

# Mediating Child Support Disputes

23<sup>rd</sup> Annual AB 1058 Child Support Training Conference  
August 27-30, 2019



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## Overview

- Mediation Styles and STAR Model
- Mock Mediation #1
- Ethical Considerations
- Strategies for Mediation at FLF Offices
- Mock Mediation #2
- Mock Mediation #3
- Debrief



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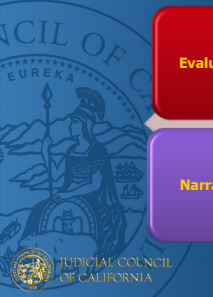
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## Mediation Styles



Evaluative      Transformative

Narrative      Facilitative



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## Evaluative

- Subject Matter Expert (SME).
- Offers an opinion on the strengths and weaknesses of each side and suggests options to resolve issue.
- Parties lack the expertise to devise solutions or when an expert is needed to evaluate the solutions.



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## Transformative

- Focuses on empowerment, enabling parties to define their own issues and solutions.
- It enables parties to see and understand the other party's point of view.
- Used if negotiation failed because the parties didn't feel empowered to make decisions; didn't feel valued or recognized by the other party.



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## Narrative

- Incorporates story-telling into the mediation.
- "Deconstructs" how each party sees the conflict, using open-ended questioning, and constructs alternate stories to achieve understanding and cooperation.
- You shouldn't give advice, recommendations, or opinions.
- You should encourage the parties to discuss matters freely and to work together to develop a solution.



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## Facilitative

- Each party holds to their own position; communication has broken down; and level of trust is low.
- The facilitative mediator encourages the parties to discuss matters freely without judging or taking sides.
- Mediator helps the parties clarify issues, re-evaluate positions, and analyze interests.
- Use questioning techniques to have the parties collaborate in order to come up with solutions on their own.



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## STAR Mediation Model

Stage	Task (What)	Action (How)	Result
Convening			Willingness
Opening			Safety and Hope
Communicating			Expression
Negotiating			Flexibility and Innovation
Closing			Informed Decision



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## Task, Action and Result

**Task:** What objective are you trying to accomplish?

**Action:** How are you going to accomplish the objective?

**Result:** What outcome are you trying to accomplish?



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## Stages

-  **Convening**
-  **Opening**
-  **Communicating**
-  **Negotiating**
-  **Closing**

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## Convening Stage

- **Stage:** The convening process begins when mediation is requested, and a mediator is assigned, or selected.
- **Task:** During this stage the parties, attorneys, and collateral contacts are identified; the mediation location is confirmed; and the scope of issues are defined.
- **Action:** How will you accomplish this objective?
- **Result:** "Willingness" of each party to participate in the mediation process.

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## Opening Stage

- **Stage:** Establish an agenda, explain the process, set ground rules and define the issues. The mediator gives an opening statement, followed by each party giving opening statements.
- **Task:** Set the appropriate tone by planning on using an Evaluative, Transformative, Narrative or Facilitative strategy; establish rapport with both parties to put them at ease; ensure the parties understand the process and gain their commitment to the process.
- **Action:** How will you accomplish this objective?
- **Result:** "Safety and Hope" in order to set an environment that fosters resolution.

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## Communicating Stage

- **Stage:** Parties present their point of view. The purpose is for the parties to understand each other's perspective and for the mediator to understand the issues and interest in detail.
- **Task:** Apply active listening techniques; uncover hidden values and interests; knowledge of communication challenges; ask clarifying questions; use of joint session and caucus.
- **Action:** How will you accomplish this objective?
- **Result:** "Expressive" result to open dialogue and get each party to disclose and understand each other's point of view.



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## Negotiating Stage

- **Stage:** Parties explore possible solutions. A mediator may encourage the parties to focus on the substance of the dispute, rather than on the person.
- **Task:** Seek creative ways to meet each parties' interest. Use Reality checking; BATNA/WATNA, and Fostering an Understanding of Other's View to move past an impasse.
- **Action:** How will you accomplish this objective?
- **Result:** Focus on "Flexibility and Innovation" in order to explore different possible solutions.



