

**The Mediators Role in Preparing Parties for Mediation** *Continued*

from reaching a settlement. It can be empowering and helpful for parties to understand how personal issues may be affecting their ability to resolve their differences. Reaching a settlement sometimes requires compromises and parties may be less willing to make necessary compromises if personal issues are clouding their judgment. In these situations, the mediator may act as a sounding board and when necessary, refer the person to the appropriate professional resources.

Mediators play several roles: communication expert, negotiation coach, or knowledgeable community resource referrer. Our goal is to get the parties ready to participate constructively in mediation. By the time the parties arrive for the session, the mediator will ensure that each side will have the necessary supporting documents, an understanding of the dispute from the other side's perspective, and is prepared to be open minded and ready to engage in a productive conversation.

**The Mediator's Role in Preparing Settlement Documents**

While a verbal promise may be acceptable in certain situations, what happens when memories fade or circumstances change? Years later, the parties may disagree on what exactly was promised or how to apply the verbal agreement to changed circumstances. As a result, in most situations the agricultural mediation program encourages written settlement agreements.

Before drafting a settlement document, the mediator will first make sure that all parties fully understand and accept the terms of the settlement. If the mediator senses that a party is uncertain about entering into a settlement, the mediator may meet separately with that party to talk about any doubts or concerns they may have about the settlement and to make sure they only sign the document if they think its in their best interests after carefully thinking about it.

The mediator will also work with the parties to figure out how they would like to address reasonably possible changes in circumstances such as a temporary cash flow problem that may make it difficult to meet monthly installment payments. After all, a settlement where one or more of the parties ultimately cannot meet their responsibilities does not benefit anyone.

After checking in with the parties to ensure that they understand the settlement and how it would apply to their situation, the mediator will draft the settlement document. Before the draft document is sent to the parties, staff from the agricultural mediation program will review the agreement for clarity and enforceability. Then the agreement will be sent to the parties. Parties are encouraged to have their attorney or accountant or other trusted advisor review the agreement. Once the parties agree on the final document, it is sent to them for their signature. Each party to the mediation will get a signed copy of the agreement.

After the agreement is signed and all the parties have a copy of the agreement the mediation is done and the work of the mediator is over. However, should there be any issue that arises over implementing the agreement, the agricultural mediation program is available to help the parties work things out.



**Mediator as Problem Solver**

Mediation is often used as an alternate method of conflict resolution. Mediators are looked upon as crises responders swooping in at the last minute to disarm an explosive situation. In some cases this is true—news outlets often carry stories of union and management settlement mediations that go on through the night and resolution coming about at the eleventh hour just before a strike starts. However, the perception that one needs to be engaged in a hostile conflict or about to be embroiled in a lawsuit in order to make use of mediation is not accurate.



In our work, our mediators are problem solvers. They utilize their professional training and experience to guide the parties' search for a resolution. They bring the necessary parties together, ensure that they are well prepared to engage in a constructive dialogue, and then facilitate a discussion aimed at solving the problem.

In the agriculture mediation field, most often producers are not involved in an active "conflict"—they are trying to resolve the kinds of problems that everyone else deals with: paying the loans and bills on time, fixing equipment that has broken down, dealing with regulations, and making ends meet. The difference is that producers sometimes have to accomplish a lot with very little resources at their disposal. There are only so many hours in the day, only so much money coming in the door and when something goes wrong on a farm, the snowball effect can lead to several problems cropping up at once. There may be no actual ongoing conflict but instead the usual problems that have escalated to a larger issue that needs to be resolved.

Being an effective problem solver involves taking the time to understand the big picture, listening to the parties, ensuring that the parties have the information they need, providing organization and structure, and being creative in working through options that could lead to a resolution. Our mediators all have many years of experience working with producers and some have farmed themselves. Understanding some of the common challenges within the agricultural community helps our mediators ask the right questions so that we can understand the producer's circumstances and help the parties solve the problem.



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**Director's Greeting**

NHAMP regularly hears from producers experiencing financial problems who are unsure whether to contact us to request mediation assistance. Often, producers ask questions about what mediators actually do and how the mediation program will be able to help them.

As a result, this issue is largely focused on describing the nuts and bolts about mediation and how it may be useful to members of the agricultural community. Pages 2 and 3 focus on deconstructing the mediation process and provide details about what the mediator does at each stage. Related articles describe how the mediator optimizes the chances to reach a settlement by preparing parties for mediation and the mediator's role in drafting settlement documents.

In addition to explaining what mediators do, we also recognize the need to more accurately label the work that we do and how it fits in with the needs of the agricultural community. Mediators typically refer to working on "disputes." By referring to our work as resolving disputes, some people end up thinking mediation is only appropriate in a situation that is headed for a lawsuit. Sometimes producers may be hesitant to request mediation because they do not think they are in a "dispute."

