

What is mediation?

Mediation is a voluntary process in which the parties to a dispute are aided in their face-to-face settlement negotiations by a trained, impartial, neutral third-party, the mediator. In mediation the parties control the outcome. Mediation enables the parties to communicate their perceptions, feelings and information directly to one another in a safe, controlled environment. This often reduces hostility and facilitates rational discussions. The outcomes of the mediation is not limited to the legal outcomes of litigation or arbitration, and are often extremely creative. Between 80% and 85% of disputes mediated are settled!

How long will the mediation take and how much will it cost?

Unfortunately, it is hard to predict with precision how long a mediation will take or how much mediation will cost. These issues depend primarily on the complexity of the issues in dispute and on how agreeable the participants are. Since the mediation fees are based upon an hourly charge, the cost of a comprehensive agreement will depend upon the time required to reach settlement. Once there is a better understanding of your particular situation, time and cost estimates can be provided.

Who pays for mediation?

Responsibility for mediation fees is an issue to be decided by the mediation participants. Participants are encouraged to consider sharing fees so that everyone benefits from expeditious and economic resolution.

What if we already agree on lots of issues?

Fantastic! The first thing that we want to do in mediation is to identify what you already agree on. We will use those points of agreement as a foundation for your overall Agreement. The standards that make sense to you on certain "easy" issues can often be applied to resolve other issues. We will want to be sure that your Agreement is well-informed and that you are aware of the many issues that you may want to consider. What is included in your Agreement is up to you. Our goal is to support your well-informed decision-making.

What are our chances for success?

The success rate for mediation is high, since it is a voluntary process and most participants are highly motivated to reach agreement. It is estimated that between 80% and 85% of mediating parties reach comprehensive resolution.

What If we don't reach agreement?

In mediation, all discussions and materials, with very few exceptions, are confidential. If no mediated Agreement is reached, evidence of the mediation discussions, mediation materials and any draft mediation resolution will not be admissible in court or any other adversarial proceeding.

What about individual attorneys?

It is common for legal counsel to be present during the mediation sessions. Although this can add to the cost of the mediation, it is desirable if it creates the level of confidence necessary to allow the parties to understand their legal rights and to comfortably negotiate and make settlement decisions.

When parties do not have legal counsel present at the mediation sessions we advise them to have any Mediated Settlement Agreement reviewed by their individual legal counsel prior to signing that Agreement. We also recommend that the parties obtain individual legal advice prior to the mediation session(s), to insure that they are aware of their legal rights. Throughout the mediation process the parties should obtain advice on legal issues, as required. This level of consultation will dramatically elevate your comfort and confidence in the final mediated agreement.

What about utilizing experts?

It may make sense, in a particular case, for mediation participants to retain mutually trusted experts. For example, participants may desire a valuation of real property, personal property, a business, or the like. It is also not uncommon for mediating parties to choose to jointly consult with an accountant or tax expert. In Family Law matters mediation participants with parenting concerns may find it beneficial to obtain the thoughts and recommendations of a trusted child psychologist or other mental health professional. Mediation participants may choose to jointly retain an impartial advisory attorney who, based upon an agreed-upon set of facts, may render an advisory, non-binding opinion on how a court might resolve certain Identified issues.

How do we initiate mediation?

If all parties have already agreed to mediate, simply call me to discuss preferred dates and locations. If you wish my assistance in obtaining the agreement of others to mediate, call or send us the name, address, and telephone number of the attorney or other representative of each party whose participation is necessary for a comprehensive resolution.

If a lawsuit has been filed, can we still request mediation?

Absolutely! Mediation is a voluntary process which can be initiated at any time, so long as the parties agree. Because of high probability of resolution through mediation, most judges will encourage use of mediation if asked.

If binding arbitration is written into a contract can we still use mediation?

Yes! Since mediation is a voluntary process, so long as you obtain the agreement of the parties who will be participating in the mediation, you may utilize the mediation process with any mutually acceptable mediator.

How do we prepare prior to mediation?

It is important to insure that all decision makers necessary for settlement of the dispute are present at the mediation sessions

When appropriate, information can be exchanged in advance of the mediation session to assist all parties in making realistic settlement decisions during the mediation. In those situations where legal counsel will be participating in the mediation sessions, submission of informal written summaries and/or briefs summarizing the facts, claims asserted, defenses, litigation history and settlement negotiations is encouraged.

What happens at the mediation?

Generally the mediation will begin with a joint session attended by all participants. Each party should be prepared to summarize his/her position during this session. You may utilize whatever presentation method you believe most effective, including charts, audio-visual, and oral presentations. Bear in mind that the goal is not to prove a case but to clarify your views for decision makers among the other parties while educating the mediator.

The joint session may be supplemented by private confidential caucuses, as appropriate, between the mediator and each party. In caucus, you can discuss information which may assist in working toward a resolution, but which you would prefer not to disclose in direct negotiations. The mediator will play devil's advocate to help all parties gain the most balanced possible evaluation of the matters. Finally, the caucuses provide an opportunity to assess realistic options for resolution, without endangering any party's negotiating posture.

Joint sessions combined with caucusing, as required, will generally continue as acceptable options are developed for the issues being considered. At completion of the mediation a Memorandum of Agreement will be prepared documenting all agreements made by the parties.

What else can we do to prepare?

Before coming to the mediation session, identify all of the issues that you desire to resolve at the mediation. Then, while trying to view the dispute from the other party's perspective, attempt to identify possible solutions which are acceptable to you and

which you believe will be acceptable to the other party. This will prepare you to participate in the creative problem solving process.

Be prepared to "listen" to what the other party has to say. Listen for the issues and facts as perceived by the other party. Don't react to the emotional issues going on between you, just deal with the issues. This will help you understand what motivates the other party, thereby providing insight into acceptable solutions.

Finally, determine how you will know when a proposed solution to an issue is "fair" to you. This will give you much needed confidence in making the critical decisions which will be necessary during the course of the mediation.