General Questions

Who, What, Why, Where, When

Who has been impacted the most by this?
Who could support you with the issue you describe?

When did this first occur?
When did the other events take place?
When did you first know there was tension?
When you did that, what did you hope would happen?

Where were you when you heard that?
Where does this mostly happen?
Where could each of you start to make a change?

Which of those incidents impacted on you the most?
With which part of this do you have the most difficulty?

What would be your solution?
What needs to happen for you to achieve that?
What do you want to achieve?
What do you think would make a realistic solution?
What would an agreement look like?
What are the things that didn't help the situation?
What influenced you to come to that conclusion?
What could each of you have done differently so that the outcome could have been different?
I would like to ask you both a question. Firstly x then x - In what way might the thinking of both of you be blocking a resolution?
What was it that concerned you the most?
On reflection what other decisions or actions could you have taken?
What have you not discussed that you might still need to talk about with each other?
What would you like to offer each other?
What are your options? What would each of your options give you?/not give you?

How would you have liked it to be different?
How could you describe this experience to someone who found it hard to understand?
How did you come to that conclusion?
How are we going to keep the lines of communication open?

Is there anything the other party could do or say that would enable you to settle today?
Have you heard anything today that has surprised you or is new information?
Making the payment that you think is reasonable is one option for a way of proceeding
If we were getting somewhere, where would that be? What would happen next?"
Have you an example of when you felt you weren't told the truth?

In Private Sessions

How do you think a Sheriff will look at this case.

What is your realistic bottom line?

What do you think the other party wants?

What could you say that would help the other party settle where you want to?

What will you do if it doesn't settle?

Managing the Process

XXX, you have interrupted XXX many times, even when I have asked you to stop.

You said you were keen to work things out so that your team can get back to normal, so you must let him have a chance to finish.

I understand you've been frustrated by the interactions to date, but accusations aren't going to help.

University of Strathclyde Mediation Clinic, incorporating material from various practitioner resources, including Jim Melamed's "How to overcome impasse"

Impasse

1. Take a break. Often, things have a way of looking different when you return.

2. Ask the Parties if they agree to set the issue aside temporarily and go on to something else - preferably an easier issue.

3. Ask the Parties to explain their perspectives on why they appear to be at an impasse. Sometimes, the Parties need to feel and focus consciously on their deadlock.

4. Ask the Parties, "what would you like to do next?" and pause expectantly. Or, say "frankly, it looks like we're really stuck on this issue. What do you think we should do?" These questions help the Parties actively share the burden of the impasse.

5. Ask each Party to describe his/her fears (but don't appear condescending and don't make them defensive).

6. Try a global summary of both Parties' sides and what they've said so far, "telescoping" the case so that the Parties can see the part they're stuck on in overall context. Sometimes, the impasse issue will then seem less important.

7. Restate all the areas they have agreed to so far, praise them for their work and accomplishments, and validate that they've come a long way. Then, ask something like: "do you want to let all that get away from you?"

8. Ask the Parties to focus on the ideal future; for example, ask each: "where would you like to be [concerning the matter in impasse] a year from now?" Follow the answers with questions about how they might get there.

9. Suggest a trial period or plan; e.g., "sometimes, folks will agree to try an approach for six months and then meet again to discuss how it's working."

10. Help the Parties define what they need by developing criteria for an acceptable outcome. Say: "before we focus on the outcome itself, would you like to try to define the qualities that any good outcome should have? "

11. Be a catalyst. Offer a "what if" that is only marginally realistic or even a little wild, just to see if the Parties' reactions gets them unstuck.

12. Offer a model. Say: "sometimes, we see Parties to this kind of dispute agree to something like the following . . . ."

13. Try role-reversal. Say: "if you were [the other Party], why do you think your proposal wouldn't be workable?" or "if you were [the other Party], why would you accept your proposal?"

14. Another role-reversal technique is to ask each Party to briefly assume the other's role and then react to the impasse issue. You also can ask each Party to be a "devil's advocate" and argue against their own position.

15. Ask the Parties if they would like to try an exercise to ensure they understand each other's position before mediation ends. Ask Party A to state his/her position and why, ask Party B to

repeat what B heard, and then ask A if B's repetition is accurate. Repeat for B. Listen and look for opportunities to clarify.

16. Ask: "what would you be willing to offer if [the other Party] agreed to accept your proposal?"

17. Use reality-checking. For example, "what do you think will happen if this goes to court?" Draw out the emotional, financial, and other costs of litigation and delay.

18. If all else fails, suggest (or threaten) ending the mediation. Parties who have invested in the mediation often won't want it to fail, and may suddenly come unstuck. This approach is useful where one Party may be hanging on because he/she enjoys the attention the process provides, or enjoys the other Party's discomfort.