

Breaking Deadlocks

A deadlock is a cessation of progress toward resolution. Different types of deadlocks call for different strategies.

Position-based Deadlock

When one of the participants reaches a “bottom-line” which is unacceptable to the other party. People reach positional deadlocks because of substantially differing values or because interests have not been sufficiently addressed or have changed during the mediation.

Strategies:

- Point out agreements in principal or common ground.
“It sounds like you both agree that . . . “
- Identify underlying interests.
“It is important to you that . . . “
- Generate new options.
“Can you think of a solution which might be acceptable to the other person?”
- Explore consequences of not settling.
“How will this be settled if the two of you are unable to find a solution?”
- Discover potential value issues.
“Tell me more about why you feel that way.”

Communication-based Deadlock

When participants have misunderstood or not completely understood the other person. Communication deadlocks can also occur if one person uses inflammatory language, filibusters, or withdraws. Statements may take on different meaning in the context of the relationship between the participants, and seemingly unimportant comments may convey strong negative messages.

Strategies:

- Explore the meaning behind significant words. Ask for specifics.
“When you say, “late night,” what do you mean?”
- Help identify emotions and issues.
“You feel _____ because _____.”

- Check to see if person feels heard and understood.
"At this point, do you think _____ has an understanding of your perspective?"
- Ask the participants to repeat what they have heard and understood.
"What is your understanding of what _____ said?"

Information-based Deadlock

When one or both parties lack or withhold information, or when facts are in dispute.

Strategies:

- Request that participants share relevant information.
"Would you be willing to send that to the other person?"
- Consult with an authority.
"I think you may need more information on this subject. Have you spoken with _____?"
- Encourage joint fact-finding (possibly through consultation with an authority).
"I think you may both need more information on this subject. One way to do that is to choose someone you both trust and to consult together to get the information from a neutral expert."

Emotion-based Deadlock

When one of the participants is so overcome with emotion that they are unable to move forward. Emotional deadlocks can result from a lack or breakdown of trust or from personal psychological problems.

Strategies:

- Reflect with a focus on the feelings.
"It seems like you are really feeling _____."
- Acknowledge the feelings and get permission to move forward.
"You are feeling _____ because _____. What would you like to see in the future?"
- Focus on the participant's ability to change things.
"What can you do to change that/address that?"
- Take a break.

"I would like to suggest we take a short break and see if it would be productive to resume negotiations at that point."

- Refer to counseling.
"You seem very distraught. What kind of support do you have?"

Procedure-based Deadlocks

When one party feels the process is not fair or the interventions favor the other person. This may also occur if there hasn't been sufficient attention to building rapport or to identifying interests, and the discussion has moved into generating solutions without rapport being adequately addressed or interests being explored.

Strategies:

- Acknowledge the feelings and perceptions without being defensive. Reflect.
"You feel misunderstood because I said that ____ had a good point."
- Ask for clarification.
"Can you tell me more about what happened that leads you to feel that way?"
- Reestablish an appropriate phase in the process.
Ask yourself: Have the participants had enough time to vent? Are there hidden agendas that haven't been surfaced? Did we begin the problem-solving phase before both people felt heard? Did we begin the problem-solving phase before interests were clearly identified? Did we begin reality checking before trust was established?
- Reflect on your biases.
Am I too involved in the creation of a solution? Do I feel like one person is "right" and the other is "wrong?" Do I have a bias based on personalities or behavior?

We are indebted to Ann McBroom for development of and permission to use this material.

Generating Movement: Persuasive Techniques (Stulberg & Love)

A. Information Base

1. Facts persuade, so develop them.
2. Use absence of facts to create doubts about what happened.
3. Use inconsistent statements to help redefine the problem.
4. Examine how the past practices of the parties in dealing with the issue at hand compares with the proposed method of treatment; if they are inconsistent, ask for a justification.

B. Negotiating Standards

1. Encourage the parties to establish priorities among the negotiating issues.
2. Make certain that the parties appreciate the constraints within which each other is acting.
3. Help the parties to develop trade-offs, making certain that the parties propose trade-offs either of items of comparable value or that the party who is proposing the trade is relinquishing that which is less valuable to it but more valuable to the other party.
4. Promote compromises on those specific issues that lend themselves to quantitative assessments (caution: mediators must appreciate the fact that having parties compromise does NOT mean that they must split their proposal on a 50/50 basis).
5. Where possible, develop solutions whereby each party acquires what it is seeking without the other party having to relinquish a particular demand (integrative solutions).

C. Individual Behavior

1. Compliment people about ideas they have suggested or adjustments they have made which contribute to their progress towards settlement.
2. Use examples that people understand in order to make your point.
3. Use humor.
4. Use role reversal.
5. Develop time constraints.
6. Let silence create discomfort among the parties such that they might pierce it by suggesting movement.
7. Focus on the future, not the past.

D. Common Interests

1. Appeal to generally accepted principles (legal, social, moral, prudential).
2. Highlight elements of interdependence among parties.

E. Encouraging the Parties to Consider the Consequences of Not Reaching Agreement.

1. Examine the impact on each party's daily life routines/rituals/interactions if the controversy is not settled.
2. Identify the tangible financial costs for refusing to resolve the controversy in mediation and by pursuing it in another forum.