



## Words of Wisdom for Success in Mediation

By Amy Lieberman

**M**ediation success takes more than just knowing how to argue the reasonableness or righteousness of your position, or strategizing on starting numbers, the bottom line, and the number of moves in between. To increase your chances of success in mediation, plan for the strategic use of essential words and phrases that have proven time and again to be immensely valuable in achieving resolution of conflict – regardless of the type of case. Positive communication is critical to success.

### “Thank you.”

These words, used at the outset of mediation, are positive in nature and open the door for improved communication. “Thank you for coming today and for being willing to participate in this process. We appreciate the fact that you are here, and that you have taken the day to see if we can resolve this dispute.” These words often generate a reciprocal “thank you,” or at least, “you are welcome.”

An expression of appreciation of the other person’s time and willingness to mediate begins the process of open and reciprocal communication.

### “We are here in good faith.”

Many people are reluctant to participate in mediation, due to their belief that the other party will not participate by coming to the table with an open mind, prepared to listen, to think creatively about options for resolution, and to put out legitimate offers.

This phrase offers critical reassurance that the time spent will not be wasted.

### “I hear you.”

The first and most fundamental need that any party to a conflict has is to be *heard*. This phrase meets that need. Note that this phrase does *not* say, “I agree with you.” It merely tells the opposing party that their position or their feelings have been received and will be analyzed and considered.

### “I understand where you’re coming from.”

Second in the trilogy of needs in conflict resolution is the need to be *understood*. Until a party believes that, even if their adversary does not agree, they at least *understand* the basis for their position, a tremendous amount of volatile energy and emotion is often expended in working to achieve that goal. This can be received as hostility. The good news is that this hostility can be reduced, simply by communicating your understanding of why the other party is taking a particular position or seeking a certain outcome.

Expressing understanding of the *why* – the underlying reason for a party’s demand or response - meets the need we all have for validation of the legitimacy of our motivations.

### “I own that.”

Third in the trilogy of fundamental needs in conflict resolution is acknowledgement of error or harm. We might think, “Yeah, I messed up,” but we rarely speak it. Yet, acknowledgement of error, or of responsibility for an action that had a negative impact on a party, is a valuable communication tool that is effective in mediation.

Parties in conflict have a strong desire for their adversary to own up to a mistake, or at least to acknowledge the impact of actions or missteps. Until that need is met, we tend to push, fight and resist. As a result, a response that contains recognition of error or negative impact is useful to the progress of mediation. It tends to take the wind out of an opponent’s sails, and allows parties to move on, to the next step – analyzing new information and working toward resolution.

### “That’s news to me. I didn’t know that.”

This phrase indicates possibility of resolution where it was not possible before. Wherever there is new information, the parties become more educated and a rational basis can exist for a solution that was not an option before mediation, when the opposing party formulated their initial demand, or response to their opponent’s demand.

### “I’m sorry.”

Despite assurances of confidentiality in mediation, often lawyers do not want their clients to apologize for any conduct, for fear of such expression being misinterpreted as an admission of guilt. Yet, even a soft apology (“I am sorry that we have reached such a point of contention that we are in court. We know that this has been stressful for everyone involved, and we look forward to a successful resolution today,”) can serve as a bridge, and helps to establish a different way of communicating.

Even better, a true, heartfelt expression of apology by a client can heal many wounds and go a long way toward reducing the ultimate amount of money that might be needed to settle a claim.

### “I can live with that.”

This phrase signifies resolution. While a client may not be happy with the eventual best that the other side has to offer, if the offer meets the baseline trilogy of needs and provides peace, settlement can be reached.

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