

# Mediation Training Program

# Welcome!



# Welcome / Introduction of Trainers

- Timothy M. Linnehan, Esq.
  - ADR Coordinator for the Trial Court
  - Executive Office of the Trial Court
- Suzette Fagan Clarke, Chief Housing Specialist, Southeast Division
- Diana Chiang, Adjunct Professor, Mediator
- Josh Hoch, Mediator / Director of Mediation Services
- Nnena Odim, Esq., Mediator



# Coaches



Elise Ramos



Alnoor Maherali



Diana Chiang



Robin DiGiammarino



Carol Kamm



# Zoom Basics

- Problems? Text Josh at 857-719-6642
- Doomsday, 712-775-8962, Conference Code: 681708



# Housekeeping

- Start at 9:00 AM, end at 4:00 PM
- Stay hydrated and comfortable
- Breaks at 10:45 AM and 2:45 PM
- Lunch at 12:30 PM
- BIN
- Training Manuals
  - [www.mwi.org/housing-resources](http://www.mwi.org/housing-resources)



# Day 2: Mediation Training

- Welcome and Introductions
- Mediation Quiz
- Why We Mediate?
- Negotiation Concepts and the Mediation Process
- Goals and Skills of the:
  - Initial Joint Session (2-12)
  - Mediators Caucus (2-18)
  - Early private sessions (2-20)
  - Later private sessions (2-25)
- Notetaking (4-20)
- Role Play I
- Cognitive Barriers
- Listening Triangle (4-1)
- Suzette Fagan Clarke, Expert for the Day
- Lessons Learned



# Group Norms

- Confidentiality
- Nonjudgmental
- Participate
- Patience
- Try new (different) things
- Take risks
- Keep an open mind
- Learn from others
- Stay present
- Encourage others



# Introduction of Participants

- Name
- Location
- Share Something About You People Usually Don't Guess



# Zoom Poll – Mediation Test

- Poll
- Select true or false.



# Why We Mediate?

Rank the goals of mediation from highest goal (1) to lowest (10).

- Help people learn to address future conflicts
- Solve litigants' problems
- Let parties feel heard
- Get parties to agree
- Change and improve the parties' relationships
- Help people communicate better
- Help parties discover and create new options
- Keep people safe
- Help parties make wise choices
- Have a high success rate

*WHICH DO YOU FEEL SHOULD NOT BE A GOAL OF A MEDIATOR?*



# Mediation Overview

- Definition – “Assisted Negotiation”



- Goals of Mediator:

- Manage process effectively
- Facilitate communication
- Focus on interests
- Help parties define and meet goals



# Principles of Mediation

1. Confidentiality
2. Voluntariness
3. Impartiality / Neutrality
4. Informed Consent
5. Self-determination



# Discussion: Being Facilitative as a Mediator

1. What does it mean to be facilitative as a mediator, and what are the benefits?
  - Benefit of setting aside your own evaluation of the case?
  - Benefit of acting as a process leader in an assisted negotiation between the parties?
2. What are some challenges to remaining facilitative?
  - When you feel pulled back to the past?
  - When you want to “talk some sense” into the parties?
  - Time?
3. What advice do you have to remain facilitative, even when it’s tough?



# Structure and Stages of Mediation

- Initial Joint Session (public)
  - Defining an agenda / Identifying interests
- Individual Sessions (private)
  - Generating options / Analyzing alternatives / Making decisions
- Final Joint Session (public)
  - Reaching closure / Agreement Writing



# Initial Joint Session

- Mediator 1 and 2 split the Mediators' Opening
- Mediator 1
  - Asks - who would like to begin? Or say, let's start with the Plaintiff. (Party A)
  - Informs Party B about next steps and lets them know they will have the same opportunity / Asks Party A – why here and what are you looking for
- Party A speaks
  - Mediator 1 thanks Party B for waiting and summarizes Party A's perspective to confirm understanding / Mediator 2 summarizes any additional points (if needed)
  - Mediator 2 invites Party B to speak – why here and what are you looking for
- Party B speaks
  - Mediator 2 thanks Party A for waiting and summarizes Party B's perspective to confirm understanding
  - Mediator 1 summarizes any additional points if needed
- Mediator 2
  - Asks both parties - Is there anything either of you wish to add? Summarizes
  - Asks each party to define what a successful mediation looks like for them | Listen and summarize



