

# EXPLORING DIFFERENT ROLES DURING THE MEDIATION PROCESS

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Presented By: Rebekah Ratliff  
JAMS Mediator and Arbitrator  
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# Objectives:

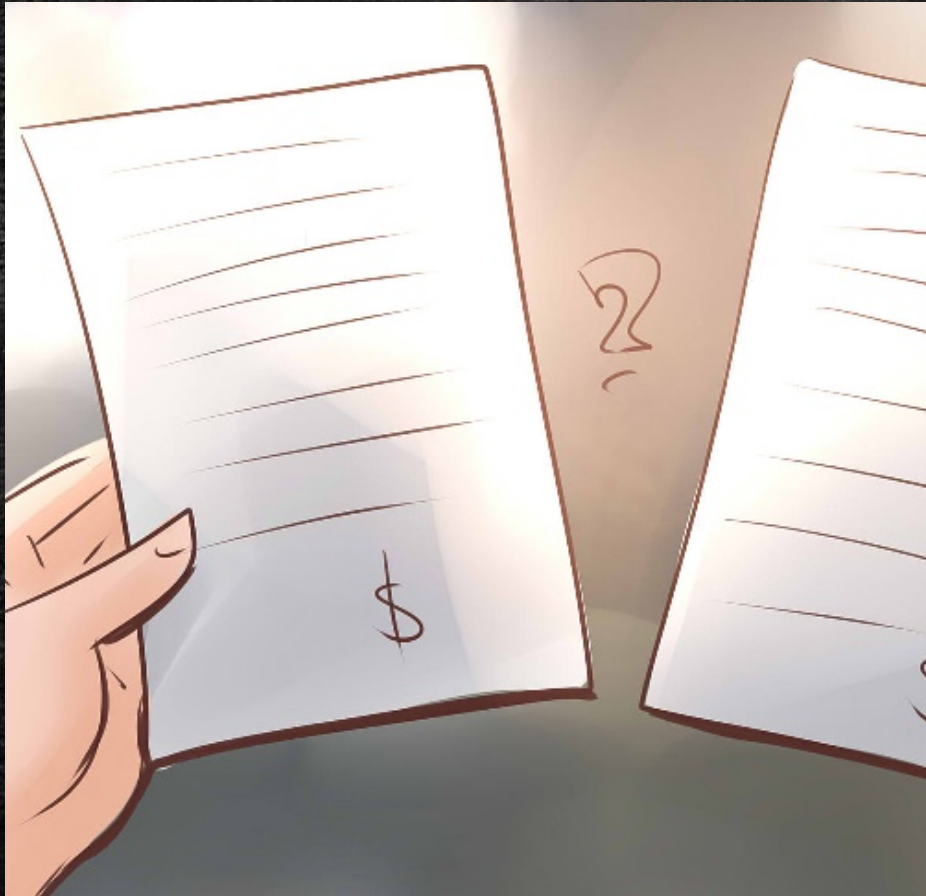
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- To explore the Psychology of negotiating
- To discover interaction and application of personality styles in negotiating
- Discuss Roles “staying in your lane”
- Tips and Reminders for successful facilitation





# NEGOTIATION



- Negotiation is non-adversarial communications and exchange of information to find mutually agreeable outcomes

GOAL: Navigate negotiables and non-negotiables... in whatever context



# ABCs of NEGOTIATING

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**A**GREEMENT

**B**ARGAINING

**C**OMPROMISE

## NEGOTIATION STAGES

- Analysis... Diagnosis
- Planning... Strategic decision-making
- Discussion... Communication/Exchange of information (the “dance”)/Understanding interests



# THEMES

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## PEOPLE

- COMMUNICATION SKILLS
  - RELATIONSHIP LAYERS
- LISTENING SKILLS/  
DETERMINING INTERESTS

## PROBLEM

- CULTURAL  
COMPETENCY
- UNCONSCIOUS  
BIAS
- CONSCIOUS  
BIAS

## PROCESS

- CONCESSIONS
  - SMALL >>LARGER
- COMPROMISE and  
RESOLUTION

## The Method of Negotiating (Bargaining for Advantage)

1. People... Separate people from the problem/issues
2. Interests... Focus on interests, not positions
3. Options... Consider multiple options to find mutual gains
4. Criteria... Insist the result be based on some objective standard



# PSYCHOLOGY IN NEGOTIATING (Bargaining for Advantage)

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## TACTICS...

