



**Community
Legal
Resources**

Connecting Lawyers and Communities

Legal Lines

Legal Issues for Nonprofits

Mediation: A Viable Option for Dispute Resolution

I. WHAT IS MEDIATION?

Mediation is a process in which parties in dispute meet with a trained neutral person — the mediator—to work out a mutually beneficial resolution to their disagreement. Mediation is informal, safe, and confidential. The mediator clarifies issues and helps the parties communicate, ensuring that each party has a chance to be heard and contribute ideas for resolution. The parties themselves create and voluntarily agree to a final settlement.

II. TYPES OF MATTERS WHICH ARE APPROPRIATE FOR MEDIATION

While mediation is most common in contract disputes, it can be used effectively in many different types of matters. Disputes involving family, neighborhood, employment, business, housing or consumer matters are some of the most common. However, there are certain characteristics that make some matters more appropriate for mediation than others. Mediation is often most effective when parties have an ongoing relationship of some kind, so that it makes sense to negotiate a settlement for the sake of future dealings. Mediation works very well for people who are going to continue dealing with each other as in business, in a family or co-parenting situation, or in some other ongoing relationship.

III. WHAT TO EXPECT IN MEDIATION

The mediation process begins as soon as all parties agree to mediate the dispute. The initial decision may be made by both parties, or one party may contact a mediation service and ask them to approach the second party about mediation. Once both parties agree to mediation, a mediator is selected. In some cases, more than one mediator will work together on the case. The mediator will facilitate meetings and mediation activities. A mediation session will be scheduled at a mutually convenient time. Before this meeting, the mediator may request the parties to provide background information and/or relevant documents.

To begin a mediation session, the mediator and parties will typically agree on some ground rules to govern the discussion. The parties will individually have a chance to tell their story, uninterrupted while all others listen. The mediator will then work with the parties to identify the exact issues in dispute and encourage the parties to share options for resolving them. The entire process may take place with all parties in the same room, or the mediation may include both “joint sessions” and “separate sessions,” where the mediator spends time speaking with each party

individually. The mediator will not impose a solution. The parties develop resolution options and the ultimate agreement.

Participation in mediation does not affect an organization's right to sue in court. Alternate legal options remain available until the parties execute a resolution agreement. All events and information regarding the mediation are confidential.

IV. HOW MEDIATION IS DIFFERENT FROM ARBITRATION?

Many people often confuse mediation with arbitration. Both methods of dispute resolution are alternatives to the court system. But there are some important differences. Three of the most important differences are the way a matter goes to mediation, the way a decision is reached and the effect that the decision has on the parties.

The decision to mediate is usually made by the parties after a dispute arises. Even if the mediation is ordered by a court, the parties are under no obligation to reach an agreement through mediation. An agreement to arbitrate, however, is often made by the parties at the beginning of their relationship. It may be set forth as a requirement in a contract between the parties. Once arbitration is set forth as a requirement, the parties are usually required to reach some form of agreement through the process.

In arbitration, a third party – the arbitrator – evaluates all of the facts and makes a decision on the matter. The arbitrator looks at all of the documents, etc. and asks questions of the parties. In some cases, attorneys may be involved. This is different from mediation, where the mediator helps the parties come to their own agreement and attorneys are less likely to be involved.

Both arbitration and mediation may be either binding or non-binding, depending on the agreement of the parties. If arbitration is “binding,” neither party has a right to go to court for a reconsideration of the same issues decided by the arbitrator. If the parties reach an agreement through mediation, it is a contract which may be enforced in court like any other contract. If the mediated agreement says that both sides agree not to pursue court action, they may be barred from doing so. However, mediation does not require that an agreement be reached.

V. BENEFITS OF MEDIATION

- **Flexibility:** Any issue the parties bring to the table, whether legal or nonlegal, can be discussed.
- **Creativity:** Resolution possibilities are not confined to traditional legal remedies, but are limited only to the suggestions and ideas of participating parties.
- **Low-cost:** Mediation can be less expensive than the cost of traditional court remedies.
- **Faster Resolutions:** Mediation will often result in an agreement more quickly than an over-utilized court system.
- **Participants Control Outcomes:** Because the parties involved are the ones who create an agreement that works for them, mediation resolutions are more likely to be kept than judge or arbitrator imposed solutions.

- **Preservation of Relationships:** Mediation can help establish a foundation and framework for future interaction between parties who have an on-going relationship because the process is not adversarial and resolutions benefit all parties.
- **Confidentiality:** Since discussion will not become part of the public record, parties can speak openly about their concerns.

VI. REQUIREMENTS FOR MEDIATION

All parties must agree to the mediation process. Fees for mediation services will vary. Parties typically split any fee equally, unless they agree otherwise during mediation.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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