



**PURPOSE:** Help the parties understand that to solve the conflict, each must be willing to acknowledge any new understanding they have about the dispute and to work together for a resolution.

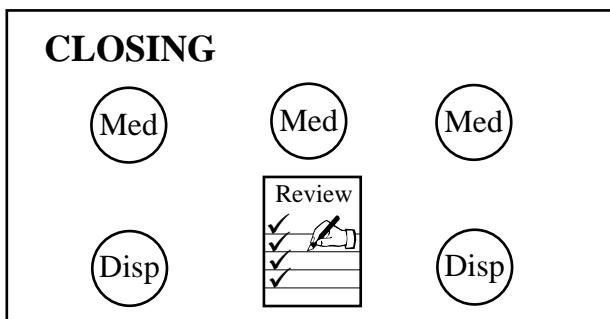
- HOW:**
1. Ask each disputant: a. "What new understanding do you have about this conflict?" b. "If this situation arises again, how would you handle it?"
  2. State: "If this problem is to be resolved, both of you must be willing to work together to develop a solution."
  3. Ask if they are willing to move forward.

Help the parties reach an agreement.



**PURPOSE:** Help the people reach a mutually agreeable solution.

- HOW:**
1. Ask each person what would be a fair solution.
  2. Ask questions and use other listening techniques to help them work out a specific agreement.
  3. Summarize the agreement and make sure both agree.
  4. Put the agreement in writing.



**PURPOSE:** Finalize the agreement between the people and the community.

- HOW:**
1. Read the written agreement to the people for confirmation.
  2. If appropriate, identify possible "outs" & "what if's".
  3. The people and chairperson sign the agreement'
  4. Make closing remarks and congratulate the parties.
  5. The Panel and the Trainer review the hearing when the parties have left.

## IV. THE PANEL HEARING

The mediation process is divided into four “phases” (plus the pre-hearing briefing, opening and closing follow-up) for organization and definition. In reality, Panel hearings rarely progress in such a linear fashion. The dynamics of conflict are such that disputants need time to express themselves – and feel heard and understood – regarding a particular issue. A hearing may move from one phase to the next only to return to a previous phase to deal with other unresolved issues.

In any conflict, parties tend to push each other’s emotional buttons. When buttons are pushed, the entire hearing may appear to backtrack. That’s okay. The phases help panelists guide the mediation process and offer a focus point when a hearing seems to be stuck or when repetition or excessive tangents threaten to bog down progress. The movement of the phases – from phase one to phase four – is not necessarily the only way to progress through a hearing. Be alert for the turning points in conciliation to get a clearer sense of the movement of the hearing process and key moments that move a hearing from one phase to the next. (See Appendix for “Turning Points in Conciliation”).

### **Pre-hearing Briefing: Working as a Team**

The briefing session is a thirty-minute meeting held just before each hearing – prior to the arrival of the disputants – attended by the mediation Panelists and by the Case Developer. This meeting prepares Panelists to work together well and is one of the keys to a successful Panel hearing. Use the pre-hearing briefing time for focusing and for grounding.

When Panelists arrive at a work, from school and from feelings and attitudes based They may also have and understanding of the in the same room at the same time does not automatically ensure that they will work well together. Panelists need to connect with each other and share information that will enable them to focus on the work and help disputants resolve conflicts.



hearing they are coming from home. They may have varied on their days’ experience. different levels of experience Panel process. Placing them



## Getting the Information

Panelists need the following information from the Case Developer:

- ☞ What are the issues in the conflict?
- ☞ Who is involved in the dispute?
- ☞ What does each party need from the hearing? (such as: a safe environment, a chance to communicate, an impartial third party, etc.)
- ☞ Are special circumstances involved? (such as: language difficulties, volatile personalities, etc.)
- ☞ How are people's names pronounced; how do they wish to be addressed?

## Determining Teamwork Tasks

Panelists must decide how they want to work together and determine what actions will promote the best teamwork. For example, someone may ask:

*“What will we do if we find ourselves getting off track?”*

*“What if we begin to offer solutions? How will we handle it?”*

*“What will we do if the disputants start giving us a hard time?”*

Panelists can then discuss how they will handle problem situations. The success of a hearing can depend on the quality of a briefing session. People must come on time and be prepared to work together.

## Keeping the Panel Working as a Team

Several pairs of eyes and ears are more likely to see and hear all the direct and subtle communication occurring during a hearing than can one person. The Panel team demonstrates cooperation and models the active listening process. When Panelists follow ground rules and work cooperatively, disputants have clear examples to follow. Each Panelist must pay attention. No one person should do all the work, nor should Panelists work at cross-purposes.

