

What Every Lawyer's Client Should Know About Mediation

What is Mediation?

Mediation is a voluntary and confidential way to resolve disputes without giving the decision-making power to someone else (like a judge). It involves sitting down with the other side in the dispute and a third-party who is neutral and impartial (the mediator). The mediator helps the parties identify the important issues in the dispute and decide how they can resolve it themselves. The mediator doesn't tell them what to do, or make a judgment about who's right and who's wrong. Control over the outcome of the case stays with the parties.

What Kinds Of Cases Are Right For Mediation?

Mediation is often successful in cases in which there is, or has been, a relationship of some kind between the parties. This may be a business relationship, a social relationship, or a family relationship. Thus, commercial disputes, contract disputes, neighborhood disputes, landlord-tenant disputes, employment disputes, and divorce, custody, and other family disputes all may benefit from mediation. In addition, complex litigation, personal injury cases, and even public policy disputes have all been handled through mediation successfully. Even in cases in which there is a specific legal issue on which the parties want a judge's ruling, other issues in the case may be taken to mediation so that those issues can be resolved before the rest of the case goes to trial.

How Do I Pick A Mediator?

There is a list of mediators who are eligible to receive cases from the court system. Every clerk's office in every court in the state has a copy of the [Directory of Court Mediators](#), that gives some idea of each mediator's background and experience. The Directory can be used as a starting point to identify qualified mediators around the state. Parties and their lawyers may also know people who do this work, and may select anyone to act as a mediator, whether they are in the Directory or not. In selecting a mediator, consideration should be given to experience, style of mediation, availability and fees. If there is already a case in court and the parties to the dispute are not able to reach agreement on the mediator, they request that the judge pick a mediator out of the Directory.

What Fees Are Involved?

Fees for mediation services vary and should be discussed with potential mediators prior to selecting one to handle the case. Free or low-cost services are available in many areas.

If We Reach An Agreement, Is It Binding?

A mediated agreement is enforceable in the same manner as any other written contract.

Why Should I Mediate?

A lot of people feel a little overwhelmed by the complexity, cost, and time involved in taking a case through the legal system. They may end up believing that they have not gotten the result they wanted (even if they "win" in court). With mediation, there is an opportunity to use an expert in communication to help the parties resolve the dispute themselves. This approach often preserves both productive business relationships and important family relationships. Since the parties are the ones who know what gave rise to the dispute and what is really important to them, they are the ones who can do the best job of developing a workable solution. Mediation keeps the parties to the dispute in control of the outcome -- something that cannot happen if the case is decided by a judge.

What Does Suggesting Mediation Say About My Case?

Mediation is a process which provides an opportunity for each side to carefully review its own case, to see the dispute from the other party's perspective, and to understand how its own case may appear to the other side. When mediation is suggested, it indicates to the other party that the person suggesting mediation believes that once the other side hears its perspective, there will be more openness to possibilities to resolve the case. It also indicates that the person suggesting mediation is reasonable and willing to explore resolution in a forum which provides the parties to the dispute an opportunity to take control of the decision.

What Will My Lawyer Do?

Lawyers know a lot about the legal process and know that for some cases mediation is a good alternative to taking a case to trial. A lawyer can also help his client

understand what might happen if the case went to court, which would be very helpful in determining whether it would be a good idea to attempt to resolve the case through mediation. Lawyers may prepare their clients to mediate alone or may accompany their clients to the mediation sessions. Lawyers provide advice on the legal aspects of a case, and should be consulted before any agreement is signed in mediation.

For more information, contact:
The Office of the Executive Secretary
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804-786-6455

This page last modified: January 16, 2004