

Dispute Resolution Program

Welcome Back!

DAY 2

June 11, 2026

12:00 PM to 4:00 PM

WELCOME

Ethics



Ethical Standards

- Uniform Rules on Dispute Resolution
- Code of Judicial Conduct

Uniform Rules

Designed to promote honesty, integrity and impartiality by all neutrals in providing court-connected dispute resolution services.

Assure the courts and citizens of the Commonwealth that such services are of the highest quality.

- Summary of Ethical Standards

<https://www.mwi.org/wp-content/uploads/2022/05/EthicalStandards.pdf>

Judicial Ethics



Mass. Code of Judicial Conduct
Canon 2
Rule 2.6 - *Ensuring the Right to Be Heard*

Rule 2.6(B)

A judge may encourage parties and their lawyers to resolve matters in dispute and, in accordance with applicable law, **may participate in settlement discussions** in civil proceedings and plea discussions in criminal proceedings, but shall not act in a manner that coerces any party into settlement or resolution of a proceeding.

Mass. Code of Judicial Conduct
Canon 2
Rule 2.6 - *Ensuring the Right to Be Heard*

Comment [2]

The judge should keep in mind the effect that the judge's participation may have not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if these efforts are unsuccessful and the case remains with the judge.

Mass. Code of Judicial Conduct
Canon 2
Rule 2.6 - *Ensuring the Right to Be Heard*

Comment [2]

Other factors that a judge should consider when deciding upon an appropriate practice for a case include: (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge; (2) whether the parties and their counsel are relatively sophisticated in legal matters; (3) whether the case will be tried by the judge or a jury;

Mass. Code of Judicial Conduct
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Comment [2]

...(4) whether the parties participate with their counsel in the discussions; (5) whether any parties are self-represented; (6) whether the matter is civil or criminal; and (7) whether there is a history of physical or emotional violence or abuse between the parties. See Rule 2.9(A)(4).

Mass. Code of Judicial Conduct
Canon 2
Rule 2.6 - *Ensuring the Right to Be Heard*

Comment [3]

Judges must be mindful of the effect settlement or plea discussions can have not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality.

Mass. Code of Judicial Conduct
Canon 2
Rule 2.6 - *Ensuring the Right to Be Heard*

Comment [3]

Despite a judge's best efforts, there may be instances when information obtained during such discussions could influence a judge's decision-making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11.

Mass. Code of Judicial Conduct
Canon 2

Rule 2.9 - *Ex Parte Communications*

Rule 2.9(A)

A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

A judge may, **with the consent of the parties**, confer separately with the parties and their lawyers in an effort to settle civil matters pending before the judge.

Mass. Code of Judicial Conduct
Canon 2

Rule 2.11 - *Disqualification*

Rule 2.11 (A)

A judge **shall disqualify** himself or herself in any proceeding in which the judge **cannot be impartial** or the judge's **impartiality might reasonably be questioned**, including but not limited to the following circumstances:

(1) The judge has a **personal bias or prejudice** concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Uniform Rules - Impartiality

- Freedom from favoritism or bias in conduct and appearance.
- Impartiality regarding parties & subject matter.
- Withdrawal by neutral (even if there is no objection).
- No gifts, no compensation beyond court-established ADR fees

Uniform Rules - Informed Consent

- Parties must consent to process & agreement.
- If unable to understand, must limit the scope or terminate process.
- Inform parties of the right to withdraw at anytime.
- No coercion

Uniform Rules - Conflict of Interest

Disclose all actual or potential conflicts. Examples: personal, professional, financial relationship; financial interest in subject of dispute; appearances.

- OK to proceed, if not significant & they consent.
- Must withdraw, if significant, regardless of consent.
- Post - ADR process considerations; representation on related and unrelated matters.

JSC - Confidentiality

- Inform parties the process is confidential.
- Do not disclosing information obtained in private session without party's consent.
- Exceptions to confidentiality – Research, training, statistics; law

Uniform Rules - Withdrawal

A neutral **must withdraw**: Violation of ethical standard; jeopardizes party safety; or neutral is unable to be effective.

A neutral **may withdraw**: Party not in good faith; agreement is illegal; appearance of impropriety; harm to nonparty or public; continuing the process would not be in the best interest of the parties or the program.

Judicial Recusal Standard

Grounds for disqualification:

- **Personal bias or prejudice** toward a party.
- **Financial interest** in the outcome (e.g., judge, spouse, or child has a stake).
- **Personal knowledge** of disputed facts.
- **Previous legal representation** of a party.
- **Close familial or personal relationships** with a party, attorney, or likely witness.
- **Prior service as a lawyer** in the matter.

