

Transformative Mediation

Concepts & ideas from training materials and books by
the Institute for the Study of Conflict Transformation

Based on the theory and principles set forth in The Promise of Mediation by
Bush & Folger (2004).


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No matter who you are or the conflict you are experiencing...



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Transformative Mediation might save your relationship




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and save your company money in personnel capital



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What is transformative mediation?

- The goal of transformative mediation is conflict transformation.
- People desire to change (transform their interaction with each other from destructive to constructive)
- Change based on empowerment and recognition
- The transformative mediator practices with a microfocus and closely follows (not leads) the parties through a dialogue that supports the parties' own efforts for recognition and empowerment.
- Goal is to support the possibility of conflict transformation
- High satisfaction with the process that allows parties to deal with the issues they feel are important, allows them to present their views, allows them to be heard, allows them to understand each other, allows them participation in the process, allows them to express themselves and communicate.
- Transformative mediation focuses on "how" the process works rather than "what" outcome is produced

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Why is transformative mediation different?

The mediator's role is to follow the parties unfolding conversation and identify opportunities for empowerment and recognition, as those opportunities appear in the parties' own conversation... such as:

- Being Transparent
- Attending
- Monitoring
- Responding
- Listening
- Avoiding directives
- Maintaining neutrality
- Reflecting
- Summarizing
- Questioning
- Checking in
- Realizing meaning are in people not words (attend to silence, meanings, relational messages, affective states & nonverbal com...)
- Metacommunicating: Talking about talk
- Following Parties
- Knowing when to intervene or not

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Components of an Opening Statement...

- Greetings
- Question that checks parties understanding mediation
- Description of Transformative mediation
- Allow parties to describe their expectations of mediation...if these differ considerably from transformative mediation...mediator may have to decline their services (rare since they can accommodate parties)
- Establish a context for the mediation in terms of allowing parties to clarify their own goals
- Explain the role of the mediator (to help facilitate the dialogue, help reach clarity, help gain better understanding, & help them have a constructive conversation)
- Explain mediation: voluntary, confidential, empowering...
- Explain the forms that may be involved and decide what is desired
- Allow parties to provide suggestions about how to proceed with the process (design, ground rules, separate sessions, interaction possibilities...so on)
- Discuss preferences for talking and organizing talk
- Preferences regarding an agenda are negotiated and discussed

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Transformative Mediators...

- Describe their role and objective during the session in terms of recognition and empowerment (transparency)
- Feel success when empowerment and recognition occur
- Remain optimistic about parties' own abilities to work through the conflict through their interaction
- Do not feel responsible for the outcome of the mediation and do not worry whether settlement will be reached or not.
- Avoid being judgmental
- Allow parties to explore and examine their ambiguity surrounding the conflict
- Focus on interaction
- Leave the responsibility of outcome to the parties
- Be responsive to parties needs, desires, and choices

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Separate Sessions

- Can be used if empowerment and recognition principles are honored
- Used when it can support empowerment and recognition
- Mediator can suggest a separate session by asking parties if they desire them throughout the session (constantly checking in and picking up cues)
- Can be discussed early by the parties so that parties understand how they will be used and how they might benefit from them
- Keep the process transparent with the parties
- Allow parties to share what they wish to share during the session
- Discuss with the parties in advance how the information will be shared in the session (Ideas of confidentiality should be discussed and agreed upon)

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Ground Rules

- Open to establishing ground rule but avoids imposing certain ground rules
- Invites parties to discuss whether ground rules are needed and important for the session
- Suggests possibilities for ground rules...check in to see if ideas are acceptable to parties
- Check in with parties by making "low inference" statements to see if they are following the ground rules they themselves have chosen. Ask parties why they are not following ground rules instead of enforcing ground rules on them
- Keeping the process flexible and ongoing. Allowing parties to have an ongoing discussion about ground rules and other process issues.
- Designing the sessions together in an ongoing discussion

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Examples of "shifts" in the conflict interaction

Recognizing transformation:

- Empowerment

Directing body language toward one another

Expressing more emotion

Speaking with confidence (clarity)

Addressing each other directly

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Examples of "shifts" in the conflict interaction

- Recognition Examples:
 1. Talking to each other than about the other
 2. Listening more to the "other"
 3. Acknowledging and validating information from the other
 4. Formulating more positive attributions to the other
 5. Apologizing and forgiving the other

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Characteristics of Transformative Practice

- First, mediators adopt a microfocus, concentrating on the presentation of the conflict by the parties that takes place in the mediation session itself.
- Second, mediators take conscious steps to encourage parties to engage in deliberation and choice making.

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- Third, mediators consciously invite and help the parties to consider each other's perspectives by:

Skillful Transformative Mediators:

- Allow parties to control topics, order & discussion.
- Allow parties to talk rather than engaging in mediator talk or interruption
- Engage in reflection, summary, and check-in
- Avoid stringent "mediator agenda" rather move with the parties
- Allow parties to express emotion/but control your "own" emotion as mediator
- Address parties as "you" instead of "we"
- Continuously check direction and choices (Where do you feel comfortable going next?)
- Focus on difference as well as common ground

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Core of Transformative Mediation Practice

- **Attend:** The mediator pays close attention to the unfolding conversation, in order to identify opportunities for empowerment and recognition as they arise – maintaining microfocus.
- **Monitor:** The mediator thinks before intervening, in order to monitor his or her own motivations for intervening, and to suppress any urges to be directive.
- **Respond:** The mediator responds, when appropriate, only to support the parties' own efforts to make empowerment and recognition shifts.

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What is a "competent" transformative mediator?