- ☞ Determine specific roles for each Panelist, including: convener, primary summarizer, note-taker, “vibes” watcher
- ☞ Determine who will be responsible for the following tasks: opening statements, introductions, summarizing, time-keeping, closing remarks
- ☞ Encourage each other to be actively involved
- ☞ Work together to maintain an overview of the process: move from one

- phase to another in a timely manner; encourage good teamwork with trust, respect and active listening; call a caucus, if necessary (page 58)
- ☞ Be certain other Panelists have finished one line of questioning before starting another; for example: *“Jane, if you’re done, I have a question.”*
- ☞ Check in if you’re confused or uncertain about the direction of the hearing: *“John, I’m not sure why you asked Richard about solutions now. I still want to hear more about what has upset him.”*
- ☞ Remind each other gently about interrupting, repeating or taking sides
- ☞ Enforce the ground rules
- ☞ Assist each other with note-taking or summarizing, when appropriate

## Opening

The Panel welcomes people formally and explains the nature of the hearing and the ground rules. People need to feel welcome and relaxed to work well together. As people introduce themselves, they begin to feel involved. They may feel less anxious or nervous as the Panelists explain the process and review the common ground rules.

## Making the Opening Work

The convener announces the beginning of the hearing and welcomes everyone, introduces her/himself and the parties. Panelists introduce themselves and all others introduce themselves. The mediators make opening remarks and a Panelist reads the case report. Panelists share parts of the opening statements, addressing the disputants in a relaxed conversational manner.

## Sample Openings/Examples of Ground Rules

A typical opening at an HMS hearing might sound like this:

Case Developer [to Panel]: *“This is (name) and this is (name).”* [To disputants]: *“I’ll let the mediators introduce themselves.”* [Welcoming nods or handshakes as Panelists introduce themselves].

Panelist 1: *“Welcome. We appreciate your decision to try mediation. Humboldt Mediation Services was created for the purpose of assisting in situations such as this. We have been through a volunteer training course so that we may assist you in expressing and clarifying issues, in understanding each person’s needs,*

*and in working toward agreement. Mediators will not decide the terms of your agreement; that will be up to you. You may notice that we are taking notes; we have extra paper if you wish to take notes. We are all promising that any information gained here will remain confidential.”*

Panelist 2: *“The way we will proceed will be by giving each of you a chance to speak to us without interruption. Later, you will talk with the other for the purpose of better understanding what you have each experienced. Then we will all work together to explore possible resolutions and put any agreements into writing.”*

Panelist 3: *“You may find the work that we do here today to be very challenging, but we know that the process has worked well for others in similar situations. Have you already seen the Consent Form?”* [Panelist 3 then summarizes the Consent Form, reiterates the ground rules (emphasizing confidentiality, respect, and willingness to work toward agreement), and copies are signed by all present. Case developer then presents a brief (1-3 sentences) case summary].

---The above is presented only as an example; an outline-form opening is provided in the Mediation Hearing Outline of Procedure. An outline permits a more conversational presentation. William Lincoln, respected mediator and trainer, suggests an even more “open” opening, following the initial greeting with a series of questions, such as:

*“Are first names okay? What do you see as our purpose in meeting today? What do you see as the role of the mediator(s)? Is everyone here voluntarily? What kinds of ground rules do you think we need?”*

Based on the responses from the disputants, Lincoln will add any essential points not yet mentioned, particularly concerning the role of the mediator and ground rules including: *“no threats, no name-calling, confidentiality, and full disclosure.”* The opening should help the disputants feel that they belong there and that the mediation process belongs to them.

Ground rules may vary for different mediation situations. The ground rules listed on the Consent to Mediation form (see appendix) provides a minimum standard for all HMS mediations. Please ask participants if other specific ground rules are necessary before proceeding.

## PHASE ONE: ISSUES

This relatively short phase has two objectives: to define the issues and to build the trust and cooperation necessary for work later in the hearing. The Panel asks each party to *briefly* explain the conflict and how they feel *to the mediators* rather than to each other. Emphasize brevity and make sure everyone understands that they will have an opportunity to speak further after each has had a turn.

### SAMPLE CASE REPORT

Ms. Minerva Smith contacted Noe Valley Community Boards, April 24th, to report that she is having a conflict with the people in her building. She says that her neighbors, Mr. and Mrs. Taylor, are trying to have her evicted and that they are harassing her. The Taylors say that they are disturbed by noise coming from Ms. Smith's apartment. They are also concerned about noise and health problems caused by Ms. Smith's dog. All parties have agreed to meet with the Panel to help resolve the conflict.

The Panel helps define and focus the issues disputants will discuss with each other in Phase Two. While sharing their concerns, the parties discover that they will be heard, respected and understood by the Panel. Once the Panelists understand the issues and have established trust, they are ready to move to Phase Two.

### Making Phase One Work

- Ask the first party to briefly explain the dispute and to describe his or her main issues and feelings.
- Ask the second party to briefly explain the dispute and to describe his or her main issues and feelings.

**IMPORTANT:** Give people a chance to speak without asking questions. To create a sense of balance it is very important to include all parties within the first 5 to 10 minutes. Thank the first party and move on to the second party. You can ask for more detail later.