STANDARD

Ethical Issues for JSC

- Judicial Recusal Standard as Judge vs Uniform Rules
- Perception vs Reality
- Voluntary JSC vs Mandatory Trial
- Informed consent & self determination
- Can the JSC judge try the case if the JSC is unsuccessful?

Uniform Rules- Ethical Dilemmas

<https://www.mwi.org/wp-content/uploads/2023/11/Ethical-Dilemmas-Conciliation.pdf>

Ethical Dilemmas

Scenario #1

The Judge knows the lawyer for one of the parties; the lawyer was a college classmate of the conciliator, and they see each other yearly at college reunions.

Questions

1. What ethical standards apply and/or would be helpful in providing guidance for the judge in this scenario?
2. What course of action would you take as the JSC judge?
3. Is this different if you are the Trial Judge?

Ethical Dilemmas

Scenario #2

In a business divorce case, Partner A discloses to the judge that he is personally about to receive a substantial contract from one of the partnership's best clients, and that his partner does not know this; Partner B would balk at their 50/50 division of assets if he knew. Partner A insists that the judge not disclose this information to his partner, or he will quit the conciliation.

Questions

1. What ethical standards apply and/or would be helpful in providing guidance for the JSC Judge in this scenario?
2. What course of action would you take as the judge?
3. Is this different if you are the Trial Judge?

Ethical Dilemmas

Scenario #3

Consumer dispute with an insurance company over alleged over-charge. The judge is currently in a dispute with his insurance company over another issue (underpayment on a loss claim.) Disclose?

Questions

1. What ethical standards apply and/or would be helpful in providing guidance for the JSC judge in this scenario?
2. What course of action would you take as the judge?
3. Is this different if you are the Trial Judge?

Answers to Ethical Dilemmas

<https://www.mwi.org/wp-content/uploads/2023/11/Ethical-Commentary.pdf>

Bias

Tendency to favor or oppose something or someone based on personal feelings or beliefs, not facts or reason.

May be explicit or implicit, conscious or unconscious, positive or negative and bias influence decisions and behavior.

Implicit Bias

- An automatic association of stereotypes and attitudes toward certain social groups.
- Research shows stereotypes are automatically activated by encountering a member of a social group, which influences our judgments, actions, and decisions.
- Despite our best intentions and explicit beliefs, implicit biases can produce behavior different from our principles.

Implicit Association Test

Has anyone ever taken the Test? Try it!

<https://implicit.harvard.edu/implicit/takeatest.html>

75% of most Americans react positively to white Americans and less positive to toward African-Americans. **65%** more positive to straight vs. gay. Less favorable to old, more favorable to young.

Implicit Association Test

Results show our bias is different from explicit perception and our implicit cognition.

We favor our own social group or socially valued groups in society.

Implicit cognitions can predict behavior.

Implicit cognition can be changed.

Jury Instructions - Implicit Bias

The Supreme Judicial Court has issued Model Jury Instruction on Implicit Bias.

<https://www.mwi.org/wp-content/uploads/2023/11/sjc-model-jury-instructions.pdf>

They suggest 5 strategies to address implicit bias:

1. **Slow down.** do not rush to any decisions. Hasty decisions are the most likely to reflect stereotypes or hidden biases.
2. **Keep an open mind.**
3. **Listen closely.**

Jury Instructions - Implicit Bias

4. **View people as individuals.** As you listen consider them as individuals, rather than as members of a particular group.
5. **Ask myself:** Would I view the evidence differently if the people were from different groups, such as different racial, ethnic, or gender identity groups?

Use these tips as a JSC Judge!!

Strategies

- Conflict Skills
- Principled Negotiation
- Impasse
- Communication Skills

Conflict Resolution Skills



SKILLS

Positions and Interests

Positions are firm demands. When positions are incompatible they create conflict and impasse.

Interests are the reasons and needs behind the position. Interests can be satisfied while positions may not.

Orange example.

Distributive & Integrative Bargaining

Distributive - Parties see the goal of the negotiation process as determining how a fixed set of resources should be allocated. More for one party means that there must be less for the others, like slices of a pie.