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## Closing Stage

- **Stage:** The final stage of the mediation process. Only two possible options; either the parties agree or they don't agree.
- **Task:** If both parties don't agree – the mediation should end. You may reconvene a second session or refer the parties to someone else that might help. If both parties agree then the mediation is successful. The closure provides the setting and structure to work out the details of the agreement. Congratulate the parties and encourage them to follow the agreement.
- **Action:** How will you accomplish this objective?
- **Result:** An agreement resulting from each parties "informed decision".



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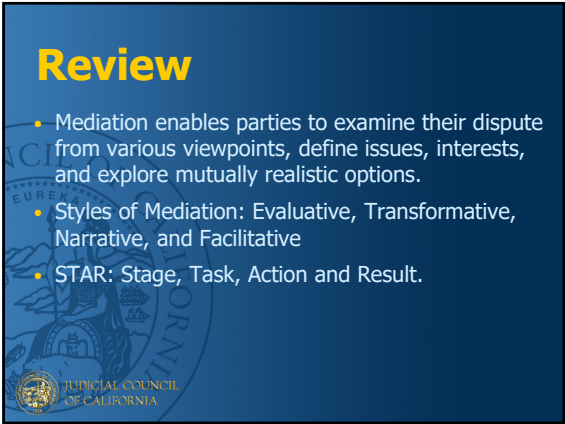
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## Review

- Mediation enables parties to examine their dispute from various viewpoints, define issues, interests, and explore mutually realistic options.
- Styles of Mediation: Evaluative, Transformative, Narrative, and Facilitative
- STAR: Stage, Task, Action and Result.




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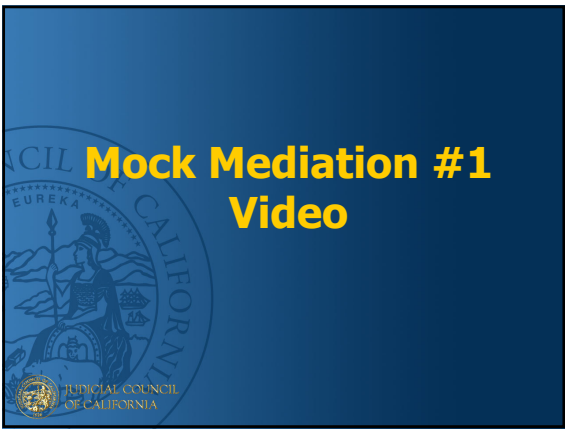
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## Mock Mediation #1 Video




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## STAR Mediation Model

Stage	Task (What)	Action (How)	Result
Convening	Identify parties; location; issues		Willingness
Opening	Tone; style; rapport; ease; commitment		Safety and Hope
Communicating	Active listening; clarify; joint session; caucus		Expression
Negotiating	Impasse; Reality check; BATNA/WATNA; Reframe; Rephrase		Flexibility and Innovation
Closing	Second session; referral; agreement; details; congratulate; encourage to follow		Informed Decision

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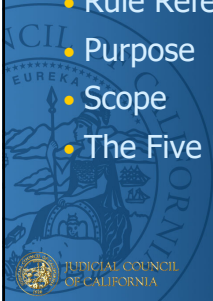
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## Ethical Considerations

- Rule Reference
- Purpose
- Scope
- The Five Principles



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## Statues & Rules

- Evidence Code §1115-1129
- California Rules of Court 3.850-3.865



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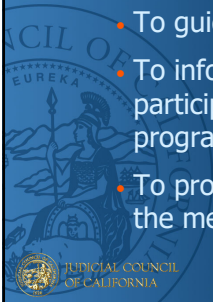
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## Purpose

- To guide conduct of mediators
- To inform and protect participants in mediation programs
- To promote public confidence in the mediation process and courts



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## Scope

- Intended for General Civil Cases
- BUT can be applied to any court-connected mediation program
- Rules not intended to be a ceiling

**It is guidance for the MEDIATOR.**



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## The FIVE Principles

- Voluntariness
- Confidentiality
- Impartiality
- Competence
- Quality of Process



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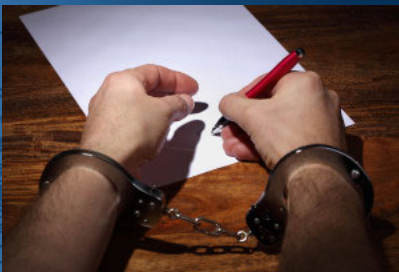
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## Voluntariness



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## Confidentiality



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## Impartiality



*"That's an excellent suggestion, Miss Triggs. Perhaps one of the men here would like to make it."*

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## Competence

- What does it mean?
- How do you define it?