- Summarize the main issues for each party. Have another go-round where each party can elaborate, if necessary.
- Ask questions that clarify issues and bring out feelings
- Summarize again briefly

**IMPORTANT:** Use your effective listening skills during this phase and validate, validate, validate!

## Clarifying the Issues

As each party expresses their concerns, Panelists need to identify main issues. When issues are clear, the hearing can focus on resolutions. Following are suggestions for identifying and separating issues:

- Write down the main points as people talk. Summarize in brief, clear statements, such as:  
*“I’ve heard you say that you are concerned about three things...”*
- Check in with people: *“Is that a fair summary of your concerns and feelings?”*
- Focus on one issue at a time: *“Let’s deal just with the broken window for a few minutes.”*

## Note Taking

Listening actively with your full self can make note-taking a challenge. Mediators each have unique styles of taking notes; you will determine what works best for you. Remember that the hearing notes are not meant to be a complete transcript, but just the significant highlights. Take brief notes that focus on main issues. Although everyone should take notes, designate one person as the primary note-taker to insure that the main issues are addressed. People involved in a dispute often have similar feelings and concerns. Note these similarities and mention them in the summary, or remember to mention them later. Use that list of concerns to keep people focused on specific issues during Phase Two. Check off each concern as it is covered during Phase Two, when the parties are talking to each other, and during the Phase Four resolution.



**IMPORTANT:** People will often acknowledge responsibility and/or offer solutions during Phase One. Thank them and note these solutions and acknowledgments, so you can refer to them later in the hearing, as appropriate.

**Sample Panelist Worksheet** – List participants across the top.  
As people talk, list concerns in columns under each person’s name:

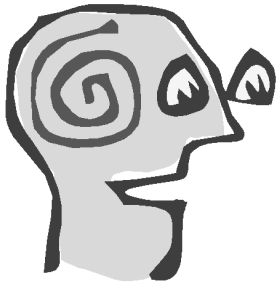
	<i>FIRST PARTY</i>	<i>SECOND PARTY</i>
Issues/Concerns (Phase One)		
Similar issues:		
Acknowledgment of responsibility (use in Phase Three)?		
Solutions offered (use in Phase Four)?		
During Phase Three: Has each person acknowledged new understanding and decided to move toward resolution?		
During Phase Four: Has each concern been addressed in the resolution in a specific way?		

### **Summarizing Issues and Feelings**

After each person has had ample opportunity to talk to the Panel, and after Panelists have asked questions, the note taker summarizes each person’s concerns. Ask disputants if all of their concerns have been addressed. If not, give each party another turn to speak. This step concludes Phase One and the hearing can proceed to Phase Two.

**IMPORTANT:** Brief summaries can occur after parties have spoken, as long as Panelists maintain balance between parties.

## PHASE TWO: UNDERSTANDING



In Phase Two people talk directly to each other and discuss their concerns. They may talk about strong feelings of frustration, anger or fear which have interfered with resolution of the conflict. Before the hearing, disputants may have avoided or threatened each other, or called outside authorities. The goal of Phase Two is for the Panel to help each person understand how the other experiences the dispute. Listening to someone's experiences usually aids understanding of his or her issues, feelings and needs. Understanding develops trust and aids in eventual resolution.



### Making Phase Two Work

- After the summary at the end of Phase One, let people know that you want to move to the next part of the hearing.

*“Thanks for talking with us. The Panel has a good idea of your issues and concerns. Now we’d like you to turn your chairs and talk to each other directly.”*

- Select one specific issue from the Phase One summary. Encourage the people to speak about the issue and help them to stay focused.

*“Ileen, would you please tell Judith why you get angry when her car blocks your driveway?”*

Pick an issue that is important, but not central, as the first one. Choosing an “easy” issue gives the parties some positive experience with the conciliation process before they move on to more crucial concerns.

### Facilitating Discussion


In Phase Two, even though people are talking directly, each may still have difficulty listening and understanding the other's issues and feelings. When Panelists acknowledge feelings and issues that seem important to participants, the process moves more quickly. Panelists can aid the process by asking

questions/making comments that focus or clarify concerns and emotions.

Paraphrase main points and direct people's attention toward each other:

*"You didn't like it when Janet yelled at you, did you? Will you please tell Janet why you didn't like it?"*



- Check and acknowledge people's feelings:  
*"You sound sad about the loss of your dog. Will you tell Sarah how you felt when she took your dog to the S.P.C.A.?"*
- Ask each person to restate what the other said. This technique helps ensure that people really understand each other:  
*"Ross, can you tell Davy what you heard him say about the loud stereo?"*
- Explore and acknowledge similarities in their situations and interests. Pointing out common concerns helps generate a more cooperative atmosphere and can make eventual resolution easier:  
*"Joe, you and Ron both expressed the desire to live in a safer neighborhood."  
"Mr. Tyler, I notice that both you and Mrs. Montague need quiet time when you come home from work."*
- After the parties have gained some understanding of each other, role reversal is sometimes useful. This technique should be used cautiously and your questions should be extremely specific:  
 *"What would you do, Sam, if you came home and found that someone had taken your things? How do you think you'd feel?"*
- Acknowledge progress, positive efforts, or indications that people have learned something:  
*"We really appreciate how you are working to communicate with each other; we know this is difficult work."  
"You seem to be understanding each other a little better."  
"Ruth, thank you for offering to repair the fence. This information will be very helpful in the last part of the hearing."*



**IMPORTANT:** When constructive efforts and attitudes are recognized, the parties are much more likely to continue their positive behavior.