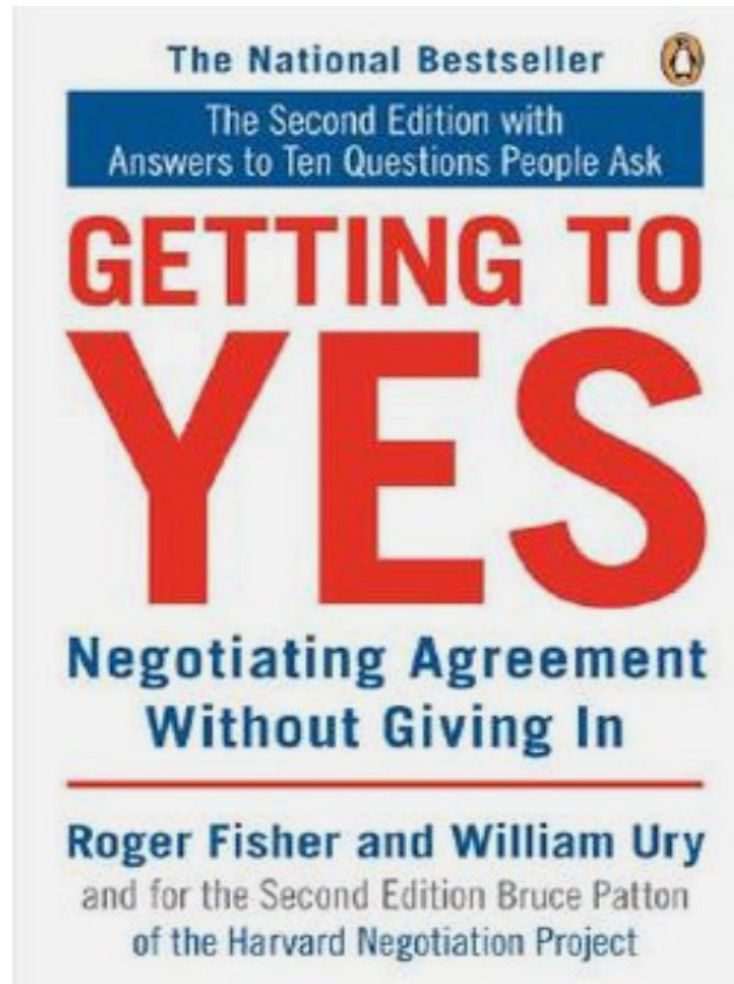
Integrative - Parties seek a solution that is a greater than the total of the initially perceived set of resources. Through discovery and introduction of alternative resources for exchange and beneficial trade-offs, parties arrives at a solution that minimizes, or maybe eliminates the need for, compromise.

Positional Haggling



VIDEO

Principled Negotiation



Principled Negotiation

- 1. Separate the people from the problem.** Deal with emotions and personality issues separately.
- 2. Focus on interests, not positions.** Look beyond hard-and-fast positions to identify underlying interests, like their basic needs, wants, and motivations.

Principled Negotiation

3. Invent options for mutual gain. Use time to brainstorming a wide range of possible options before choosing the best one.

4. Use objective criteria. Use objective criteria (a fair, independent standard) to resolve differences. For example, market value, industry protocol, or law.

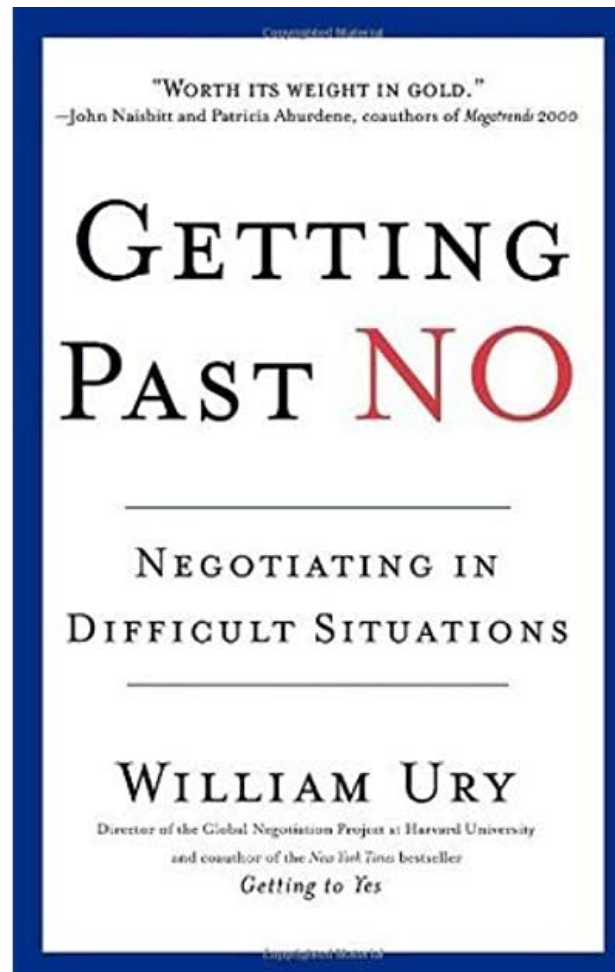
BATNA

Best Alternative To Negotiated Agreement

BATT - Best Alternative To Trial.

Are you ready for trial?

