

ROLE PLAY: MEDIATION STYLES

This is a simple role play or simulation designed to demonstrate the consequences of employing different methods of mediation. You will need a minimum of 18 participants for this role play. The facts are relatively simple and the role play can be completed in 30-60 minutes.

Parties/Characters:

Mediator
Kate (a mother/driver/defendant)
Christine and Shawn (parents/plaintiffs)
Bobbi Robinson (plaintiff's counsel)
Gene Washington (defense counsel)
Blake Martin (insurance claims rep/supervisor)

Facts for everyone:

Kate was driving four girls from a larger group of children who are friends from the community out to Tygart Lake where they were planning to spend the day. En route, she reports that she became distracted when two of the girls in the back of the SUV starting taunting one in the front. She went to pull over and flipped in the ditch. No one was seriously injured, but Whitney, who was riding in the back, received a sprained wrist and a few cuts on her arm, which will likely leave a noticeable scar. Her parents, Shawn and Christine didn't want to file suit, but they did not have medical insurance besides the CHIPS card and had no med pay. Christine, Kate and Shawn went to high school together and were on the softball team their senior year. The physicians believe that Whitney would probably benefit from scar revision, which may cost as much as \$20,000.00 once she is ready for it, but Shawn and Christine can't afford it. When Kate's insurance company, Nostate, refused to pay more than the bills and \$1000.00 towards the scar revision costs, Shawn and Christine hired Bobbi Robinson as their attorney. S/he is known to be aggressive and able to bully his (or her) way into settlements. A deposition was scheduled quickly and during the deposition Shawn and Christine witnesses an intense cross examination of Kate which at first made them feel sorry for her, but eventually they came to believe Bobbi Robinson's theory of the case. Bobbi believes that one of the children saw Kate texting when she flipped the SUV. Although the cell phone records do not show any calls placed, at the deposition, Kate admitted that she was going to text her boyfriend.

This mediation is occurring after the deposition and Kate no longer communicates with Christine and Shawn. Present at the mediation are Kate, Shawn, Robinson, and defense counsel, Jean Washington, the Nostate rep, Blake Martin, and Christine. The Nostate policy has 100/300 limits. Bills to date are \$2500.00 and future meds are \$20,000.00. No one is claiming any other damages, including lost wages. Shawn and Christine have a bottom of

the barrel 20/40 BUYCO policy which does not include med pay or underinsured coverage. There is no other coverage than the Nostate policy.

While there will be three different styles of mediation, please feel free to use your own techniques and skills such as active listening, paraphrasing, reframing or other mediation skills consistent with that assigned style.

DIRECTIONS FOR EVALUATIVE MEDIATOR

You are going to mediate this case in the role as an evaluative mediator. You will take charge of the mediation by setting the agenda and controlling the process. After a brief introduction of the parties you will immediately separate the parties and conduct the mediation in caucus. Once you have an idea as to what the disagreement is about, you will evaluate their positions and then work to point out each case's weakness and make formal or informal recommendations. Becoming emotional is not an issue to you, this is not emotional, it is a case. The attorneys are present through the mediation. You anticipate settling this case, you always do.

TIPS FOR MEDIATOR IN ROLE PLAY:

- Read your description carefully. Think about how to apply this style of mediation in this context.
- Set up the environment before the role play begins consistent with the style of mediation.
- Stay in role. If things do fall apart, get back into role as quickly as possible.
- There may be observers. Ignore them. They will not intervene.

DIRECTIONS FOR TRANSFORMATIVE MEDIATOR

You are a transformative mediator. This is their problem, and their process. Your primary goal is to help the parties get to a position where they can not only address the question about insurance, but be able to rebuild their community and relationships. You will allow them to set the agenda for the mediation and **will not use caucuses**. You will avoid interrupting and will not become alarmed or try to dissuade the parties from being emotional. While the attorneys are present for the mediation, in your mediation, they do not play the primary role, the parties do. From the time you set the room up until you conclude the mediation you are working to empower the parties to have skills to resolve their own conflicts.

