

Indiana Association of Mediators
2022 Virtual Midwest Mediation Conference
“Advanced Skills for the Workaday Mediator”

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The purpose of this training is to advance the frontiers of skill and knowledge for civil and domestic mediators from all backgrounds (including lawyer, therapist, financial professional, educator, and other occupations). The training will include lectures, small-group discussions, and a few role plays.

Overview:

- **November 4:**
 - The Psychology of Mediation
 - Diversity Issues and the Problem of Unconscious Bias
 - Ethical Issues: Impartiality, Confidentiality, and Informed Consent Under Indiana Rules
- **November 5:**
 - The Art of Asking Questions in Mediation
 - Impasse-Breaking Techniques
 - The Personal Qualities of the Mediator
 - Depictions of Mediation in the Popular Media

Details:

- **The Psychology of Mediation**

Mediators are beginning to use a variety of psychological perspectives in our work (e.g., neuroscience, cognitive biases, behavioral economics, etc.). We will begin by surveying those that attendees have found useful. Our focus will then shift to the Internal Family Systems model created by psychologist Richard Schwartz, which focuses not on families but rather on the family-like relationships that our internal “parts” have and how those relationships affect us (and the people with whom we mediate). We will also consider how ethical issues (particularly the duty of competence) are impacted by our knowledge of the psychology of mediation.
- **Diversity Issues and the Problem of Unconscious Bias**

Unconscious bias is ubiquitous – a feature of the human condition – and yet mediators have a duty to be unbiased. Fortunately, bias is malleable. We will consider how we can identify unconscious biases in ourselves and others, how biases show up in our mediation work, and how we can skillfully respond when biases are present. In addition, this workshop will provide participants with techniques we can all use to reduce our unconscious bias. We will also consider the legal and ethical dimensions of our duty to treat all mediation participants in a non-discriminatory manner.

- **Ethical Issues: Impartiality, Confidentiality, and Informed Consent**

In small-group discussions, participants will tackle ethical dilemmas and report their conclusions in a plenary session. Impartiality dilemmas will address the psychological and bias problems discussed earlier in the day. Confidentiality dilemmas will focus on private information communicated in caucuses. And informed-consent problems will focus on situations in which the parties lack legal advice, have inadequate advice, or there's an asymmetry in the parties' knowledge. We will also consider what legal and malpractice issues arise for mediators in handling these three areas of our practice, with specific reference to the Indiana ADR Rules.

- **The Art of Asking Questions in Mediation**

Mediators have enormous power to direct mediated discussions simply by posing questions. Our questions can direct people toward shared interests, shared values, or a focus on the future. Our questions may focus on emotions, facts, or options. Often, however, we do not fully appreciate the emotional impact of our questions. Working in small groups, participants will interview each other and learn more about that impact. David will present examples of questions that can profoundly impact the mediation process in a positive way. We will also consider how overly intrusive questions from the mediator can be harmful and inconsistent with legal and ethical responsibilities.

- **Impasse-Breaking Techniques**

David will present a list of 25 impasse-breaking techniques (such as case evaluation, mediators' proposals, and range bargaining), and then we will break into small-groups to discuss (a) which additional techniques mediators should consider using, (b) what are the most effective techniques, and (c) what are the pitfalls of some techniques. This session will conclude with a fishbowl demonstration of several impasse-breaking situations. We will also consider the legal, ethical, and malpractice implications of various impasse-breaking techniques – particularly those that have more evaluative and directive (as opposed to facilitative) elements.

- **The Personal Qualities of the Mediator**

In the book “Bringing Peace into the Room,” David and his co-editor Daniel Bowling suggest that a mediator’s personal qualities can exert a powerful influence on the peacemaking process. Working first in small-groups and then in plenary session, we will explore what those personal qualities are and how we can cultivate them. We will also consider what the ethical duty of a mediator may be with regard to cultivating these qualities.

- **Depictions of Mediation in Popular Media**

This two-day program will end on a humorous note, as David presents excerpts of his collection of mediation videos from movies and television. We will then discuss the popular misconceptions of mediation shown in these vignettes and also what violations of mediation ethics may be reflected in these excerpts.