# Mediator Caucus

1. How am I?
2. What do I know about each party's INTERESTS?
3. What should I do next and why?



# Early Private Session Mechanics

- Welcome back
- Confidentiality reminder
  - This session will be as confidential as you want it to be
  - I'll check in with you at the end of this session about what you want me to keep private from the other party, if anything.
- Anything to add? (OEQ)
- Allow for venting
- Summarize / reframe to interests:
  - Ask “Why?” / Follow-up with “Anything else?”
- Ask / listen for options once interests are out
- Wrap-up with summary of interests / options
- Confidentiality check / give homework



# Later Private Sessions

- *Goals*
  - Develop / Refine options
  - Evaluate alternatives / Address impasse
  - Prepare to reach agreement or end mediation
- *Mechanics*
  - Welcome back / Begin with confidentiality
  - Ask about homework and explore options
  - Address barriers to agreement
  - Conduct Reality Testing
  - Examine / Discuss alternatives
  - Prepare for final joint session
  - Close with confidentiality



# Note-Taking

- Why?
- What do you do that works well for note-taking?
- What do you do with your notes after the mediation?



# Notes – To keep or not to Keep?

## Destroy:

- Protects the confidentiality of mediation
- Eliminates the burden on the mediator to store and secure notes
- Reduces the risk that the parties will subpoena the mediator later if negotiations fail, particularly if the mediator informs the parties in the agreement to mediate that he or she routinely destroys notes as a matter of practice



# Notes – To keep or not to Keep?

Keep:

- If follow-up sessions - refresh the mediator's recollection of the case
- Notes can be used to create case studies
- Insurance coverage says to do so
- A mediator could conceivably be charged with destruction of evidence in a criminal or federal investigation
- Because you always keep notes



# About Role Playing

- 1 Coach
- 2 Parties – will rotate
- 4 Solo Mediators – will rotate
- About 20 minutes for each mediator, including small group debrief
- Start mediation over each time; mini or fast opening is fine.
- Mediators: practice, try new things, take risks, make mistakes.
- Parties: Stick to the role and give helpful feedback.



# Role Play 1

11:00 AM to 12:30 PM

Introduction of Coaches

Roles:

- See [www.mwi.org/housing-resources](http://www.mwi.org/housing-resources)
- Day 2 – Role Play 1

To help with feedback: See *Questions for Observers*.



# Role Play 1 – Debrief

Lessons Learned from Role Play 1



# Exercise – Cognitive Barriers

This is your coffee mug below - How much are you willing to sell it for?

\$ \_\_\_\_\_ price



# Exercise

This is not your coffee mug below - How much are you willing to buy it for?

\$ \_\_\_\_\_ price



# Exercise – Cognitive Barriers

WRITE THE LAST 2 DIGITS OF YOUR SOCIAL SECURITY  
NUMBER ON A BLANK PAGE

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AND THEN TURN YOUR PAGE OVER



