



THE SUPREME COURT *of* OHIO

Specialized Dockets Annual Conference

Mediation Basics for Specialized
Dockets

November 21, 2019
Catherine Geyer, Esq. & Professor William Froehlich

Objectives



By the end of this program, you will be able to:

- Identify and implement effectively listening techniques
- Explain how to reframe a negotiable issue in neutral, forward-looking language
- Structure an agenda of negotiable issues for a constructive conversation in the context of a specialized docket

Agenda



- Identifying ideas for effective listening to
 - Make Voices Feel Heard
 - Develop Respect & Appreciation
 - Enhance Understanding
- Developing skills to “reframe” negotiable issues
 - In a neutral manner
 - To enhance discussion of forward-looking ideas

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The Power of Listening



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Poor Listeners	Active Listeners
Glance at their watch, tap their feet, and drum their fingers.	Make eye contact, nod occasionally, and say words of encouragement.
Finish people's sentences and make assumptions.	Paraphrase the speaker's words, clarify, and summarize.
Interrupt to disagree and rush to correct the speaker.	Are patient and calmly state their views when appropriate.
Focus on the speaker's delivery or mannerisms.	Focus on the content of the message.
React emotionally.	Remain non-defensive.
Ignore non-verbal cues.	Pay attention to non-verbal cues.
Tell others how they should feel. Control others' feelings.	Respect others' feelings.
Talk more than they listen.	Listen more than they talk.

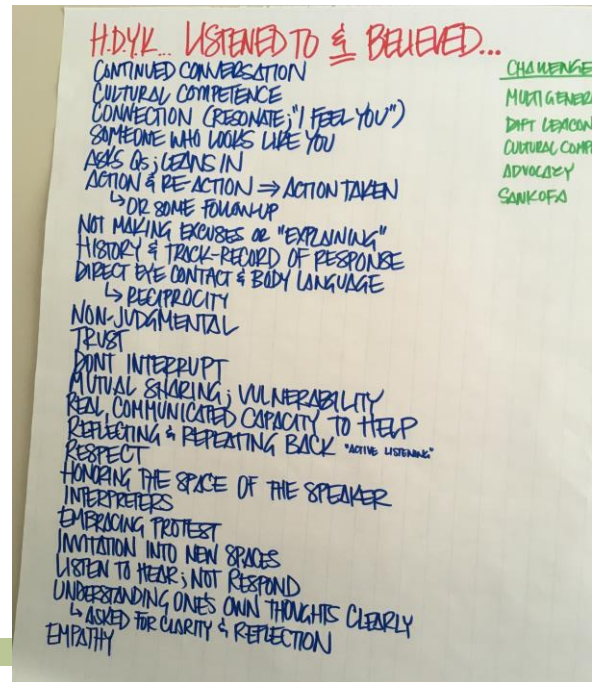
Three Basic Tools for Active Listening



- Inquire
 - Open-ended question which does not narrow the range of answers
- Summarize / Paraphrase
 - ... while remaining open to correction
- Acknowledge Feelings
 - Humanize and Develop Empathy

How do you know... You've been listened to & believed

- 2 nonprofit executives
- 2 interfaith leaders
- 3 community organizers / advocates
- 2 think tank staff
- 2 law academics
- 1 bar association leader
- 1 big-law partner
- 1 common pleas judge



Framing Issues for a Constructive Conversation



1. Highlight Common Interests
2. Identify Negotiable Issues, framed in Neutral Language
3. Develop a Structure for the Conversation

Focus on Interests not *Positions*



Position:

- One Person's proposed solution
- Typically expressed as a demand

Interest:

- Reasons behind a position which may develop a solution: *needs, concerns, hopes, fears*



Marc Bonica, orange, January 23,2015, CC BY 2.0

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Why is Focusing on Interests Valuable?



- In a negotiation, interests are the foundation for parties to find resolution that addresses interests on both sides
- Understanding one's own interests can lead to new ideas
- Understanding the interests of the other party may lead to recognition of the other party's basic needs
- Parties may discover that they share common interests
- Helps parties prioritize (interests) and analyze (proposals)

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Negotiable Issue



A Behavior (or lack thereof) of one party which frustrates the need of another party

- Separate the people from the problem.
- Reflect parties' interests not legal issues.
- Framed in neutral terms.
- Forward-looking, not about past actions or blame.
- Flexible and sufficiently broad to allow option generation,
- Realistic and sufficiently narrow to be mediated.

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Wedding dress became discolored when dry cleaned:



- Let's talk about ruining the bride's dress.
- Let's talk about the poor customer service.
- Let's talk about the wedding dress.

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A woman complains about harassing phone calls from her former boyfriend:



- Let's talk about the harassment.
- Let's talk about your ex.
- Let's talk about the telephone calls.

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Structure the Conversation



HELPS

- Highlight common Interests
- Easy Issues First
- Logical Categories and Sequence
- Priority for Pressing Deadlines
- Stability and Balance

Love & Stulberg, The Middle Voice (2nd ed. 2013)

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Successful Negotiation Involves



- Separate the people from the problem
- Focus on interests not positions
- Invent options for mutual gain
- Insist on objective criteria
- Know your Best Alternative To a Negotiated Agreement (BATNA)

Fisher, Ury and Patton, Getting to Yes: Negotiating Agreement Without Giving In

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16

Objective Criteria



jean françois bonachera, porto-005, June 12, 2017, CC BY-NC-ND 2.0

Specialized Docket Simulation



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Reading for Addressing Conflict



- Fisher & Ury, *Getting to Yes*
- Stulberg & Love, *The Middle Voice*
- Susskind & Cruikshank, *Breaking Robert's Rules*

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