



OvalOptions

MEDIATION TRAINING WORKBOOK

THE STORY OF
“MBC Marketing Company”

THE MOST CURRENT AND RELEVANT
EXAMPLE OF WORKPLACE MEDIATION

Table of Contents

Overview iii

How to use this Workbook and Video iv

 Part 1: Mediator Introduction 1

 Part 2: Agreement to Mediate 2

 Part 3: Andy’s Position Statement 3

 Part 4: Katie’s Position Statement 4

 Part 5: The Negotiation 5

 Part 6: Caucus with Katie 6

 Part 7: Caucus with Andy 7

 Part 8: Crafting the Agreement 9

 Part 9: The Agreement 10

 Part 10: The Conclusion & Additional Discussion Questions 11

Appendix A: Agreement to Mediate 12

Appendix B: Mediator’s Notes 15

Appendix C: Memorandum of Understanding 17

Appendix D: Mediation Scenario for Role Play 18

 General Case Description 18

 Katie’s Confidential Notes 19

 Andy’s Confidential Notes 20

Appendix E: Project Credits 21

Overview

This workbook accompanies a mediation training video. The video may be purchased at www.OvalOptions.com/Mediation-training-videos. The workbook may be downloaded for free at www.OvalOptions.com/MBC.

These resources serve to augment training provided to new mediators, as well as refresher opportunities for experienced mediators. We welcome feedback on how you utilized these resources and how useful you found them.

Acknowledging that there is no perfect example of mediation, the video portrays a realistic workplace mediation scenario. As confidentiality prohibits recording an actual mediation, this is an extended role-play based on our experiences from an amalgamation of past mediations.

The actors in this mediation were briefed on their roles in order to build their respective characters, but the mediator was not privy to any specific information about the case beforehand. He is an experienced mediator whose only instructions were to conduct the mediation as a real situation, and, when possible, exaggerate the transition between segments.

The mediation was filmed in one continuous take, so there were no opportunities to modify actions or language. Breaks between segments allowed the crew to rest and adjust equipment as needed.

Viewers can watch the video to analyze the various sections of the mediation process, debate the mediator's skills and techniques, and examine the outcome. This workbook helps guide viewers through the process, offer discussion topics and provide hands-on resources of the material produced in an actual mediation.

If you are not using this video and workbook in conjunction with a training program, we strongly recommend that you discuss the topics outlined here with an experienced mediator.

How to use this Workbook and Video

You can be creative about how to use the combined workbook and video resources. Here are four possible combinations.

- Role-play the mediation scenario in-class.
- Watch the video in its entirety; then use the workbook to guide discussion.
- Watch selective video segments with accompanying questions.
- Role-play the scenario; then watch the segments or the whole video before discussion.

The running time for the entire video is one hour and 20 minutes, including introductions. It is structured to reflect the most common phases of a mediation. Chapter markers in the DVD menu allow you to jump to any of the phases on the DVD. Likewise, the workbook is structured to provide discussion questions relevant to each of these phases. Feel free to add questions or to selectively pick and choose.

The appendix items in this workbook reflect actual work-product produced or referenced by the participants in the video. One appendix provides the necessary mediation issue and background into the characters' roles to provide to your students should you decide to role-play the mediation scenario.

Review the **TABLE OF CONTENTS** in this workbook for a brief overview of the mediation phases covered in the video and related workbook questions, as well as an overview of the items included in the appendix of this workbook.

Finally, here is a brief synopsis of the circumstances leading to this mediation, which you can use to introduce the video to your students.

This mediation is between two employees of the MBC Marketing firm, Andy and Katie. Headquartered in Colorado, MBC recently opened an office in Hawaii. Andy works from the Denver office and hired Katie six months ago to head this new office. Katie reports directly to Andy. Both parties have willingly agreed to participate in mediation to address their ongoing communication misunderstandings.

Part 1: Mediator Introduction

1. Observe the seating arrangement. Explain why you believe this particular arrangement will support or hinder participant communication. What would you do differently, if anything?

2. What are the key topics addressed in this mediator's introduction?
 - a. What topics, if any, were not sufficiently addressed in this introduction?

 - b. What topics, if any, were not necessary to address in this introduction?

