

“What to do if” Interventions

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Peace Talks Mediation Services, Inc.

Peace Talks Mediation Services
8055 W. Manchester Ave., Suite 201
Playa del Rey CA 90293
(310) 301-2100

Diana Mercer, Attorney-Mediator, is the founder of Peace Talks Mediation Services in Los Angeles (www.peace-talks.com) and the co-author of *Your Divorce Advisor: A Lawyer and a Psychologist Guide You Through the Legal and Emotional Landscape of Divorce*, (Fireside 2001).

“What to do If” Interventions

Mediation relies heavily on intuition mixed with underlying skills. As much as mediation involves feeling your way along given the tone of the mediation session, it’s also helpful to have a mediator’s toolbox of moves and interventions to call upon when you’re out of intuitive ideas.

What to do when parties don’t see the progress they’ve made in mediation:

From a therapist’s perspective:

- Acknowledge their frustration;
- Ask clients to articulate more clearly what is ‘a lack of progress;’
- Identify what progress they do see;
- Explore what this means to them;
- Ask what they think stands in the way of their progress;
- Ask what could be done to clear the path to progress;
- Explore what progress would look like;
- Explore what progress would feel like.

From a lawyer’s perspective:

- Reiterate all that they have accomplished;
- Reiterate it in writing in the summary letter;
- Be transparent about the lack of progress at the time, e.g., “You’ve said you only have 15 minutes to talk about this, but you keep going off the topic. We can’t finish unless we stay with the agenda.” Straying frequently from the agenda can be a sign of ambivalence, so be sure to address this issue soon enough for the

clients to be able to change their behavior and still make progress. It's okay to deviate from the agenda, but do it with everyone's agreement that you're switching topics;

- Suggest a caucus if the clients can't stop fighting;
- Ask what they'd hoped to accomplish and how best to get to their goals;
- Ask if there's another way to go about things that might show them more progress more concretely;
- Point out how much faster mediation has been than litigation.

What to do when parties seem to want to stay in a joint session but you think it's counter-productive

- Talk about your own physical or emotional discomfort. Where and how are you as the mediator feeling it?
- Ask each one of them if they're uncomfortable. You'd be surprised how normal extreme discomfort can feel for some people. If you're uncomfortable, say so.
- Make the hidden transparent: *e.g.*, "You've said you only have 15 minutes to talk about this, but you keep going off the topic. We can't finish unless we stay with the agenda. I'm concerned that you won't reach your goal for today's session if this fighting keeps up."
- If none of this helps, you may have to insist upon a caucus.

What to do when it appears that one party has chosen mediation to bamboozle the other spouse under the guise of the mediator's legitimacy

- Make it clear that full disclosure of assets is mandatory, not optional, and explain the unpleasant consequences of untruthful or less than full disclosure of financial information if the matter goes to court.
- Explain your office policy about legal information and consultation with attorneys. Make it your policy is that clients may make an unconventional decision in mediation but it must be an informed decision. To preserve the integrity of the process, mediation participants can choose to give up their legal rights in a mediated agreement, but only after they have an understanding of what their rights might have been.
- Articulate your concern in the session, summary letter or in subsequent sessions by talking about each party's distress. There are typically behavioral clues related to this problem, and if you notice them during the session you can bring it up at that time. If you notice it afterwards, you could bring it up in the summary or next session. If it's too risky to do it in joint session, you could do it in a caucus.
- Explore with the bamboozling spouse what is going on. Although it may appear to you that there's an attempt to curtail the other participant's

- power or rights the parties may not see it the same way. Check your own biases or discomfort and make sure it's truly about the parties and not about your own agenda. For some bamboozlers, the attempt to unduly sway the other party stems from the sense of having done everything right in the marriage and now having to pay when the divorce wasn't his or her idea or fault.
- Explore with the other party about any perceived lack of contribution to the marital team's successes.
 - Re-screen for domestic violence, controlling behavior or severe power imbalance in the relationship.
 - Be prepared to let go of the case.

What to do when a client is out of control

- Caucus, or end the session early;
- Take a break that's long enough for everyone to calm down;
- In caucus, help the client self-soothe, and don't try to cover any more ground on the agenda until the client has completely calmed down;
- Reiterate that for mediation to work, the timing must be right. Give the client the opportunity to stop the mediation, and the option to return when he or she is more ready to reach an agreement;
- Separate the behavior from the person, not to establish guilt or blame, but to emphasize how the behavior is perceived or perhaps even misinterpreted as scary, manipulative or odd;
- Talk about your own discomfort even if the parties cannot;
- Consider more drastic security measures like installing a panic button.

What to do if the session is moving too fast: signs you should slow things down

- Ask. If you suspect you should slow down, you probably should. Take the temperature.
- One or both clients are showing emotional distress. For example, if one party starts to cry, ask the one who's not crying if they know why the other party is crying and if they know what the tears are about.
- If one or both parties are wearing their wedding bands. This unspoken gesture speaks volumes and is usually an outward sign of ambivalence about the breakup.
- One or both clients have a glazed over or far away look in their eyes and don't appear to be taking in the information.
- By paying attention to clients' right hand side of their face and eyes, you are beginning to tune into your client's internal world. This makes them

- feel more attended to, thereby slowing things down to a more manageable pace.
- Acknowledge agitated behaviors such as a client pounding the table or clenching their hands by talking about them directly in the session. For example, “I couldn’t help but notice that when she said XYZ that your face flushed and you clenched your teeth. Can we talk about that for a minute?”
 - If you notice from the intake that the date of the appointment coincides with an important time in the relationship, or that one or both parties tell you about a recent death in their respective families. Remind them of the anniversary, acknowledge that it can be difficult to reach an agreement when they’re remembering an important milestone, and invite them to either slow down or come back another day.
 - You know one client is giving up much more of the marital assets than is provided under the law without having the opportunity to fully explore the issues. It’s time to do some reality testing, to check for bamboozling, or to discuss the reasons he or she might want to give up too much.

What to do if the mediation is meandering: Signs you should speed things up

- You should probably never speed up a mediation session. It’s not your job to make the clients go any faster than clients are inclined to go. A nice, slow pace may be exactly what the clients need. Part of your job is to keep clients on the agenda, or to mutually agree when to stray from the agenda. Your job is never to race through the issues.
- Our policy is never to work harder at reaching an agreement than the clients are willing to work themselves. Check your own discomfort at the slow pace of the mediation. Are you truly at fault? If you’re still uncomfortable a few minutes later, take the temperature and ask the clients how you can best help them.
- For clients who aren’t talking at all, ask why they’re not talking or engaging in the process.
- If clients are going round and round on a subject starting to repeat themselves, not adding new information, and getting emotionally distraught, suggest that the issue should be tabled for the moment, that it will be an issue to return to and that by addressing other issues, the solution to this one may become clearer.
- When you return to the issue and there is still no resolution, start offering some suggestions for resolution, or make a referral to an attorney or accountant who might be able to make suggestions.
- Clients should never feel rushed in their progress. Remember that mediation is a very thoughtful process and bound to bring up highly



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Playa del Rey, California 90293
310-301-2100 Fax:310-301-2102
Email: diana1159@aol.com
www.peace-talks.com

Diana Mercer, Esq
Attorney Mediator

Tara Fass, LMFT
Therapist-Mediator
Lic. #MFT 35078

volatile material that takes time to take in satisfactorily. Relax. They will reach an agreement when they're ready.

A full mediators' toolbox can help you get over some rough moments in tough mediation sessions. One of the best perks of being a mediator is sharing techniques with other mediators and mediators' commitment to lifetime learning.