

# **Mediation Process**

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Mediation is much less formal than going to court, but the conflict resolution process does involve distinct stages designed to lead to a mutually beneficial compromise. Here's what to expect.

## **The Role of the Mediator**

Unlike a judge or an arbitrator, the mediator won't decide the case's outcome. The mediator's job is to help the disputants resolve the problem through a process that encourages each side to:

- air disputes
- identify the strengths and weaknesses of their case
- understand that accepting less than expected is the hallmark of a fair settlement, and
- agree on a satisfactory solution.

The primary goal is for all parties to find a solution they can live with and trust. Because the mediator has no authority to impose a decision, nothing will be decided unless both parties agree to it. The process focuses on solving problems economically- for instance, taking into account the cost of litigation rather than uncovering the truth or imposing legal rules.

That's not to say that the case's merits aren't factored into the analysis; they are. The mediator will assess the case and highlight the weaknesses of each side, the point being to hit home the risks of faring far worse in front of a judge or jury and that the penalty or award imposed will be out of the litigants' control.

## **Types of Problems Solved With Mediation**

When litigation has commenced, it's common for courts to require some form of informal dispute resolution, such as mediation or arbitration, and for a good reason—it works. But it isn't used solely in the court setting. Anyone can suggest solving a problem through mediation. Neighbor-to-neighbor disputes or other personal issues can be resolved quickly without initiating a lawsuit.

Examples of cases often resolved through mediation include the following:

- personal injury matters
- business disputes
- family law issues
- real estate matters, and
- breach of contract cases.

## **Mediation Length**

How long it will take to resolve a problem through mediation depends on the case's complexity. Somewhat straightforward matters will resolve in a half day. More complicated cases will require a full day of mediation, with the negotiations continuing after the mediation ends.

If the mediation doesn't settle, either side can file a lawsuit or continue pursuing the current case.

## **How Mediation Works**

Many people think mediation is an informal process in which a friendly mediator chats with the disputants until they suddenly drop their hostilities and work together for the common good. Although it can encompass these attributes, most mediations follow a somewhat formal process.

The multi-stage mediation process follows a tried-and-true formula designed to get results. Although less formal than a trial or arbitration, distinct mediation stages account for the system's high success rate.

The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

## **The Mediation Process**

The process has seven stages.

Stages 1-4 and 6-7 are usually conducted in joint session. Stages 1-4 focus on the past and present and stages 6-7 focus on the future. At all stages, the mediator will assist the parties to define their own interests and needs and understand those of the other parties.

Referral to mediation will usually take place following a conference.

## **1. PREPARATION AND MEDIATOR'S OPENING STATEMENT**

The opening statement includes a brief description of the role of the mediator and participants, the mediation process and any ground rules. After the disputants are

seated at a table, the mediator introduces everyone, explains the goals and rules of the mediation, and encourages each side to work cooperatively toward a settlement.

## **2. PARTIES' STATEMENTS AND MEDIATORS SUMMARIES**

Each party presents a statement of the dispute from his or her perspective. Each party is invited to describe the dispute and its consequences, financial and otherwise. The mediator might also entertain general ideas about resolution. While one person is speaking, the other is not allowed to interrupt. Parties' statements are noted and summarised back by the mediator, checking with the parties for accuracy. The advantages of this procedure include:

- assuring the parties that their concerns have been heard by the mediator and each other;
- providing opportunities to create a positive social atmosphere conducive to effective negotiation; and
- providing two opportunities for an appreciation of each party's perspective.

Emerging needs and options for resolution are acknowledged for use later in the mediation.

## **3. IDENTIFICATION AND LISTING OF ISSUES (AGENDA SETTING)**

The use of a whiteboard or equivalent may allow parties to refer to the topics or issues during the mediation. The listed issues form the basis for more effective negotiation and co-operative problem-solving. The topics are expressed in neutral and, whenever possible, mutual terms. Depending on the participants' receptivity, the mediator might encourage the parties to respond directly to the opening statements in an attempt to further define the issues.

## **4. JOINT EXPLORATORY DISCUSSION**

Parties are encouraged to focus on a topic for discussion or negotiation from the list of issues. The mediator encourages parties to communicate directly with each other. The parties' interests and needs are further clarified.

## **5. PRIVATE MEETING**

Parties are provided with the opportunity to express opinions and give information privately to the mediator if they feel more comfortable doing so than in joint sessions. The private meeting can also assist parties to prepare to negotiate, generate options and ensure that particular proposals are realistic. The private caucus allows each party to meet privately with the mediator. Each side will be placed in a separate room. The mediator will move between the two rooms to discuss the strengths and weaknesses of each position and exchange offers. The mediator will continue the process as needed

during the time allowed. It's in these private meetings that the hard work of mediation is done.

## **6. JOINT NEGOTIATION**

This provides the basis for joint problem solving, exploring the agreement and may be followed by further private meetings and joint sessions where necessary. After caucuses, the mediator might bring the parties back together to negotiate directly, but this is unusual. The mediator usually doesn't assemble the participants until a settlement is reached or the time allotted for the mediation ends.

## **7. FINAL SESSION**

In the final session, the parties meet together in the presence of the mediator to discuss issues and possible options for resolution. The mediator facilitates final negotiations and fine-tuning of the agreement. Alternatively, the mediation may need to be adjourned or terminated. After caucuses, the mediator might bring the parties back together to negotiate directly, but this is unusual. The mediator usually doesn't assemble the participants until a settlement is reached or the time allotted for the mediation ends.

Stages 1-4 usually take place in order. Other stages, with the exception of the concluding joint session are seen as optional depending on the circumstances.

If the matter has not resolved, the mediator will discuss with the parties the next steps to be taken, including the need to obtain any further material.