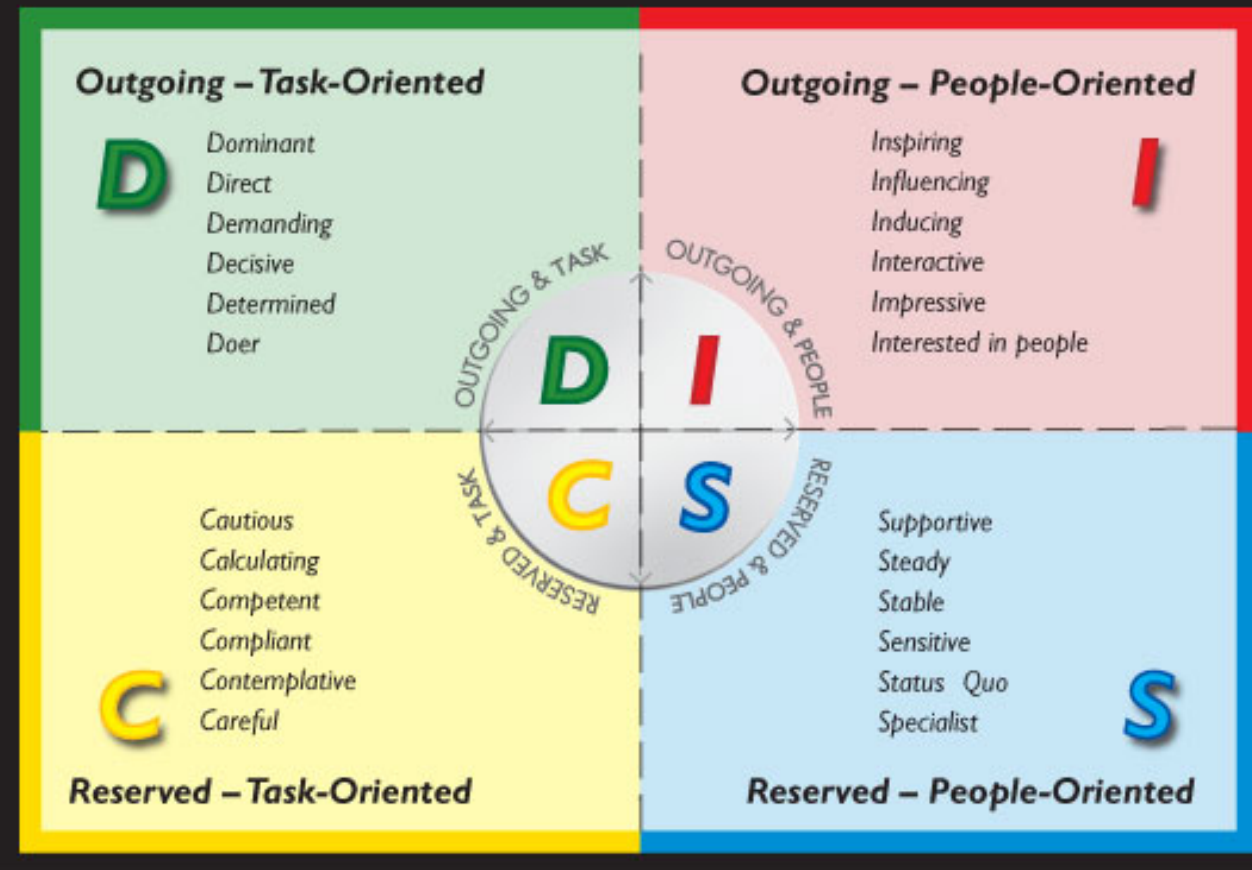
- GOOD COP/BAD COP (bluffing)
- THREATS (skilled negotiators don't threaten)
- PRESSURE (limited time opportunity)
- DELAY
- SCARCITY (limited supply/time deadlines)
- TAKE IT OR LEAVE IT (walk out)