Perhaps it is more accurate to say that mediators work on problems rather than disputes. For example, a producer may recognize that falling behind on their loan payments is a problem, but they may not call it a dispute. It may start out as a little problem, but without

a way to address the problem, it will grow to be a bigger issue. Our mediators strive to understand these problems and work with producers and creditors to find solutions that will work for both parties. For more information please read the article Mediators as Problem Solvers. Regardless whether the parties are in a dispute that may be heading for litigation or a problem that needs solving, please do not hesitate to give NHAMP a call.

The new masthead for When Conflict Happens is based on a figurative metaphor for the work of a mediator. In typical agricultural disputes, NHAMP staff and roster mediators worked with the parties to piece together a puzzle until we found a solution that was acceptable by all parties.

In the beginning of a mediation, each party usually talks about the dispute from their perspective. At that stage of the puzzle solving process, there is a jumble of irregular jagged pieces on the table. Reaching resolution may feel elusive or even impossible because each party is sticking to their position and each wants something different. But as the mediator helps the parties focus on the interests that underlie the positions, a few pieces from the jumble may start to fit together. As the mediator helps the parties generate and evaluate settlement options, more and more pieces begin to fit together until what started as



a chaotic pile of individual pieces has been transformed into a complete picture or a resolution of the dispute.

*Matt Shum*



Image from Carosaurus

**Tropical Storm Irene and Agricultural Mediation**

Tropical Storm Irene devastated farmlands of Vermont and New Hampshire in several counties. The damage was so widespread that it took weeks for state officials to place accurate numbers on how many acres were flooded and assess the impact on livestock and crops.

Federal and state governments, non-profit organizations, as well as a variety of agricultural lenders and businesses have offered grants and low interest loans to assist farmers in ongoing recovery. The quick response enabled many farmers to address the immediate needs to repair damage to buildings and infrastructure, alleviate watershed problems, replace feed and make up for lost crops.

The agricultural mediation program has been receiving calls from farmers who applied for, and in many cases, received aid. However, now they are discovering the help they received is simply not enough. If you are experiencing difficulties concerning loans or other credit issues, insurance claims, compliance or qualification for USDA programs, or other issues, please contact us.

NHAMP is the official USDA certified mediation program in New Hampshire. NHAMP provides free mediation services to farmers and other members of the agricultural community in New Hampshire. NHAMP is a program of the non-profit Environmental Mediation Center.

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# Deconstructing the Mediation Process

Although most people think they know something about mediation, it remains a mysterious process to some.

Often, people talk about mediation, arbitration, and negotiation almost interchangeably. Sometimes, others may confuse mediation and meditation.

At a farm show a few years ago, someone read our sign for agricultural mediation as agricultural medication and wanted to buy some medicinal products from us for their herd. While there are critical differences between mediation and arbitration or negotiation, mediation has nothing to do with medication.

This article aims to demystify the process by defining mediation and deconstructing what goes on at each stage from the initial contact with us, to preparation for the mediation session, and up through the mediation session.

Mediation is the use of an impartial person (the mediator) who facilitates the conversation and helps the parties try and resolve their differences. Unlike a judge, the mediator cannot impose a settlement on the parties. The parties decide in the end whether a settlement is acceptable to them or not.

On the other hand, in a negotiation the parties meet without an impartial person and each side attempts to extract as much advantage as they can from the other side. In arbitration, which can be binding, meaning that the parties must follow the arbitrator's decision, the arbitrator sits as a "private judge" and after holding an informal hearing, makes a ruling on who is right and who is wrong.

### Mediation Intake Process

The process begins when a party contacts the agricultural mediation program. During the initial conversation, we explain the process, answer any questions parties may have and suggest that they watch our video about mediation on our website.

We also ask about the nature of the problem and gather information about the other parties involved in the dispute. Often, after the parties have tried talking to each other informally without resolving the issue, one party suggests they try mediation. If the other party has not yet agreed to mediation, we will talk about how to approach them and provide information about mediation.

### Preparation for the Mediation Session

Once all parties have agreed to participate in mediation, the mediator will arrange to speak with each party individually to learn more about the dispute. These in-depth conversations are confidential and enable the mediator to fully understand the nature of the dispute from each side's perspective. The mediator will also make sure that the parties have the relevant documents that are necessary for a constructive dialogue at the mediation. For more information about the work mediators do leading up to the mediation session, read the adjacent article "The Mediator's Role in Preparing the Parties For Mediation."

In addition to preparing the parties for the mediation, the mediator will also ensure that there is a convenient and "safe space" for the session. That means all parties need to be physically comfortable in the room and emotionally comfortable to express their

point of view. Often, we are able to meet in a party's home, at a local USDA office, or at some other meeting spot suggested by the parties.