3. What would you do differently if you were the mediator? Why?

4. Draft your own mediator's introduction checklist of topics. Compare and discuss this with a classmate.

5. At one point, the mediator discusses that he "randomly selects who goes first."
 - a. What are the pros and cons of starting with Katie?

 - b. What are the pros and cons of starting with Andy?

Part 3: Andy's Position Statement

1. Before transitioning into Andy's position statement the mediator discusses "I messages." Why is it important to mention this?

2. The mediator started with Andy. Is this what you would have done? Why or why not?

3. Based on his opening statement, what issues do you identify as most important to Andy? Compare and contrast your observations with those of a classmate.

4. Near the end of the segment, the mediator says to Andy, "So you're saying that there is more independence there than you feel is warranted by her position and what she is doing?"
 - a. Is this a fair statement?

 - b. What was the purpose of this question?

 - c. Were there any risks associated with the mediator's phrasing? If so, what?

 - d. How might you phrase the question?

5. Did the mediator give Andy sufficient opportunity to express his concerns? What, if anything, would you have done differently?

Part 4: Katie's Position Statement

1. Based on her opening statement, what issues do you identify as most important to Katie? Compare and contrast your observations with those of a classmate.
2. During Katie's description, why do you believe the mediator asked about the term "technically"?
3. Katie references cultural differences and the importance of assimilating with local culture. Did this influence the mediator's subsequent questions and actions? What would you do or say differently, if anything?
4. The mediator accommodated more time for Katie's opening statements than for Andy's. Was this equitable? Why or why not?

Part 5: The Negotiation

1. The mediator summed up what he heard from the parties, then transitioned into the negotiation. What did he do well? What would you have done differently?
2. The mediator presented a hypothetical example (timestamp 00:26:15) to encourage discussion about collaboration. Did this example further the conversation? In general, do you believe such examples can further or hinder negotiation?
3. The mediator identified the “trigger” point event that initiated the mediation discussion (i.e. use of a Hawaiian print company). In general, do you believe addressing the trigger point directly can further or hinder negotiation?
4. During these negotiations, what does Andy’s body-language indicate to you? What actions, if any, should the mediator take based on Andy’s body language?
5. Do you feel that the mediator provided sufficiently balanced talk-time during the negotiation phase?
6. At one point in the negotiation, the mediator allows the two parties to dialogue without much interruption. Explain why you believe this strategy furthered or hindered the negotiation.
7. Did the mediator surface sufficient items in the negotiation phase before deciding to go to caucus?
8. Do you agree or disagree with the mediator’s decision to caucus with Katie first? Why or why not?
9. Based on your hearing of the opening positions and negotiation phases, list what you consider to be the primary issues to be resolved for each client.

Part 6: Caucus with Katie

1. At one point, the mediator suggests that Katie might want to talk directly to Andy about her frustrations with staffing/hiring.
 - a. Is it appropriate for a mediator to do this? Why or why not?

 - b. In general, can a mediator give direction while remaining neutral and not advocating for the client?

2. What differences do you observe in Katie between the negotiation and the caucus? (Consider changes in tone of voice, body language and topics.)

3. Katie tells the mediator that she respects Andy. Do you feel she is telling the truth? Why or why not? In general, as a mediator, what should you do if you don't believe what a client is telling you?

4. Why did the mediator ask Katie if she was looking for other jobs? What are the pros and cons of this line of questioning?

5. What other topics, if any, do you believe the mediator should have addressed in this caucus?

6. After the caucus conversation, do you have any changes to your list of primary issues to be resolved for Katie?

Part 7: Caucus with Andy

1. At the beginning of the caucus with Katie, the mediator asks a specific question about a perceived underlying issue. With Andy, however, the mediator asks an open-ended question about Andy's perspective.
 - a. What might be the mediator's reasons for using a different strategy and language with each client?
 - b. In general, what are some considerations when moving in caucus from one client to another?
2. At the beginning of the session, Andy says, "I don't think we have made any headway."
 - a. Should the mediator be concerned and/or have pursued this perspective more directly?
 - b. Is there any action the mediator should have done differently before the caucus to give Andy a different perspective of the progress?
3. Andy reveals that he is sympathetic to Katie's suggestion to use a different printing company. Why is this significant to the mediator?
4. Near the end of the caucus, the mediator asks Andy, "How much trust do you have in her?" Was this an important topic to raise? Why or why not?
5. Are there any additional questions or suggestions that you feel the mediator should have raised with Andy during the caucus?
6. After the caucus conversation, do you have any changes to your list of primary issues to be resolved for Andy?