## What to Avoid During Phase Two

- Do not resolve the dispute during this phase:  
*“Thanks for offering a solution, Macy. I’ll make a note of it so we can discuss it in the last part of the hearing. Right now, let’s stay focused on the broken window.”*
- Do not force people to say things that they do not feel:  
*“I know you are sorry now, so why don’t you tell her that?”*
- Do not put words in people’s mouths:  
*“Elena, you really didn’t mean to say that, did you? What you really meant to say was that you were sorry, isn’t that right?”*
- Avoid unnecessary interruptions that prevent communication. If parties are talking well together, be quiet and let them get on with their work.

## Concluding Phase Two

Phase Two concludes when both parties realize they both have:

- ☞ Issues that are important to them
- ☞ Concerns and interests in common
- ☞ A better understanding of each other and of their conflict
- ☞ A desire to work together to resolve the dispute

## **PHASE THREE: EMPOWERING**

Phase Three is a transitional step toward resolution. Somewhat of a misnomer, Phase Three is often simply a moment of insight. The Panel helps people understand that to solve the problem, parties must acknowledge their new understanding(s) and agree to work together on a resolution. This transitional phase allows parties to reflect on the work that has taken place in Phases One and Two, and eases the way for a mutual resolution.

### **Making Phase Three Work: Facilitating Understanding**

As appropriate, given their work so far, ask each person:

*“What new information do you now have about this conflict?”*

Then ask:

*“Given this understanding, if this situation arises again, how would you handle it?”*

If these questions seem to cause difficulty, the parties may need to do more Phase Two work. As an alternative, the Panel may ask them to focus on a concrete resolution before discussing handling the situation differently. The following is particularly useful if the parties have not yet reached common understanding about the issues:

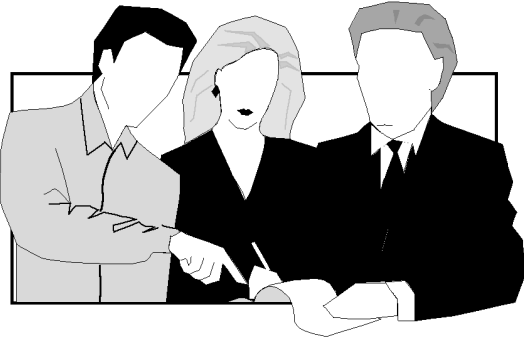
*“If this problem is to be resolved, both of you must be willing to work together to develop a solution. Are you both willing to move forward toward a specific solution, preferably a written one?”*

If the parties agree, then move on to Phase Four. If they are not ready, ask what they need from the Panel or from each other to be able to move toward resolution.



## PHASE FOUR: AGREEMENTS

In Phase Four, the Panel helps people arrive at a mutually acceptable resolution to their conflict. If the Panel has been successful in achieving the goals of the first three Phases, Phase Four is usually fairly simple because the conflict is under control and people are more trusting and cooperative. Ideally, the parties have gained the necessary skills to resolve their dispute. They can




discuss, negotiate and compromise without fear of losing or being ridiculed, and can see each other in a new light. They have learned that how they work on a conflict can make the process either simple or nearly impossible to resolve. They can devise a workable solution that comes from within themselves, not from an outside authority. When people reach their own agreements they are more likely to maintain those agreements.

### Making Phase Four Work: Facilitating Resolution

- When people understand their conflict and agree to work on solutions, you might say:  
*“You seem to understand the conflict and each other. Now let’s work on an agreement you can both accept.”*
- When people do not completely understand the cause of the dispute, but seem willing to work on resolution anyway, say:  
*“It seems that you don’t yet fully understand the dispute, although you seem to be understanding each other better. Since you both want a resolution, let’s work on an agreement you can both accept.”*
- Ask each person what they think would be a fair resolution of each issue.
- Ask questions and use other active listening techniques to help them work out an agreement.
- Summarize all the points of the agreement. Ask each party if the solution is reasonable and workable. If there is disagreement, work through the issue again, allowing each party opportunity to respond.
- Write the details of the agreement on the agreement form.