# Exercise

- NOW PROVIDE HOW MUCH YOU WOULD PAY FOR THE WATCH BELOW

- \$ \_\_\_\_\_



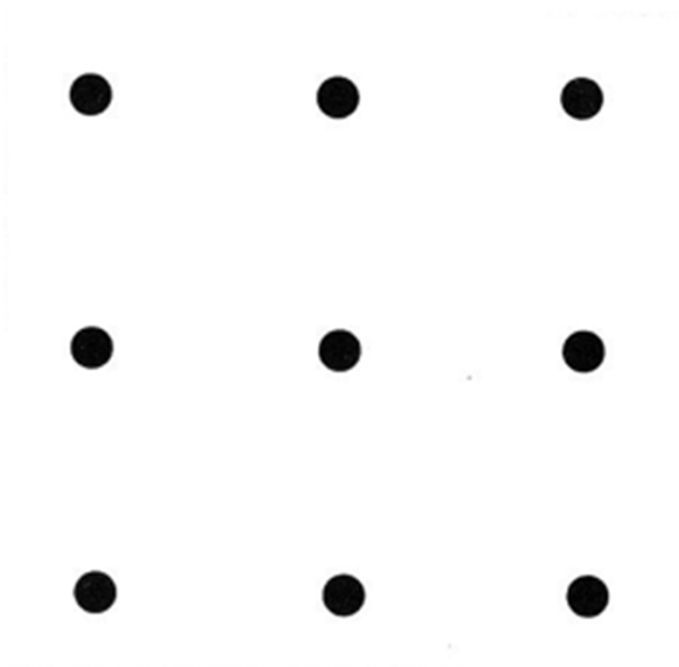
# Nine Dot Puzzle

The goal of this puzzle is to draw lines that connect all nine dots in the pattern below according to the following rules.

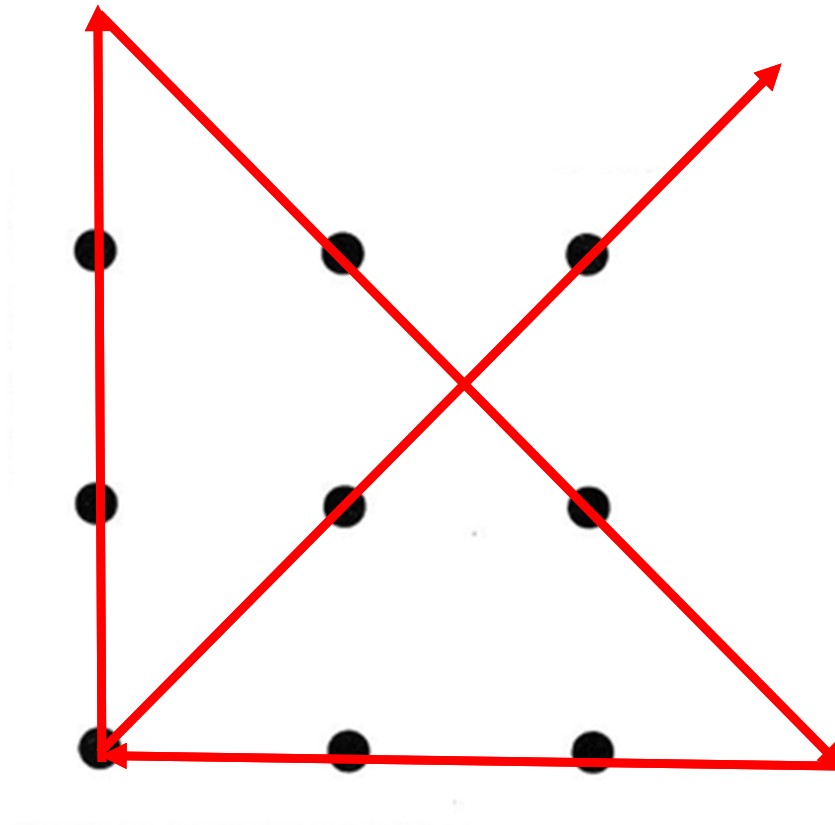
1. You may draw **only 4** lines.
2. The lines must be **straight** lines.
3. You may **not lift your pen** or pencil off the paper.
4. You may **not retrace** over any part of the line.
5. It **is Ok** if the lines intersect.



# Nine Dot Puzzle



# Nine Dot Puzzle



# Cognitive Barriers

**Heuristics:** A term used to describe decision making strategies people use

- Mental short cuts.
- Not always rationale.



# Affect Heuristic

The **affect heuristic** - when our emotional state or mood influences our decisions.

Instead of evaluating the situation objectively, we rely on our “gut feelings” and respond according to how we feel.