Part 8: Crafting the Agreement

1. At the beginning of this segment, the mediator invites the clients to “share” whatever they wanted about the caucus. Why do you think he opened this way? What action, if any, should the mediator take if neither party volunteers to share?
2. Describe differences, if any, in communication between Katie and Andy after the caucus?
3. There is a long period during this phase in which the mediator was silent while the two parties were talking to each other. Was this appropriate behavior by the mediator? Why or why not?
4. The mediator made the suggestion to include the CEO in a meeting. Is this an appropriate suggestion to be made by the mediator? In general, as a mediator, how would you handle proposed conversations/agreements that include the actions of people who are not in the mediation?
5. At the end of the discussion about the CEO, the mediator began re-framing each party’s position for several topics raised in this conversation (e.g. participating in a meeting with the CEO, Andy’s trust of Katie, willingness to pursue local hiring and regularly planned communications). What was the benefit, if any, of calling out these specific items?

Part 9: The Agreement

Reviewing his notes, the mediator summarized a list of items to include in the final agreement.

- Acknowledge respect for Katie's capabilities in Hawaii.
 - Acknowledge understanding for Andy's situation as "man in the middle."
 - Hire locals and involve Andy in process.
 - If possible, arrange meetings between CEO, Andy, Katie and ABC printing.
 - Require weekly emails between Andy and Katie.
 - Hold periodic Skype meetings with Katie and selective staff and Andy.
 - Larger goal: Keep communication open and regular.
1. Earlier, you compiled a list of priority issues to be resolved for each client. Discuss with a classmate any differences between your list and the mediator's final list.

 2. As mediator, what should you do if clients are content with a list of agreements, yet you discover an outstanding item that was not included on that list?

 3. The mediator stated that he'd write the language for the Memorandum of Understanding then review it with them. Was this a good strategy in this situation? What other ways could the language for the agreement be drafted?

 4. What are the pros and cons of summarizing/writing the agreement with the parties in the room vs. giving them a break while the agreement is put on paper?

 5. Write your version of the Memorandum of Understanding. Share with a classmate and compare to the actual final version from the video. (See Appendix C)

Appendix A: Agreement to Mediate

This Agreement to Mediate is made this _____ day of _____, _____ by and between _____

(hereafter referred to as "the Parties") and Company XYZ, LLC (hereafter referred to as "the Company") to work toward a consensual settlement of a dispute between the Parties related to _____.

1. **Mediation Defined.** Mediation is a process in which a neutral (the Mediator, as defined below) facilitates communication between the Parties and, without deciding the issues of imposing a solution on the Parties, enables them to understand and reach a mutually agreeable resolution to their dispute. The mediation process will include at a minimum, an opportunity for all Parties to be heard, the identification of issues to be resolved, the generation of alternatives for resolution, and if applicable, the development of a Memorandum of Understanding ("MOU") or other agreement made in mediation.

2. **Mediator Role.** The Parties hereby appoint _____ of the Company as Mediator for their negotiations. The role of the Mediator is to assist the Parties to reach a mutually acceptable resolution of the dispute in a collaborative, consensual and informed manner. The Parties understand that the Mediator has no power to decide disputed issues for the Parties. The Parties also understand that the Mediator is not acting as an attorney in this process and that they will not receive legal advice from the Mediator. The Parties further understand that the Mediator must remain impartial throughout and after the mediation process, that the Mediator has an obligation to work on behalf of each Party equally, and that the Mediator will not render individual legal advice to any Party.

3. **Legal Advice.** The Parties understand that mediation is not a substitute for independent legal advice. Each Party is advised to retain counsel to determine any rights and responsibilities of the Party. In the event that the Mediator draws up an MOU or other agreement made in mediation, this document is ancillary to the mediation proceeding and is not for the purpose of giving legal advice. Each Party is encouraged to have any draft MOU or other agreement made in mediation reviewed by independent counsel prior to execution. This is a personal decision of each Party based upon the Party's own judgment of the agreement as developed by the Parties.