**PEOPLE**



# WHO DO YOU THINK YOU ARE?

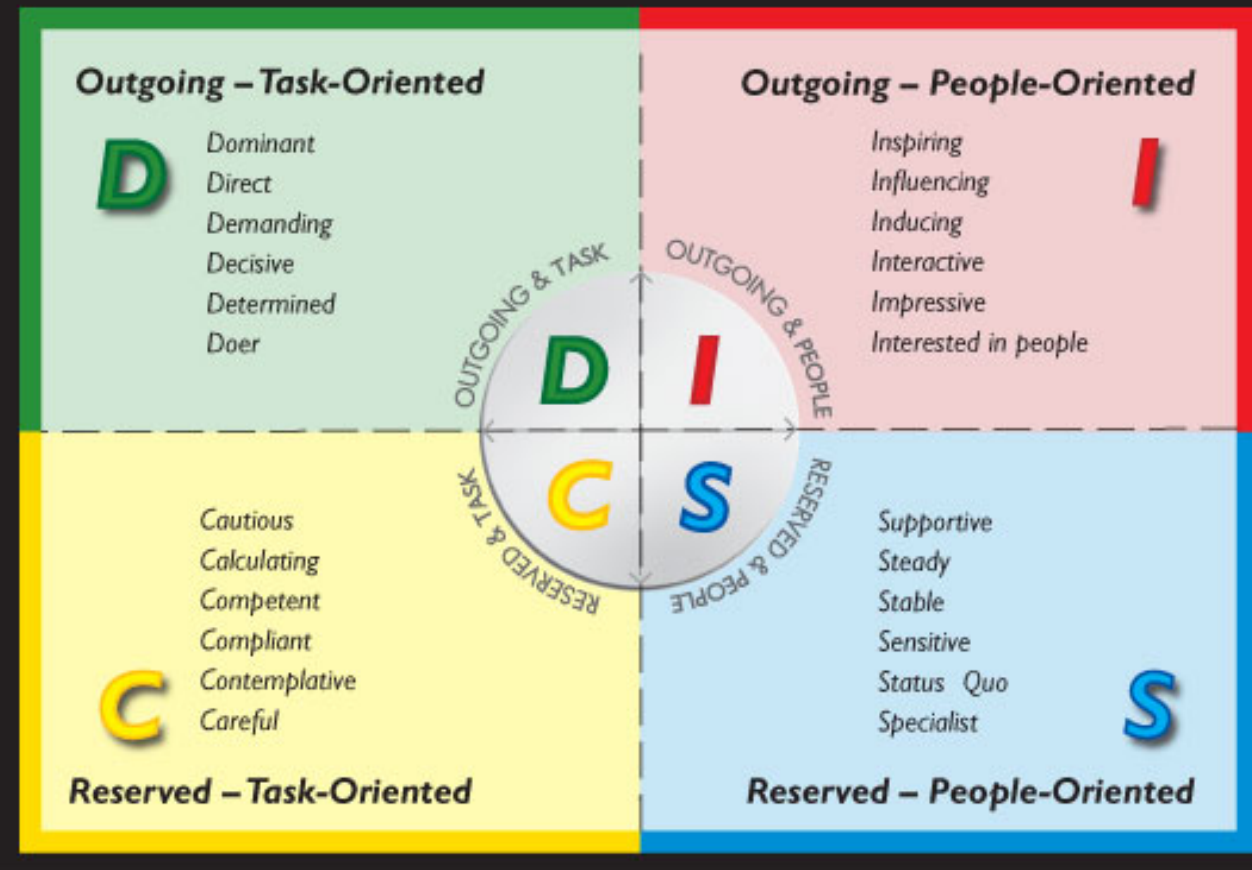






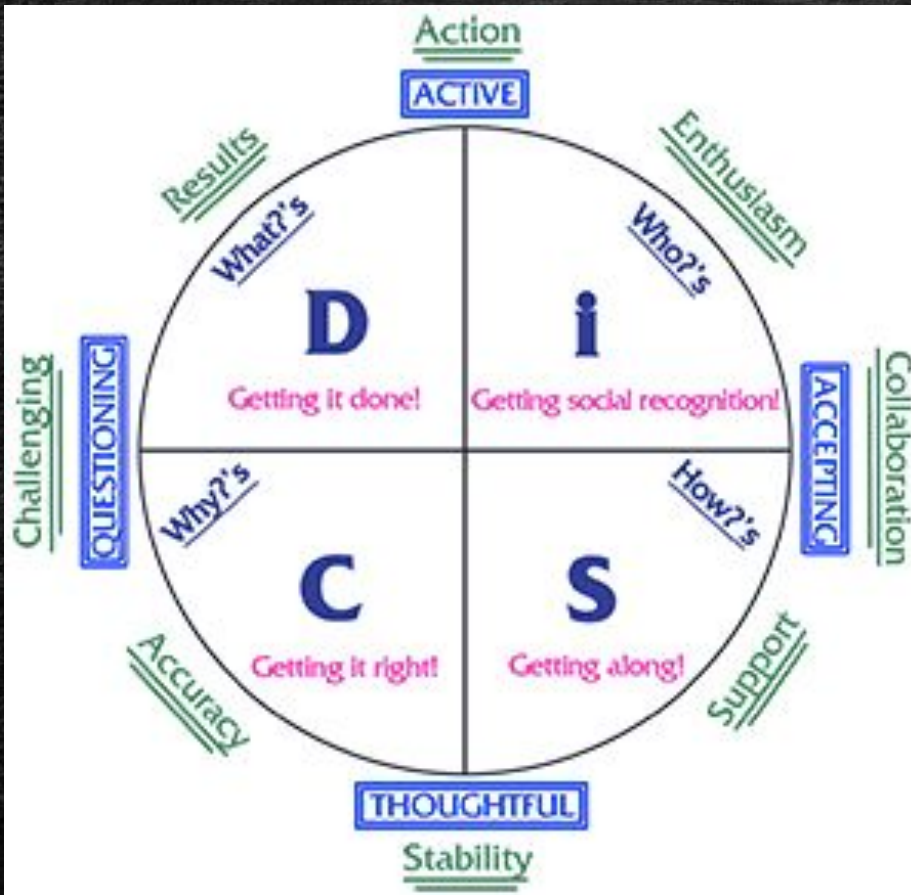


# WHO ARE YOU?





# WHAT DO YOU WANT?



- D is concerned with the “WHAT” and motivated by RESULTS
- I is concerned with the “WHO” and motivated by ENTHUSIASM
- S is concerned with the “HOW” and motivated by SUPPORT
- C is concerned with the “WHY” and motivated by ACCURACY



# THE ART OF NEGOTIATING..

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Getting the parties to agree ..on anything

- Finding points in common
- Working through perspectives
- Acknowledging interests
- Compromising

Getting the parties to agree ..on money (remedy in civil cases)

- Merging interests and information to find an agreeable settlement amount





# THE ART OF AGREEMENT

Personality Styles influence how you negotiate with different people in different circumstances and inclinations change over time as your knowledge increases. (Gender, Culture, Power Relationships)

Getting the parties to agree ...on money

Merging interests and information to find an agreeable settlement amount

Getting the parties to agree ...on anything

Finding points in common

Working through perspectives

Not all settlements are based solely on money



# PATHS to RESOLUTION

## Negotiation

Non-adversarial communications and exchange of information

## Mediation (or Arbitration/Adjudication)

Collaborative opportunity (saving time, money and stress)

## Trial

Adversarial... Evidence, Experts and Witnesses ...strangers decide your case





**PROBLEM**



## ...WHAT'S FAIR?

Fairness standards vary based on individual personality styles, beliefs, personal and professional experiences and other factors.

- Understanding cultures (verbal, non-verbal)
- Managing Biases
- Other Influences



# THE APPROACH

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- WHAT YOU CAN DO
- WHAT THEY MAY DO
- WHAT A 3<sup>rd</sup> PARTY CAN DO





## 6 Foundations for Negotiating (Bargaining for Advantage)

- Bargaining Styles
  - Avoidance
  - Compromise