Bad weather - the affect heuristic can lead to suboptimal decision-making.



# Repetition Bias

**Repeated information feels more true than new or unrepeated information.**

**The more times a message is repeated, and the greater the number of sources repeating the message, the more believable it becomes.**

**“ I am a fair person ”**



# Selective Perception

- The hammer only sees the nail. Only see the positive or good part of the case supporting your position.
- Only see the positive of their case not the negatives.



# Optimistic Over Confidence

- An inflated view that people have of themselves or a situation.
- Lake Wobegon - That's the news from Lake Wobegon, "where all the women are strong, all the men are good-looking, and all the children are above average."
- Good driving example.



# Reactive Devaluation

Refers to the fact that the very offer of a particular proposal or concession especially if the offer comes from an adversary – may diminish its apparent value or attractiveness in the eyes of the recipient.

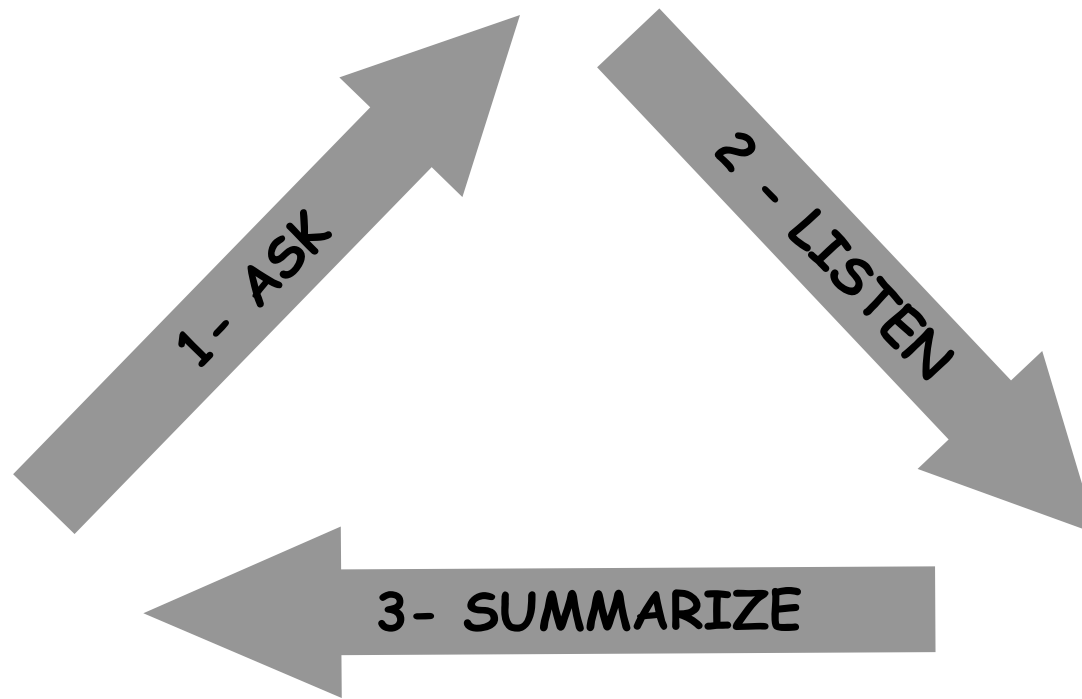


“We should support whatever the enemy opposes and oppose whatever the enemy supports”

