

**RIC 2006
Session T2F
Allegations
(Alternative Dispute Resolution)**

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MEDIATION

- What is mediation?

Negotiations with the assistance of a third party.

Negotiations Defined

- A communications process directed towards resolving initial differences
- The “Mother” of all conflict resolution processes
- Negotiations are all around us and take on many different forms

Characteristics of a Good Negotiation

- A good negotiation is one which:
 - Produces the best available outcome
 - Increases the likelihood of compliance by constituents
 - Improves the relationship between the parties
 - Is the most efficient

Characteristics of a Bad Negotiation

- A bad negotiation is one in which:
 - No settlement is reached:
 - because of destructive interpersonal dynamics
 - because of the failure of the parties to discover technical solutions that address each sides needs.

Characteristics of a Bad Negotiation (continued)

- A bad negotiation may also be one in which:
 - A settlement is reached, but:
 - the outcome is less than optimal
 - full compliance by both sides is problematic, or
 - the relationship is damaged in the process

Two Approaches to Negotiation

- “Positional” Bargaining
 - the conventional approach
 - a “position” is a single answer or solution to a problem, one which the other party may or may not be able to accept
- “Interest-based” Bargaining
 - also known as “principled” negotiations
 - an “interest” is a need or concern regarding a problem or issue, which might be solved or resolved by a variety of solutions, some of which will be acceptable to both parties.

Assumptions Made by the Two Approaches to Negotiations

- Positional assumptions- “Win-Lose”
Assumption: “the pie is fixed”
 - Negotiators have a direct conflict of interests and objectives
- Interest based assumption “Win-Win”
 - Assumption: “the pie can be expanded”
 - Negotiators have compatible interests and objectives

Elements of the Mediation Process

- ❑ Parties retain control of the process and the outcome
- ❑ Mediator has no power
- ❑ Confidentiality is a critical component
- ❑ Frequently, mediation is the first opportunity disputing parties meet face to face
- ❑ Parties are free to end the mediation at any time
- ❑ No requirement that an agreement must be reached

The Role of the Mediator

- Mediator Clarifies What the Parties Truly Want
- Listens Carefully and Makes Sure Parties Understand Each Other's Views
- Works to Develop Trust (Critical part of the process)

The Role of the Mediator (Continued)

- Remove Artificial Barriers To Resolution
 - Posturing;
 - Pouting;
 - Pontificating;
- Keep the Discussions Going

The Role of the Mediator (Continued)

- Reduce personal hostilities
- Suggest new or creative ways to settle
- Keep the parties focused on legitimate needs and interests, not positions

The Role of the Mediator (Continued)

- Provide some Form of “Face Saving” for a Party Who Early in Mediation, took Extreme Position but now wants to Settle
- Only Late in Mediation, Give Parties Her/His Assessment of Dispute (i.e. “Evaluative” approach)
- Attempt to Maintain Important Relationships, even if Dispute Doesn’t get Resolved

When to Mediate

- When Early Resolution is Desirable, Whatever the Reason
- Parties Wish to Resolve Dispute and Maintain Their Relationship
- Adverse Publicity Likely to Occur and with it, Additional Problems to Follow