DIRECTIONS FOR FACILITATIVE MEDIATOR

You still believe this is their problem and your process, but you don't see it as your job to evaluate or tell them what the strengths nor weaknesses of their case might be. You want to help the parties reach a mutually agreeable resolution. You do tend to structure the mediation, identify issues for them and don't allow the parties to move off of your agenda. You also work hard to keep emotions calm, believing that rational discussions will yield the best results. You see yourself as a problem solver and want to help these people solve this problem. You DO NOT make recommendations about the outcome. You prefer to have all parties present, but may hold a caucus if you think it will help reach the mutually agreeable resolution. The attorneys are present, but it is the parties who do most of the talking. Since it is your process, you are comfortable limiting the attorney's involvement.

DIRECTIONS FOR SHAWN

You like Kate and appreciate what she did for your daughter, but you want for her to be able to have the surgery and you know that you will never be able to afford it. You feel guilty that you can't afford it and feel very guilty that you didn't have enough insurance. You are very upset that Kate and Christine are no longer friends and are really concerned about what this has done to the children, since the group of girls going to the lake splintered in the last few months and it seems like your daughter doesn't have as many friends. You want this over but can't compromise your daughter's scarring. Since Kate's deposition, Christine has not been feeling well. She has migraine headaches for days at a time and her doctor said that she needs to go to Morgantown for tests.

DIRECTIONS FOR PLAINTIFFS COUNSEL (Bobbie Robinson)

You like your reputation as the most aggressive plaintiff's lawyer in the state and are anticipating that this case will yield a high jury verdict for this little girl and her family. You know that Nostate is slow to settle and anticipate going to trial. You think that this mediation is a hoop you have to jump through and don't really think that this case can settle. It doesn't matter much to you. You have an established practice and a caseload of 120 active cases. The lien by CHIPS is \$1200.00. There are no other outstanding bills or liens.

You are very comfortable in evaluative mediation, and participate actively. In facilitative mediation, you also participate, but yield when the mediator seems to encourage the litigants to talk. In transformative mediation, you are very uncomfortable, but aware that you will not be playing the type of role you would in evaluative mediation. You would prefer just to get to trial since you feel confident that the jury would give you a substantial award.

DIRECTIONS FOR DEFENSE COUNSEL (Gene/Jean Washington)

You've been practicing with your defense-oriented firm for 15 years and handle a large volume of cases. You fell bad for Kate. She was just trying to be a good volunteer. You think it is best for all of the parties to settle, but your claims representative and supervisors refuse to give you authority to settle for more than \$17,500.00 inclusive of future medical bills claiming that the scar revision is all speculative.

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DIRECTIONS FOR CHRISTINE

You are sick. You have had migraine headaches ever since Kate's deposition, and your daughter does have a minor scar, but what is happening at school is worse than the scar could ever be. You just want everything over, but Shawn is insisting that you go along with your lawyer and try to go to trial and get enough money to fix the scar and any other medicals. He told you when he first took the case that he thought you could get \$100,000.00. You don't want that. You just want this over with.

DIRECTIONS FOR CLAIMS REP (Blake Martin)

You are actually a supervisor, with 100 active files. Since the claims rep just quit, you are covering the mediation. You have a copy of the file and cannot get authority to go higher than \$25,000.00 under any circumstances. You have not told the bottom line to defense counsel since you think he'll just offer that and then you'll continue to inch higher and higher. You have told him that the bottom line is \$17,500.00.

You don't care what the mediation style is. You have what you have and otherwise you don't have much to say. You are putting in your time.

DIRECTIONS FOR KATE

You are really mad. You feel guilty that you caused the accident and you did pick up the phone to text your boyfriend to have him bring out the soft drinks you forgot to the park for the kids. You were worried that if you didn't do it before you got there that you'd forget. However, you hadn't texted him yet and the kids in the back were telling the girl in the front that she couldn't be in their club because she smelled funny. But when Shawn's lawyer accused you of causing all of this, you just got defensive and now don't care what happens. You are hoping to just move away and forget all of it, but want to finish this lawsuit first and then move to a new town. However, your entire family is in Fairmont, along with your children's father and part of you wishes that you didn't have to move to get away from it.