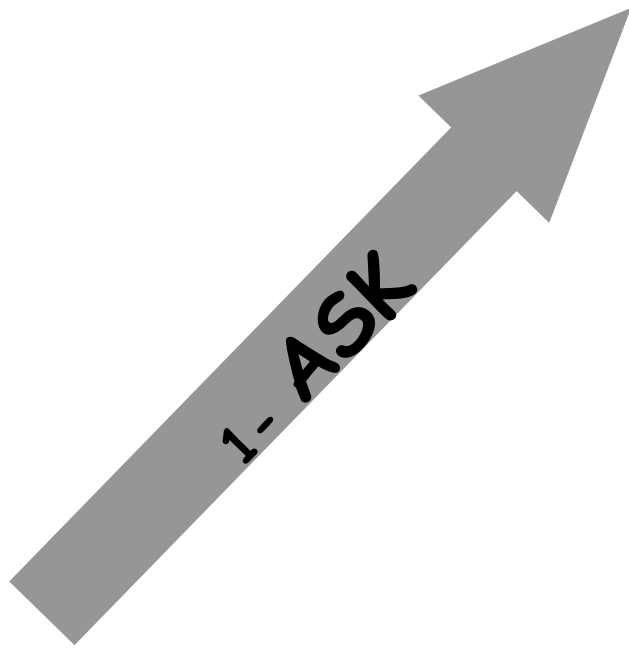
**Chairman Mao**



# Interactive Listening Skills



# ASK

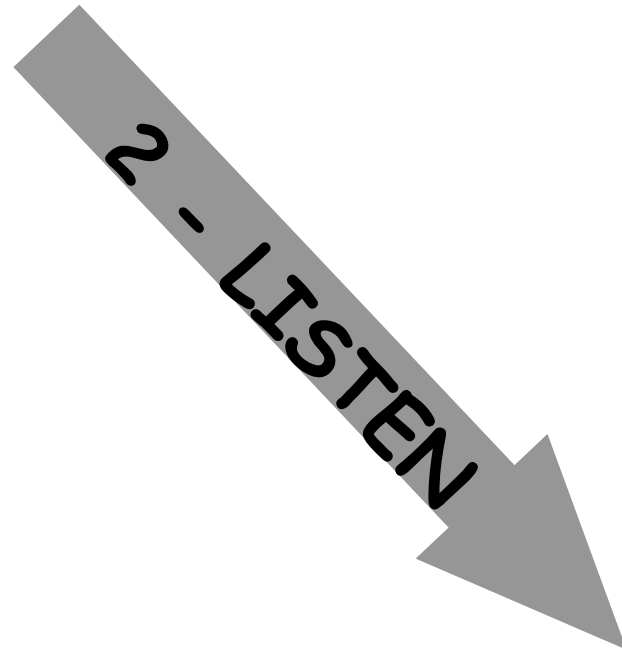


- Negotiate with yourself to be curious
- Use open-ended questions
- Keep it simple and succinct



# LISTEN

- Quiet your inner-voice
- Check body language
- Work on being present
- Goal: Listen for INTERESTS



# REFLECT

## 3 Ways

- Repeat
- Paraphrase
- Reframe
  - Positions to interests
  - Past to present/future
  - Negative to positive

## Benefits

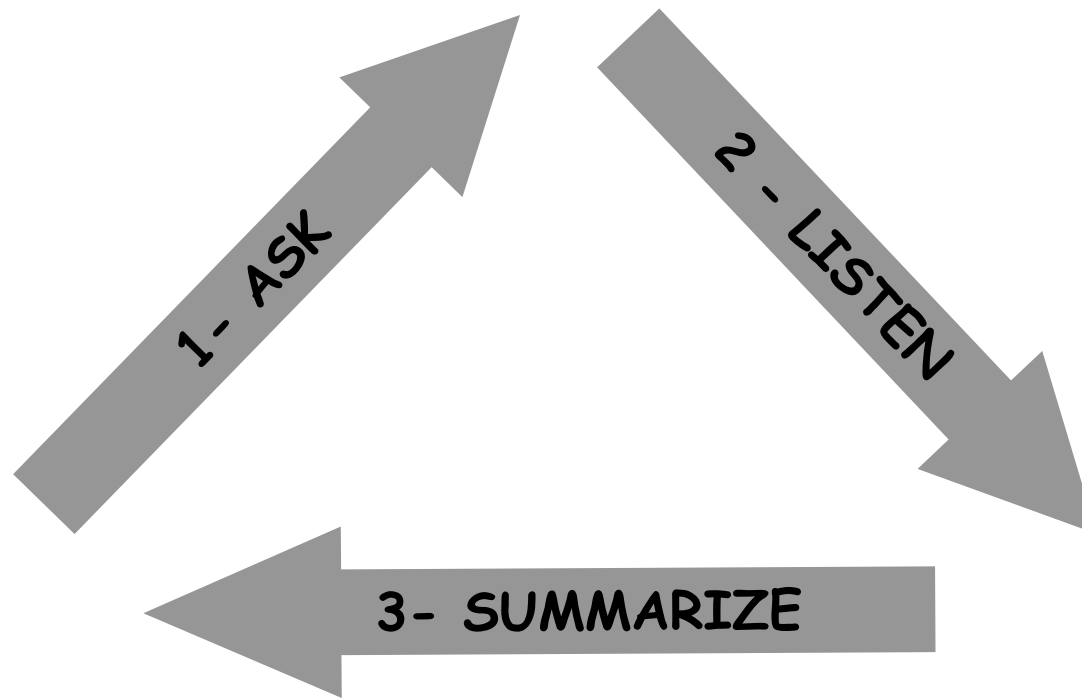
- Let the party know they've been heard
- Confirm your understand
- Identify & clarify miscommunication
- Allow party to reflect on their own words
- Let other party hear things in a different kind of way
- Shift to a more productive focus/mindset