4. **Legal Rights.** The Parties understand that the Mediator is not obligated to identify or resolve legal issues, whether or not raised by any Party in the course of mediation. The Parties are encouraged to seek the advice of independent legal counsel at any time. The Parties further understand that they may be waiving or compromising legal rights by settlement of the dispute and claims.
5. **Good Faith.** In consideration of receiving services from the Mediator, the Parties agree to enter into this mediation in good faith, such that each Party agrees to attempt to resolve the issues relevant to this dispute and will consider reasonable solutions presented to them towards this goal.
6. **Disclosure of Information.** Full disclosure of all relevant and pertinent information is essential to the documentation that would be available through the discovery process in a litigation proceeding. Failure to make such full disclosure by any Party may invalidate any written agreement reached in mediation.
7. **Confidentiality.** For mediation to be an effective conflict resolution tool, open and honest communications must occur. Therefore, all mediation session notes and other written and oral communications occurring during the course of mediation will be treated as confidential by the Mediator and the Parties.
 - a. The Mediators will not reveal anything discussed during mediation without the written consent of all Parties and the Mediators. Mediators are not required to maintain confidentiality if the mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen (18) years.
 - b. The Parties agree that they will not at any point in the mediation process or thereafter call the Mediator or anyone associated with the Company as a witness in any legal or administrative proceedings relative to this dispute. The Parties further agree that they will not subpoena or otherwise call for the production of any records, notes or work product relevant to this dispute in the possession of the Mediator or anyone associated with the Company in such legal or administrative proceedings. To the extent that Parties may have such rights, such rights are hereby waived. If an attempt to subpoena the Mediator or anyone associated with the Company is made in violation of this paragraph, the violating Party agrees to reimburse the Mediator and/or the Company for any and all expenses incurred to quash such subpoena. Expenses will include the Mediator's and/or the Company hourly rate.
 - c. The exception to the above statements is that any documentation which is allowed by law to be made public, including any MOU or other written agreements made and signed by the Parties, and this signed Agreement to Mediate, may be used in any relevant proceeding unless required to remain confidential by the Parties.

- d. Neither the Parties nor the Mediator(s) will make any audio or video record of these mediation meetings or any communications related to them (e.g., telephone calls between a mediator and a party) unless all individuals involved in that communication have previously agreed to said audio or video record (i.e., all Parties and Mediator(s) in a mediation meeting or all individuals involved in a telephone call). No such records will be made by anyone connected with this mediation without full disclosure.

- 8. **Restraining Orders.** The Parties will obtain an exception to any current restraining orders so that they can meet together in mediation.

- 9. **Termination of Mediation.** While all Parties intend to continue with mediation until a written agreement is reached, it is understood that any or all of the Parties may withdraw from mediation at any time. It is agreed that if one or more of the Parties decides to withdraw from mediation, a sincere effort will be made to discuss this decision in the presence of all Parties and the Mediator. It may also be appropriate for a Party to withdraw from mediation by speaking only with the Mediator.

- 10. **Indemnification and Covenant Not to Sue.** The Parties hereby covenant and agree to hold harmless and indemnify the Mediator and the Company and their respective heirs, personal representatives and successors, and assigns from and against any and all liabilities of or related to the mediation (including, without limitation, reasonable counsel fees and costs and expenses incurred in the investigation, defense or settlement of any claims covered by this indemnity), other than claims which arise from the gross negligence or willful misconduct of the Mediator or the Company. The Parties further covenant and agree not to institute, cause to be instituted, or cooperate in or facilitate the institution of any action against the Mediator or of or relating to the mediation and Parties further covenant and agree to indemnify and hold the Mediator and the Company harmless from and against all expenses, of any type or nature, defending against any claim the institution of which any Party has participated in violation of this covenant not to sue.

I have read, understand and agree to each of the provisions of this Agreement to Mediate.

Print Name	Signature	Date
Print Name	Signature	Date
Print Name	Signature	Date

Appendix B: Mediator's Notes

This section shows the actual notes taken by the mediator as he role-played the mediator in the video. These are not captured for completeness nor perfection; rather, to share with you this particular mediator's observations as he conducted the mediation.