### Participating in the Mediation Session

At the mediation session, the mediator will have the parties sign our Agreement to Mediate form. Whether you are sitting in a conference room, in an office, or around a kitchen table, the mediation process is informal and is designed to create a constructive dialogue.

The mediator will get things rolling by welcoming the parties and explaining the ground rules. Next, the mediator will ask each party to briefly describe the dispute from their perspective and more importantly, how they would like to move forward. At this point, the parties are all together in a "joint session."

Following the opening remarks, the mediator will facilitate a discussion to help parties clarify the issues, discuss the available information, and determine whether additional information is necessary.



### Deconstructing the Mediation Process *Continued*

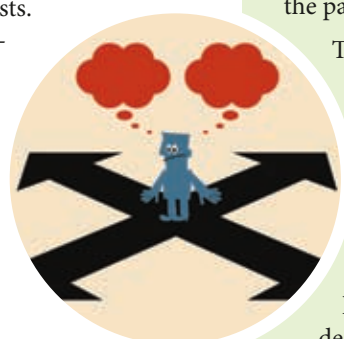
Sometimes the joint session is followed by individual meetings between the mediator and each party. This allows each party to ask any questions and talk privately with the mediator about their goals for the mediation in confidence. Then the parties may reconvene with the mediator in a joint session.

During both joint sessions and individual meetings, the mediator will work with the parties to focus on their "interests" and not their "positions." A position is a specific action that a person wants to happen. For example, a producer may have a loan on a piece of equipment that he now thinks is defective. His position may be that he wants to exchange it for a brand new model that is more reliable. His interest is why he wants that specific action to happen. In the above example, the producer's interest is that he needs the equipment to work because he can't continue to regularly stop work to repair it. There may be multiple ways to satisfy his interests, but there is only one way to satisfy his position.

The mediator will help the parties generate and then evaluate options to see which ones best satisfy all parties' interests. During this time, the mediator will work to keep the discussions constructive and on track. The mediator will also regularly check in with all parties to make sure they are comfortable with the process and have had an opportunity to express their feelings and ideas.

Depending on the nature of the dispute and the dynamics of the mediation session, the mediator may alternate between joint and individual sessions until the parties have resolved their differences, decided to reconvene for another session, or determined that further mediation would not be constructive. Should an agreement be reached, the mediator will carefully go over it with the parties, and if appropriate, draft it in writing for the parties to review.

In sum, mediation can help parties resolves issues because; 1) it brings the necessary parties together with the common goal of searching for a solution, 2) the mediator works with the parties beforehand and makes sure they are prepared to engage in a constructive dialogue, and 3) the mediator facilitates the discussion and coaches the parties to focus on their interests.



## The Mediators Role in Preparing Parties for Mediation



One reason mediation works is because the mediators take the time to prepare parties to constructively engage in mediation. In agricultural mediations, most often parties are not represented by an attorney and need some assistance before the session. The preparation begins with pre-session confidential interviews where the mediator learns about the nature of the dispute and the parties who are involved.

The importance of these in-depth confidential conversations cannot be under estimated, in fact, much of the "heavy lifting" of the mediation process takes place during this stage. During these conversations, the mediator will attempt to learn about not only the surface level reasons for the dispute but also deeper reasons underlying the dispute.

A critical early step is for the mediator to determine whether the parties agree on the facts that lead to the dispute. If the parties disagree on the facts, the mediator will begin to strategize on ways for the parties to come to a common understanding of the factual issues. Sometimes that can happen through hearing about the dispute from the other side's perspective. Other times, the mediator may suggest tools such as joint fact finding where all parties agree on a neutral expert to make a determination on a significant fact that is in dispute. For example, if the dispute is about the value of something, the mediator will see if the parties can agree to use a mutually trusted appraiser to value a property.

Other times the mediator may recognize that a party does not have all the informa-

tion necessary to constructively participate in mediation. The mediator might help that party prepare for the mediation by developing a list of the information or documentation that may be helpful and working with that party to figure out how to get the needed paperwork. Alternatively, the mediator may refer parties to meet with a financial counselor to prepare documents that would be helpful in the mediation such as a cash flow sheet, a statement of assets and liabilities, or other financial documents. The agricultural mediation program regularly refers producers to organizations such as Ag Extension, Farm Viability Enhancement Program, and the Small Business Development Center.

If the nature of the dispute is not a disagreement about the facts, there may be communication problems at the root of the dispute. Communication problems could be due to multiple reasons such as strong emotional feelings that drown out your message or parties hearing things through their own filter and not hearing the intended message. The mediator can take an emotionally punctuated communication and help you express it in a less inflammatory way. This maximizes the chances that your message will actually be heard by the other side rather than shut out due to the emotional expression.

The mediator will also work with the other party and coach them to ensure that they hear the communication with an open mind.

Other times there may be personal issues where a party is under tremendous stress or dealing with anger that may inhibit them

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