How to Deal with No



SKILLS

Impasse

When no progress is possible and the parties are deadlocked.

- Be patient.
- Impasse may be transitory or contextual.
- False Impasse. Not a genuine impasse just a delayed breakthrough

How to Address Impasse

Expand the pie. Invent options, brainstorm, move beyond distributive bargaining, use interactive bargaining, and use linkage to other issues.

Use objective standards. Auto Blue Book, comparable sales, and recent verdicts to assist parties.

Offer Certainty - Trade hope of winning at trial for the certainty of settlement.

Use Reality Testing. Ask what if you can't, do X??

Ask about costs - Ask about cost and time of continued conflict

How to Address Impasse

Modify the process - Use more public and/or private sessions to modify the conciliation process and change the flow of information or offers.

Speak Separately. Address the party directly, speak with the attorneys separately or encourage direct negotiation between parties.

Provide a closing session - Offer hope and provide space for reconsideration or further discussion before ending conciliation.

Communication Skills

How to encourage resolution through effective communications



Effective Communication

- Be Impartial
- Be Respectful
- Be Empathic
- Focus on non-verbal

Barriers to Effective Communication

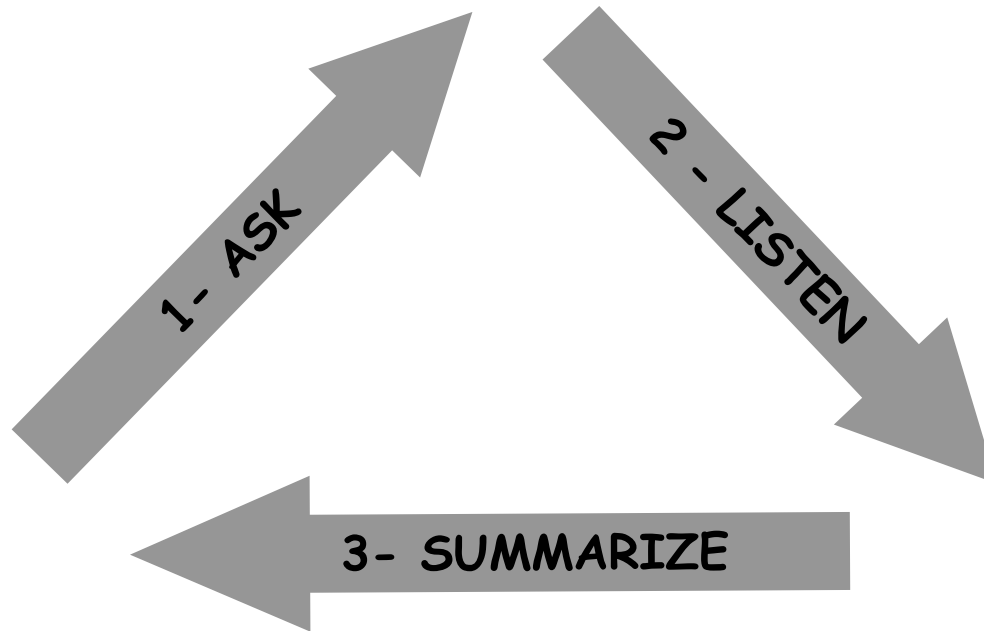
Making assumptions.

Passing judgment or moralizing.

Cross-examining or making people defensive.

Dominating or being patronizing or condescending.

Listening Triangle



Active Listening

- Give parties space to vent.
- Listen for meaning.
- Make eye contact and acknowledge listening.
- Don't interrupt.
- You do not have to agree to understand, **validate!**

Reframing

“The art of reframing is to maintain the conflict in all its richness but to help people look at it in a more open-minded and hopeful way.”

Bernard Mayer

Reframing/Rephrasing

- Helps the parties feel heard.
- Statements contain a "core truth" about the Parties' interests that you need to maintain while stripping away the negative (threats, posturing, insults, etc.)
- It's not as easy as it may seem.

Reframe these statements

- I do not trust her
- He cheats
- She drinks too much

Role-Play 2 – (80 mins)

Role-Play Groups

4 participants per group, 4 groups

1 coach per group

Switch role as a JSC judge every 17 mins

12 minutes for setup and debrief

Tort Case

<https://www.mwi.org/wp-content/uploads/2023/05/Tort-CaseTML.pdf>

Debrief Tort Case

- Questions

Duck in a Bottle video

Wrap Up

- Materials
 - www.mwi.org/tc-conciliation
- Program Evaluation
 - www.mwi.org/tc-conciliation-eval
- Certificates of Completion
 - Will be mailed next week.

Training Completed



WRAP UP

Thank you!

- Judges
- Judge Clifford
- Beth Cook
- MWI Training Team