Andy – opening statement

- With MBC eight yrs.
- Never had employee who took so much leeway w/ decisions.
- Has brought in clients but taken too much liberty with decisions.
- Communication breakdowns should stop.
- Denver printing company – ABC printing used. Katie found local company instead. Denver Company historic supplier. Decision should be through proper channels instead.
- Communication problem – could do conference call.
- Taking too much independence.

Katie – opening statement

- With MBC for six months.
- Changes adapting to unique Hawaiian culture for success.
- Get discount at ABC but shipping runs up costs.
- Use of local printer cheaper and makes contacts.
- She brings new eyes and new perspectives.
- Hard to communicate – time difference/not heard, not accepted.
- Various new clients.
- Changes/adaptations of Andy's idea. Communication is through him only.
- Wants more collaborative relationship.
- Hawaii – native culture important – animosity toward mainlanders.
- Incorporate native culture.
- Community/family important.

Observations/issues

- Andy: Appreciates cultural differences.
- Could understand more creative license.
- Wants things cleared.
- Pre-planning would be good.
- Too much last-minute.

Issue: Early lost client.

- Katie: has brought in more since.
- Andy didn't know this. He imagined the worst.
- Katie – she is not being heard. Times change.
- Worth taking risks.
- Andy: Need to go through proper channels; change for its own sake not worthwhile.
- Hasn't had this problem with other reps like Katie.
- Needs to put brakes on a bit.
- Katie – feels like Andy simply wanted a yes person and that's not her. She was hired to do something else.
- Andy – is open to new ideas.
- Katie – No faith.

Possible settlement elements

- Respect for judgment – understanding Andy's situation.
- Hire locals – involve Andy with trip to Hawaii.
- Meeting w/CEO, ABC printing, Andy, Katie.
- Weekly emails – check-ins.
- Skype meeting less often, but regularly.
- Larger goal – communication open and regular.

Appendix C: Memorandum of Understanding

This section presents the actual Memorandum of Understanding generated by the mediator in this video.

MBC Marketing: Mediation between Andy, Supervisor, and Katie, Manager of Hawaiian Office

Memorandum of Understanding:

In an attempt to achieve the overall goal of assuring open and regular communication between them, Andy and Katie agree to the following items:

1. Each party will make a greater attempt to understand the other's situation, thereby improving respect for each other's judgment.
2. Katie is authorized to hire local people and contract with local companies. Andy will be involved with this process, in part, by making trips to the MBC Hawaiian office.
3. The parties will make their best attempt to convene a meeting involving the CEO of MBC Marketing, a representative of ABC Printing, Andy and Katie to discuss the future relationship between ABC Printing and the MBC Hawaiian office.
4. Andy and Katie commit to weekly check-in e-mails to improve ongoing communication about operations of the Hawaiian office. These meetings will commence immediately.
5. On a less frequent, but regular basis, Andy and Katie will have Skype meetings. They agree to set a schedule for these meetings by _____. [***The parties would agree to a specific date prior to signing the MOU.***]

[Andy and Katie would each sign and date the Memorandum of Understanding, once they approved its precise wording. Each of them should receive an original, signed copy. If both Andy and Katie agreed, a copy of the MOU would be provided to the CEO of MBC Marketing.]

Appendix D: Mediation Scenario for Role Play

This section provides information to role-play the mediation in your class.

- General Case Description – provide to all members of the role play team to provide context.
- Katie’s Confidential Notes – provide to only one client in the mediation.
- Andy’s Confidential Notes – provide to only one client in the mediation.

General Case Description

Parties are in the middle of a workplace dispute over strategies and resources.

MBC Marketing was formed in Denver in 1993. They serve clients nationwide and have 12 offices in six states. They serve mostly large nonprofit organizations and their primary services include marketing and event-planning for large-scale fundraisers.

Andy has been a supervisor with MBC Marketing for eight years and has helped the company grow substantially. He works for the corporate office in Denver and is responsible for oversight of all events nationwide. He reports directly to the CEO and has 20 FTEs who report directly to him (including Katie).