  - Accommodation
  - Competition
  - Collaboration
- Your Goals and Expectations
- Authoritative Standards and Norms
- Relationships
- The Other Parties' Interests
- Leverage



# LEVERAGE (Bargaining for Advantage)

Leverage is a dynamic, time-sensitive factor based on perceptions, not fact.

## Checklist:

- Which side thinks they have the most *or least* to lose from no deal?
- For whom is TIME a factor?
- Can I gain control over something the other party needs?



**PROCESS**

## Negotiator's Toolbox... (Bargaining for Advantage)

- Influence
  - Verbal and Non-verbal attention
- Persuasion
  - Connection (verbal)
- Negotiation
  - Compromising (Insight into others' needs)



# KNOW YOUR ROLE

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## MEDIATOR

- FACILITATOR
- SUBJECT MATTER EXPERT
- REVIEW THE FACTS AND INFO
- KNOW WHAT QUESTIONS TO ASK
- KNOW THE PLAYERS
- DISCERN THE INTERESTS OF THE PARTIES
- REALITY TEST
  - REVIEW THE FACTS AND EVIDENCE
  - KNOW WHAT QUESTIONS TO ASK
  - DISCERN THE PARTIES' INTERESTS
  - LOOK FOR POINTS IN COMMON



# GUIDE, DON'T DECIDE

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- PRE-HEARING PREP
- LISTEN TO LEARN
- DOUBLE CHECK FOR ACCURACY



# TRUST IS A MUST

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- BUILD THE RELATIONSHIP(s)
- BE HONEST, BE PATIENT
- STAY IN YOUR LANE
- DON'T RUSH THE PROCESS



# NUDGE, DON'T JUDGE

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- CONFIDENTIALITY
- SELF-DETERMINATION



## DISCERN and ADJOURN

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- SETTLEMENT MEMORANDUM (if it settles)
- vs. IMPASSE
- FOLLOW-UP TO RESOLVE



# SOURCES

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**DiSC Personality Assessment**

**Personality Styles (Robert Rohm)**

**Getting To Yes by Roger Fisher and William Ury**

**Bargaining for Advantage by G. Richard Shell**



**THANK YOU!**



Rebekah Ratliff  
JAMS Mediator/Arbitrator  
Email: [rratliff@jamsadr.com](mailto:rratliff@jamsadr.com)





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