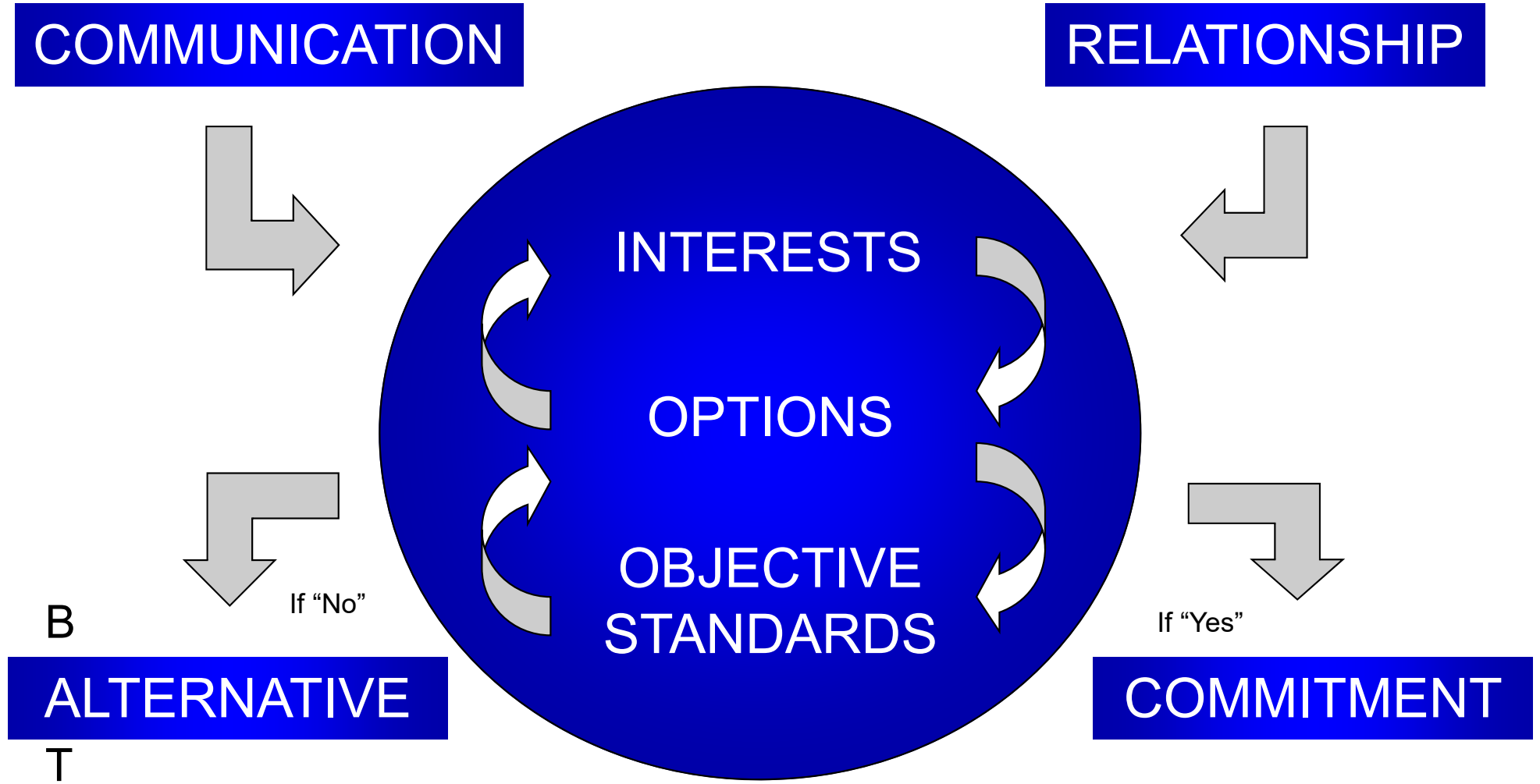
3- REFLECT



# Interactive Listening Skills



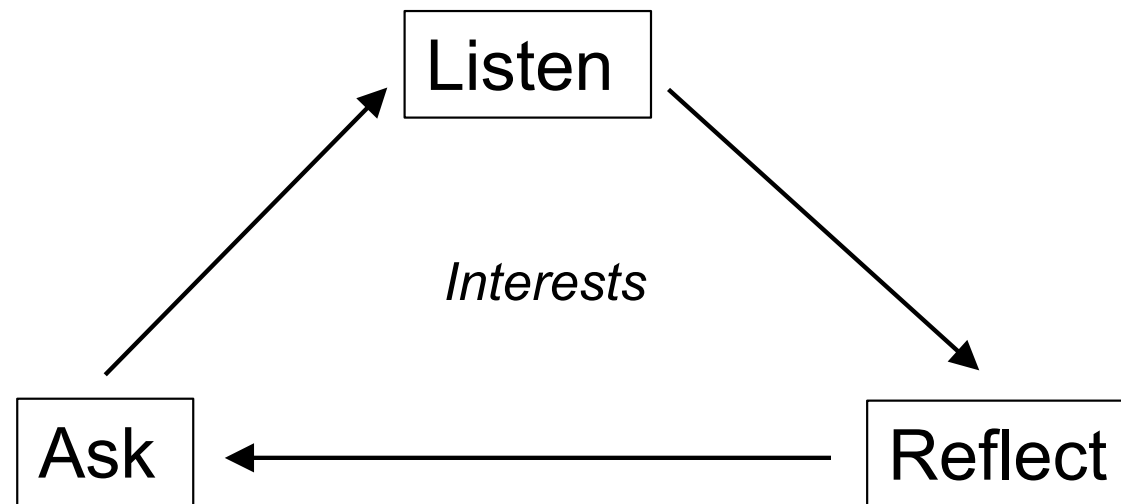
# Negotiation Framework for Mediators



B

T  
M  
A

# Listening Triangle



- OEQ (open-ended questions)
- CEQ (closed-ended questions)

- What are hoping to achieve in mediation?
- What would be a successful outcome?
- Tell us more...
- Why is that important to you?
- Is there anything else?

- Repeat
- Summarize
- Reframe
  - Positions to interests
  - Negative to positive
  - Past to present



# Lessons Learned



WRAP UP

# Remarks from the Expert

Suzette Fagan Clarke, Chief Housing Specialist, Southeast Division



WRAP UP

# Wrap Up

- Homework – Please read role play 2 before Friday.
- Day 3: Friday, September 15, from 9:00 AM to **3:00** PM
- Same Zoom Link
- Yariely Camacho, Asst. Chief Housing Specialist, Eastern Division