## More Ways to Reach Agreement

- Focus on areas of definite agreement first:  
*“It seems to me that you’ve agreed you want the constant fighting to end.”*
- Ask which issue or concern is most important:  
*“Which is more important to you, Mrs. K., the broken window or the ruined fence? How do you feel about that, Mr. B.?”*
- Focus on one issue at a time, in order of importance:  
*“Let’s just discuss the matter of the broken window right now. What do you think should be done about it?”*
- Check out possible resolutions with each party:  
*“What if she agrees not to park in front of your house on Mondays?”*   
*“Mr. S. is willing to fix the fence himself. Is that okay with you?”*
- Remind people of their common interests, if appropriate:  
*“It seems that you are both trying to reach the same end: to find a way to resolve the dispute about the parking space.”*  
*“A quieter street is important to both of you. How can you reach an agreement that will provide what you both want?”*  
*“We’d like you to tell us your ideas for resolving the problem before we offer suggestions.”*

**IMPORTANT:** Although Panelists may think they know the best solutions for all concerned, the process belongs to the parties and not to the mediators. Lasting agreements must come from the parties themselves. Offer solutions only when requested by the parties, only if there is no progress toward a written agreement, and only in an open tentative manner.

## Developing a Clear Resolution

The Panel needs to help parties with their agreement so that the details are clear and specific. New conflicts can develop and the agreement can break down if the resolution is vague or confusing.

- Take notes on points of agreement throughout the hearing

- Write down individual items as parties work out the resolution, such as:

Party A agrees to:

- 1).....
- 2) .....
- 3) .....

Party B agrees to:

- 1).....
- 2) .....
- 3) .....

- Do not leave anything indefinite. Specify details about who, what, when, where and how:

*“Mr. G. agrees to return Mrs. L.’s tape recorder to her home by 10 am, Tuesday, December 6th.”*

- Deal with both “do’s and “don’ts:

*“Mr. G. will return the tape recorder and Mrs. L. will not call Mr. G. a thief.”*

- Write legibly.

Since the resolution will be copied for the parties and for program files, write on the original legibly, in ink, and on only one side of the paper. Sometimes, a typewriter or laptop computer and printer are useful tools during a Panel hearing. Use of a nearby copy machine is helpful. A Panelist may volunteer to make copies and mail them to the parties.

### **Closing the Hearing**

This part of the hearing finalizes the agreement between the parties. Their written agreement sets a clear standard for future behavior.

- Read the written agreement to the parties for confirmation.
- If appropriate, identify possible “outs” and take them into account in the agreement:  
*“Ib, can you think of anything that would make this agreement break down?”*
- Have the parties and the mediators sign the agreement.
- Make closing remarks and congratulate the parties.

## The Hearing Review

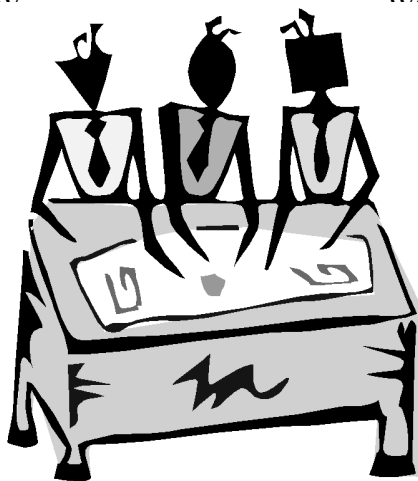
Immediately following a hearing, Panelists review or “debrief” to evaluate their performance and discuss what happened. During a hearing, Panelists have many valuable experiences and may be excited, wound up or frustrated afterward. The hearing review provides a way to reflect on the hearing, share information and express feelings about:

- Insights gained from the hearing
- Problems encountered during the hearing
- Successes of the hearing
- Teamwork issues

## Making The Review Work

Focusing on the *process* (rather than the content) in terms of what worked well and what could have worked better, guides the review in a constructive way.

Panelists agree on the length of the review session, and then identify and discuss issues. A review works best when Panelists are willing to express their honest feelings about the hearing experience. Panelists might be frustrated because the panel did not work as a team. If they say nothing about their feelings during the review, the other Panelists are denied an opportunity to improve their work.



A Panelist might recognize successes that could provide new insights for evaluating the hearing. Panelists need to be as willing to give and receive information as they want the disputants to be. The review session provides a structure for Panelists to share information.

**IMPORTANT:** Even after a long mediation session when Panelists are tired or anxious to get home, a review is necessary. Please allow time for even a short review session.

## V. ADVANCED PANEL WORK

By evaluating hundreds of hearings, Community Boards has identified areas of Panel work that need special attention. This section outlines ideas for working with special situations, common difficulties in each phase and suggestions about how Panelists can work together more effectively.

### Common Problems Phase by Phase

#### Phase One

**Problem:** Panelists begin to ask detailed questions of one party before allowing the second party to talk, making him or her anxious or angry.

**Solution:** Give each party the chance to speak before asking any questions. You can get more information after each party has had a chance to speak. Details of a conflict are *not* as important as guiding the process.