Katie joined MBC six months ago after graduating from college. Andy hired her to take charge of events in a new and growing branch of the organization in Hawaii. These clients have grown the organization’s event-planning services and helped them expand outside of nonprofits to more corporate clients. Even though she is a recent college graduate, Katie’s background in event-planning and marketing, along with her knowledge of Hawaii, made her an obvious choice for the job.

Andy and Katie are having problems coming to agreement on certain aspects of the events based in Hawaii. Andy says that Katie is taking too much liberty with the way she manages the company’s brand and resources. Katie is upset that so much of the company’s brand is rooted in Denver and feels that she needs more flexibility to adapt to the unique culture in Hawaii.

The tipping point came when it was time to print materials for an upcoming event. MBC uses a Colorado-based company for all of their print material. They have used ABC printing for everything for the last 10 years (even before Andy joined the company), and they offer discounted pricing on their services. Katie is upset because she feels the printing is no longer discounted by the time she pays the shipping costs and believes that she can find higher quality for a much lower price, saving money in her budget for other opportunities.

Katie will be in Denver for the company’s annual retreat and both parties have agreed that this is a good time for the mediation.

Katie's Confidential Notes

- You aren't really sure what mediation is, but you were told it is a "safe place to have open and honest conversations" and you can't wait to tell Andy how you feel.
- You think Andy is still bitter about the fact that you lost your very first client, but you have brought in five new clients since that incident. Besides, it's not your fault the client lost a major grant and had to cut the program altogether.
- You're a recent graduate but not just some kid off of the street. You have an outstanding resume with a lot of experience that speaks for itself, but you're being treated like the new kid. You're the one who started bringing in corporate clients.
- You had hoped to move back home to Wisconsin, but this was an amazing job opportunity in Hawaii that you couldn't pass up.
- You had hopes that you could move up the ladder and work for corporate after proving yourself in Hawaii, but you're starting to feel that MBC isn't the right fit and have been shopping around for another job just in case. You hope you can find a resolution that would encourage you to stay at MBC.
- You really respect Andy and know you could learn a lot from him, but he needs to lose some of the "know-it-all" attitude.
- You feel Andy has gotten stuck in his ways and is hampering your creativity with a "but we've always done it this way" attitude. This is especially frustrating with the printing issue, because the shipping cost really damages your budget.
- You already know printing companies that would not only be excited to have your business but would also be great connections and networking for growing the business.
- The more you think about this, the more you feel Andy is just too controlling.

Andy's Confidential Notes

- You feel that communication with Katie has broken down and really hope that mediation will help.
- You are excited by the energy that Katie brings to the organization (that's why you hired her), but you are worried that her youthful excitement will hurt the organization if she isn't careful.
- You aren't really happy with the printing company either, but the CEO is friends with the owner and believes it is a waste of time to seek quotes elsewhere. You have to be cautious about if and how you present this to Katie.
 - You believe that there are better options out there and are willing to explore other printing companies, but you have to be really cautious about going behind the CEO's back.
- You do have the power to make changes that you feel are in the best interest of the organization.
- Katie is very skilled at bringing in and managing corporate clients, but she doesn't always have the best PR and political skills.
 - As a matter of fact, she lost her very first client in a rather dramatic way, and you still don't know what happened.
- In the current economy, you are aware of how mistakes can tumble out of control, giving companies a good excuse to reduce overhead (i.e., your job). You think Katie can bring in some needed revenue, but are aware that giving her too much control can come back to bite you (as in you can be replaced by her, or her ambition can incur costly mistakes).
- You see the value in some of Katie's solutions, but she doesn't seem to understand the larger implications and have respect for why things are done the way they are.

Appendix E: Project Credits

Cast and Crew

Mark S. Loye – Mediator
Addison Parker – Andy, Party 1
Mary Kate Loye – Katie, Party 2
Brian S. Beck – Executive Producer
Luke Bender – Director
Ken Longoria – Sound and Lighting
Ilya Kushnir – Camera 1
Mykel Fatali – Camera 2
Ian Walker – Camera 3
Tara Feiman – Makeup Artist
Billy Kostka – Post Production
Chris Beauchamp – Graphic Art

Workbook Production

Jennifer Beck
Chris Beauchamp
Jason Gladfelter
David Holland
Mark S. Loye
Devin Rau
Paul Teven