It depends....

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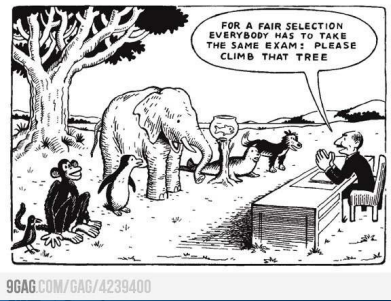
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## Quality of Process



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## Mediation In Real Life



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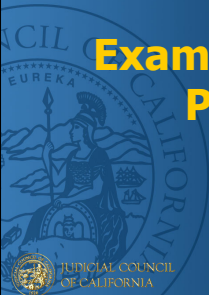
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## Examples of Court Programs



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## Mediation by Bench Officer



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## Workshop

- Judgment by Agreement



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## Mediation by Facilitator

- Courtroom Referrals



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## Mediation by Mediator

- Volunteer Attorney Program



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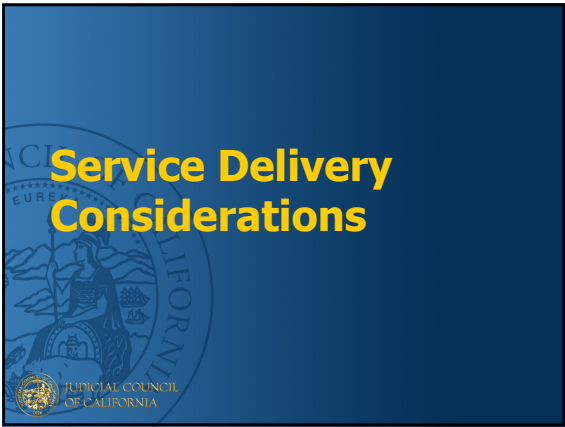
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## Service Delivery Considerations



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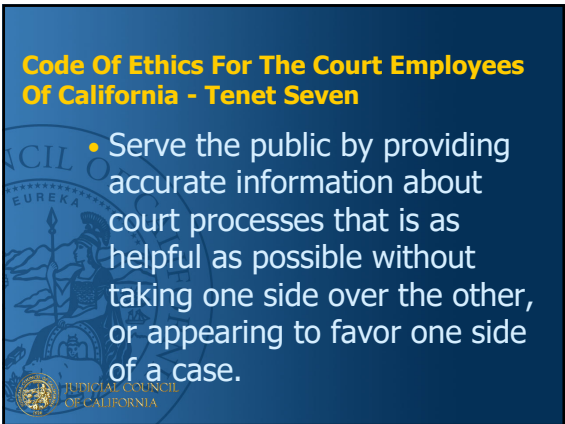
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## Code Of Ethics For The Court Employees Of California - Tenet Seven

- Serve the public by providing accurate information about court processes that is as helpful as possible without taking one side over the other, or appearing to favor one side of a case.



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## Resource Constraints



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## Overcoming Impasse

- Shifting from the Litigation to Mediation Mindset
- Framing the issues
- Introducing Risk
- Explaining Costs

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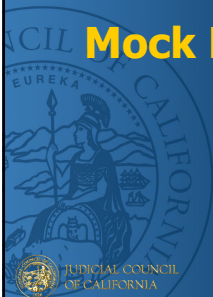
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## Mock Mediation #2 Video



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**Mock Mediation #3  
Video**

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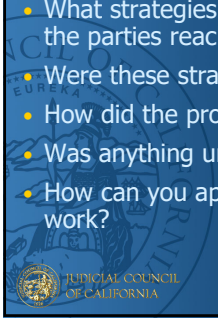
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**Closing and Debrief**

- What strategies did you use to try to help the parties reach an agreement?
- Were these strategies effective?
- How did the process feel to you?
- Was anything uncomfortable? If so, why?
- How can you apply these practices to your work?

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