**Problem:** Poor teamwork causes Panelists to move in different directions.

**Solution:** One Panelist can say:

*“I’m not sure where we are in the process. Can we figure out where we are?”*

*“We need to make sure we are all in the same place. Can we summarize and decide where to go from here?”*

**Problem:** Panelists give a detailed history, instead of a brief summary, of issues and feelings, such as:

*“Will says that Dawn had four dogs. He often fed the dogs to become friends with them. Last week they began barking, so he went to speak to Dawn....”*

**Solution:** Summaries should contain *only* the issues and feelings that brought people to the hearing, and only the highlights of those, for example:

*“Will is upset because Dawn’s dogs bark and keep him awake.”*

**Problem:** Panelists have the information they need to complete Phase One, but keep asking questions, even though the parties are ready to talk to each other.

**Solution:** One of the Panelists can say:

*“It is clear that Marlene and Denise really want to talk to each other now. I think we understand the issues and feelings. Can we summarize and see if we have enough information to move on?”*

## Phase Two

**Problem:** Panelists have difficulty leading into Phase Two. Example of an ineffective lead:

*“Okay, David, why don’t you face Dan and tell him how you feel about it.”*

The parties may not be sure what “it” is. Be specific.

**Solution:** Deal with issues from Phase One and ask specific questions:

*“Judy, you mentioned that you were concerned about loud music being played late at night. Will you tell Jed how you are being affected by the music?”*

**Problem:** The disputants are talking with each other effectively, but the Panel keeps interrupting them.

**Solution:** As long as the parties are communicating, they do not need to be interrupted. Panelists need not become nervous if the parties talk for a long time without Panelists’ involvement. Although Panelists will need to focus the discussion sometimes, the parties themselves should do as much of the work as possible.

**Problem:** Panelists do not acknowledge work done by the disputants. When disputants take responsibility, follow directions, make concessions, or work cooperatively, and the Panel does not acknowledge their work, they are less likely to continue positive work.

**Solution:** VALIDATE! The more often Panelists acknowledge constructive work, the more positive work the parties will do. Make note of statements that indicate responsibility or progress and acknowledge them:

*“Joanie, we appreciate you saying you are willing to repair Mrs. J.’s fence. Although we still have more work to do before we move to a solution, your comments will be very helpful later in the hearing.”*

**Problem:** Panelists do not acknowledge similarities. People in conflict often work in negative, competitive ways. They sometimes strive to emphasize their differences and maintain a negative atmosphere.

**Solution:** Identify similarities and shared interests, such as:

*“You both are concerned about living in a peaceful neighborhood, you both are interested in resolving the conflict in a positive way, and both of you want an acceptable resolution.”*

**Problem:** One Panelist may dominate.

**Solution:** Another Panelist can say to the dominant person:

*“I would like to ask a question, and some of the other Panelists may, also.”*



*“Elizabeth, perhaps now would be a good time to give the other Panelists a chance to ask questions.”*

### **Phase Three**

**Problem:** Panelists sometimes overlook previous understanding and willingness to work on a resolution.

**Solution:** Panelists must appreciate that using the hearing to work through disputes is a statement of responsibility in itself. The disputants will respond if this responsibility is acknowledged.

### **Phase Four**

**Problem:** Panelists help facilitate agreements that are not specific or are unrealistic.

**Solution:** One Panelist can say:

*“Do both of you feel that this agreement is realistic?”*

*“Do you feel that this agreement is one that both of you can keep?”*

*“Daniel, you said that you will pay for Darcy’s broken window by Wednesday, and you also said that you have no money. Do you really feel that you will be able to keep that part of the agreement?”*

### **Honoring the Ground Rules**

Upholding the ground rules encourages respect and trust because the parties realize that the Panel is impartial and in control, and neither party is allowed to dominate or abuse the other.

- Remind people of the rules they agreed to, in a nonjudgmental way:  
*“You agreed not to interrupt. Please wait until Mr. Freedman has finished his statement.”*

- Reflect behavior:

*“You have interrupted Mr. Long  
work together.”*



*three times. That makes it hard for us to*

- Ask people for help:

*“The Panel can help with this conflict only if you follow the rules. Can you think of a way we can help you stop name-calling?”*

## Staying Impartial

The Panel process is effective primarily because the process is impartial, even if humans are not. When Panelists are fair and unbiased the parties will trust them and be more open. If Panelists take sides, parties will tend to withdraw. Remaining impartial is difficult because we all have feelings. We may find ourselves feeling sympathetic to one or the other party at different times. The key is to set our own feelings temporarily aside for the duration of the hearing.

- Avoid cross examination, blame or fault-finding: mediators do not determine guilt or innocence, right or wrong. Avoid sympathizing or agreeing. Be accepting without agreeing, or it may appear that you have taken sides: *“I can understand how you would see the problem that way.”*
- Avoid judging or jumping to conclusions. Once you begin judging, you will tend to hear only things that confirm your own judgment.

## Encouraging Reluctant People to Talk



One aspect of mediation is the ability to discern the balance of power between parties in dispute. Panelists need to help people overcome shyness, reluctance, or fear and begin talking. Realizing that they can speak freely builds people’s self confidence and increases chances of reaching resolution. Unless people feel open to speaking, underlying issues may not surface.