- A competent transformative mediator acts consistently and reflectively in a way that supports the parties' efforts at conflict transformation.
- Transformative mediators should understand the theoretical foundations of the transformative framework, such as its underlying principles, premises, and purpose.

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The language of empowerment and recognition

- The transformative mediator supports and allows the parties to move from weakness to strength and from self-absorption to responsiveness.
- The transformative mediator responds , at appropriate points, with simple but effective kinds of interventions, throughout the process.

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Language of Empowerment and Recognition

- The mediator pays close attention to the parties' own conversational clues in the *immediate* interactions between them – what they do and say.
- The transformative mediator stays in the moment with the parties.

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Empowerment may be as to:

- Goals
- Options
- Skills
- Resources
- Decision-making

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Recognition may consist of:

- Consideration of giving recognition
- Desire for giving recognition
- Giving recognition in thought
- Giving recognition in words
- Giving recognition in actions

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Mediator Goals

- | | |
|---|--|
| <ul style="list-style-type: none"> ■ <u>Empowerment</u> ■ The mediator aims to <i>foster</i> empowerment, by <i>supporting</i> (and never supplanting) each party's voluntary efforts at <i>deliberation</i> and <i>decision-making</i>, at every possible opportunity in the session(s). | <ul style="list-style-type: none"> ■ <u>Recognition</u> ■ The mediator aims to <i>foster</i> recognition, by <i>supporting</i> (and never forcing) each party's voluntary efforts to achieve <i>new understandings</i> of the <i>other's perspective</i>, at every possible opportunity in the session(s). |
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Supportive Responses

- The transformative mediator never has the answer and does not suggest a resolution.
- The mediator follows the language tone, words, and body language for shifts from weakness to strength and "checks in" with the parties to make sure that they *hear* the conversation.

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Transformative Mediators have the Ability to:

- Be comfortable with conflict & emotions
- Respect party choices
- Be comfortable with the conflict at hand without full understanding of the conflict
- Respect parties, who are different from the mediator (values, attitudes...)
- Be patient with the interaction
- Have an open process, but skillful in the types of questions that allow recognition and empowerment opportunities
- Choose interventions that are based on recognition & empowerment
- Focus on moment-by-moment situation in the interaction
- Avoid problem solving and control processes

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Memory Log

- Parties come to an agreement on what should be included/recorded in writing for the session.
- Writing the agreement for documentation should be interactive & conversational
- Parties should determine what is significant to record (mediator facilitates this decision making)
- All significant accomplishments should be recorded (as desired by the parties). Process issues can be included.
- The memory log is developed with circular discussions between the mediator & parties whereby clarity, choice and understanding are considered

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Reflection

- Reflection is the primary supportive response of the mediator.
- If the parties speak loudly, as an example, the mediator speaks loudly and mirrors the parties.
- In transformative mediation the parties talk directly to each other, often for extended periods of time, so they need to reflect on what has been said.

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Summarizing

- The transformative mediator only summarizes when the parties have come to a natural break or become stuck.
- A summary includes a brief review of all the issues that had been discussed by the parties, without the mediator using a personal agenda or leading the parties.

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Questions and Checking In

- Non-leading questions are a good way of checking in.
- Questions are used to open doors and to invite further discussion.
- A typical transformative question: "Is there more you want to say about that?"

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Mediator Responses

- *Reflecting*
- "So, for you, what's happening is that ..."
- "What you seem to be saying is ..."
- "You're feeling..."

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- *Summarizing*
- "So what you want to talk about today is..."
- "To summarize what you've both talked about so far..."
- "There are a number of things you're disagreeing about, including..."

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■ Questioning

- "What did you mean by ...?"
- "What do you want X to understand about that ...?"
- "Is there more that you'd like to say about that?"

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■ Checking In

- "So where do you think the discussion should go at this point?"
- "Are you comfortable with the way this conversation is going?"
- "Are you ready to move on to [this new point] or do you want to stay with this part of the discussion a while longer?"

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Final Note

- Transformative mediation is very useful in employment disputes, elderly and guardianship issues, and health care disputes. So, does it work with other styles of mediation?



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Application of skills

- Skills from transformative mediation are very useful in traditional styles of mediation, and they, especially, complement problem-solving mediation.
- The basic and underlying philosophy of transformative mediation is that it must not be mixed with other styles of mediation and must be practiced within its own framework. However,

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Should transformative skills be used in other styles of mediation? Sure.

The magic of mediation is that it takes a blend of all styles of mediation to be successful as a practitioner. The trick is to know what to use *when* and to understand the philosophy and strength of each style.



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History of the Transformative Framework (based on B & F)

- Movement from theory to practice
- Began with the book *The Promise of Mediation* (1994)
- Training Design Consultation Project (1995-1996)
- Practice Enrichment Initiative (1997-1999)
- (1997-1999) Mediation program utilizing the transformative framework was created for the United States Postal Service (an award-winning nationwide mediation program designed for EEO disputed (REDRESS).
- Founded the Institute for the Study of Conflict Transformation (affiliated with Hofstra University School of Law (provides training programs and workshops in transformative mediation).

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References

Mediation Practice: The Transformative Framework, Basic Training Program, Institute for the Study of Conflict Transformation. Copyright 2004.

Personal notes of Barbara Manouso from a variety of transformative training programs and workshops between the years of 2000 and 2004.

Training manual by Pepperdine University Law. *New Insights into Transformative Practice*. Session No. 5.08. Copyright 2002.

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For more information, go to:

- http://www.beyondintractability.org/m/transformative_mediation.jsp
- http://www.transformativemediation.org/training_program.htm

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