- Show patience: *“You’ve been very quiet so far. thinking. Do you have any ideas or feelings about this matter?”*

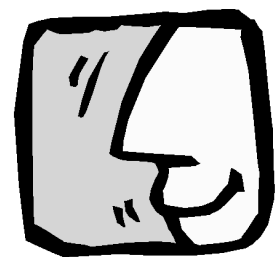


*I’m really interested in what you’re ideas or feelings about this mat- ter?”*

- Focus attention on those who have not spoken: *“We’ve heard a lot from Anita. Maybe now you want to say something, Juan.”*
- Support people when they begin to talk: *“Thank you, Francisco. That information will help us. Is there anything more you want to say?”*

Talk about your own experiences, if appropriate. Help people feel safe by telling stories about yourself. Be brief!

*“You know, I remember doing something like this myself once.”*



## Helping Adults Work with Youth



“Youth” are people with fewer years and less life experience than “adults.” They may be more difficult to involve in a hearing if they feel powerless, resentful or fearful of adult authority.

Involvement of youth in community conflict resolution is a fundamental Community Boards value, and many young people serve as volunteers in the conciliation process. Just as youth are involved as Panelists or in other roles, they also have a responsibility to participate in hearings when involved in disputes.

Begin with questions that are not directly related to the dispute. *Do not patronize!* Ask about school, hobbies and personal interests. This technique can help young people relax and establish trust.

- Be respectful and sincere.

Adults may need to question their attitudes towards young people. Children and teenagers deserve the same amount and quality of attention and respect accorded adults in a hearing. To assume that youth cannot take responsibility for a situation, or to treat them with artificial care because of their age, is disrespectful.

- Use language they can understand.

Adults may have to adjust their vocabularies out of consideration for a young person’s possible language limitations. Check to be sure the person understands what is happening. Be alert for expressions of confusion or boredom, and ask questions to help the person bring out those feelings.

### Help with Authoritarian Parents

Youth are sometimes accompanied to hearings by over-protective or authoritarian parents whose attitudes can prevent the child’s full participation. Some parents have difficulty letting children speak for themselves. Remind parents that the child is a full participant, that the Panel needs to hear the child’s point of view and have his or her active involvement to reach the most satisfactory resolution.

Acknowledge parent’s concerns; reassure them that the Panel also cares about the child.

- Do not ask “double bind” questions, such as:  
*“Did you plan to throw the rock or was it just an impulse?”*  
*“Did you take the money or did you just find it?”*
- Do not put words in their mouths:  
*“You’re sorry you threw that rock through the window, aren’t you?”*  
*“You really meant to tell Mrs. Smith you hit her dog, didn’t you?”*

## Calling a Caucus

During a caucus, Panelists hold a brief private meeting away from the people with the conflict or meet with disputants separately. The Community Boards conciliation process is experimental, changing and improving according to circumstances. The ability to call a caucus adds flexibility to the process, giving Panelists a way to change the dynamics of a hearing and turn a situation from destructive to constructive.

A caucus can enable Panelists to confer privately about the direction of the hearing, to determine a plan of action as necessary, to consult with each other or with individual disputants. Sometimes a hearing gets stuck, or a disputant’s behavior prevents further progress. Sometimes there is a significant power shift or a moment of insight goes unnoticed. Panelists can offer suggestions in private that may not be appropriate in the group setting to help individuals negotiate, work on specific behaviors, or “save face.”

Call a caucus only when absolutely necessary. When caucusing as a Panel, do not send angry parties into the same room by themselves; suggest that a Panelist go with them, or that everyone take a short break. Explain the purpose of a caucus in the Opening so that there are no surprises.

A Panel member can say:



*“I think the Panel needs a few minutes for a brief private meeting. Can we caucus in the other room?”*

*“Let’s take a few minutes to meet together as a Panel. Mr. Jones and Miss Meyer, we’d like to ask you to step outside. One of us will show you where the coffee is.”*

Caucusing with individuals should be done sparingly, so that disputants do not feel either neglected or favored by the Panel. Caucuses with disputants are often more effective if Panelists caucus first to plan strategy.

*“Mrs. Jones, it seems that you aren’t able to tell the Panel about your issues and feelings. I’d like to call a brief caucus, and then I’d like the Panel to meet with each of you separately.”*

*“Mr. Rogers, you have repeatedly broken the ground rules against interrupting and name calling. Your behavior is preventing us from helping you and Mary resolve your dispute. I’d like the Panel to meet briefly with each of you, to see if we can change the dynamics of this hearing.”*



## **Recommending Additional Hearings**



Conflicts brought to a hearing that arise from ongoing relationships, such as marital difficulties, lovers’ quarrels, roommate feuds, parent/child disputes, co-parenting agreements, and employer/employee conflicts, often respond positively when a second hearing is included as part of the initial resolution. Long-standing conflicts are often more difficult to resolve, especially when disputants have daily contact with each other. Setting up a second hearing establishes an interim period of “good behavior,” because the parties know they will be meeting with the Panel in the near future, and allows Panelists and disputants time for a thorough discussion of the resolution. The parties also get a second chance to practice new communication skills, invaluable experience that will help ease day-to-day conflicts.

A Panelist can say:

*“Miss Roberts and Ileen, you are now talking to each other with respect and without yelling. I would like to recommend a second hearing as part of your resolution so you’ll have another chance to practice communicating with the help of the Panel.”*

*“Mr. Ramirez, the conflict between you and your brother has been going on for a long time. I think we’ve made some progress in reaching a resolution here tonight. But I think it would be valuable for both of you to spend more time working with the Panel. How do you feel about scheduling another hearing next month?”*

## **Conflict Styles that Emerge During Hearings**

Some people are especially challenging because of their attitudes or behaviors. Following are a few common “types” of disputants and some suggestions about how Panelists can better work with them.

**The Legalist** comes to the hearing with letters, long documents and witnesses. This person impress and This person uses legal terms and quotes “The Law” to intimidate the other parties and the Panel. This person may try to make the “other side” look bad.



If the Panel reacts negatively and resentfully, two problems occur. First, the Panel will lose impartiality and, thus, the ability to work effectively with both sides. Second, the frustrated legalist will become aware of the non-support and may fight with the Panel.

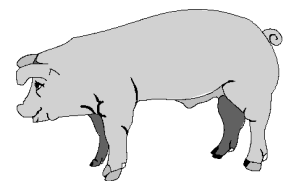
Active listening will help set this person at ease. Remind The Legalist that mediation differs from the court process, and that the Panel is not concerned with guilt, innocence or blame. Panelists need to support and acknowledge this person for voluntarily choosing mediation to resolve the dispute. Panelists need to demonstrate support for both parties.



**The Attacker/Blamer** wants to prove the other person is wrong. He or she may attack by name calling or making harsh remarks. This person may try to dominate the hearing and manipulate the Panel into validating his or her “rightness.” The Attacker/Blamer cannot always understand the situative aspects of the process.

Panelists must demonstrate impartiality and good communications. Do not complicate the conflict by showing that you dislike the Attacker. This action could cause a three-way conflict between the Panelists and the Attacker, and the other party and the Attacker. Attacking behavior is usually caused by insecurities about what may happen at a hearing. The Attacker protects him/herself by striking first and blaming others.

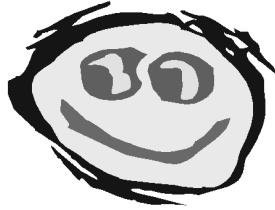
When the Panel demonstrates interest and understanding, the Attacker’s negative energy may be refocused. When the Panel notices people acting out difficult behavior, ask “*What does this person need from this hearing?*” If the person is angry or upset, acknowledge the anger that you see, but affirm that the other party must be protected from abuse. For example, if the attacker says, “*Joe is a lousy pig!*” a panelist may respond:



“*Derik, that kind of behavior is not helpful. If you want to talk about what Chip*

*did that makes you feel so angry – and it’s okay to be angry – then we can discuss it. Name calling and harassment are what you did before coming to mediation. We want to help you resolve this conflict in a more positive way. Derik, for us to work together, we must have an agreement that there will be no more name-calling.”*

**The Quick**  
you wonder  
place. This  
In this  
they see:



**Agreeer** says “yes” to everything, making why they came to the hearing in the first person’s main agenda may be to get home. situation, the Panel can acknowledge what

*“Terry, you seem to be in a hurry. We’re concerned about rushing through the hearing so quickly that you may not find a lasting solution. We need your commitment to spend the time necessary so that this process can work for you.”*

Another type of **Quick Agreeer** is a person who feels powerless. See suggestions on page 56, under “Encouraging Reluctant People to Talk.”

### **If the Conflict Cannot be Resolved**

If the Panel finds that the parties are unable to communicate directly and are unable to agree to work together on a resolution, continuing the hearing may not be useful.

- Check your perceptions:

*“It’s my impression that we are not going to be able to reach a solution in this hearing. How do the rest of you feel?”*

- Admit your conclusion. If you agree that no resolution can be reached, be honest about your feelings and tell the parties:



*“This Panel doesn’t think we can be of any further help in resolving this conflict.”*

Sometimes telling people their conflict cannot be resolved will make them work harder to prove that resolution is possible.

- Identify the difficulty:  
*“My impression is that you don’t agree on the issues. Given that lack of clarity, I’m not sure this Panel can do any more.”*
- Point out successes as well as failures:  
*“You have made some progress this evening: you’re talking to each other. That was a real step forward.”*
- Determine what the parties want to do next. They might want to return to a Panel hearing at some future date, go to court, forget about the issue or try another conflict resolution process.



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