

## **How Is Mediation Different from Arbitration or Litigation?**

### **Mediation is Practical**

Mediation is one of many possible means to resolve conflict. Moving from least confrontational to most confrontational ways to resolve conflict, the various alternatives are: avoidance or denial of the conflict, negotiation, mediation, arbitration, litigation, self-help or physical violence. Mediation is the best choice of available alternatives because it effectively resolves the conflict without further escalation and avoids the time and expense of arbitration or litigation.

### **Mediator is Neutral Party**

If the problem is too important to be ignored, and the parties are unable (or unwilling) to solve it by themselves, then using a trained mediator is the first step to avoid the bitter consequences of unresolved conflict. Since mediation involves the services of a third party, there is a perception that mediators somehow have power to decide how disputes are resolved. Quite to the contrary, a mediator is truly a neutral party without any authority, except the power to persuade the parties to reach an agreement that is in all parties' best interests.

### **Mediation Works!**

Some people think that the lack of formal authority hinders a mediator's ability to be effective. In fact, it is not uncommon for attorneys and others familiar with our judicial system not to appreciate mediation because of the lack of authority of the mediator. According to this point of view, parties to a dispute are not capable of resolving the matter without intervention of a judge or arbitrator empowered to order a resolution. This discounts both the mediator's ability to assist parties reach resolution and the parties' personal power to overcome their differences. In fact, statistics show that mediation is overwhelmingly successful with upwards of 80% of cases resolving after mediation. The fact that mediation is absolutely voluntary and the parties must choose to cooperate without any guarantee of success is one of the major advantages of mediation.

### **Mediation Gives the Parties Control**

In mediation, the parties retain complete control over the outcome throughout the entire process. The ultimate outcome is solely determined by the parties and how they decide the issues should be resolved. Mediation has two primary benefits: (1) the people most knowledgeable and directly affected by the dispute make the final decision as opposed to a judge, jury or arbitrator who are not directly effected and only learn a small amount about the case, and (2) the parties are free to consider creative solutions that are beyond what is typically

available through a court proceeding. In contrast, parties who chose either arbitration or litigation lose all control and give over authority to other parties (i.e. arbitrator, judge or jury) who decide the case based on “evidence” presented by both sides. Since the rules of evidence govern what is admissible in a trial, there is always a risk that the decision-maker (i.e., judge or jury) may not have all the facts necessary to make a correct decision.

### **Mediation Allows for Collaboration**

Mediation offers the opportunity to collaborate with the other side to reach a “win-win” solution. In mediation, the parties are encouraged to shift their focus from bargaining from positions, each trying to change the other’s perspective which rarely happens, to jointly solving a problem that is affecting the parties in different ways. Because the parties are not bound by legal precedent or rules of evidence, they may craft solutions that take into account real world impacts on the parties. Often times, the solution not only resolves the dispute but creates new opportunities that would not have existed but for the collaborative process.

### **Mediation Preserves Relationships**

Mediation allows the parties to preserve their relationship by working together to develop a mutually agreeable solution. The parties’ mutual commitment to work towards resolution usually goes a long way toward repairing a previously broken relationship. The results are: (i) developing better, more satisfying agreements, (ii) creating greater commitment to an agreement, and (iii) strengthening the parties’ relationship.

In contrast, arbitration or litigation requires the parties to pursue a competitive or punitive (“winner takes all”) approach. To prevail in arbitration or litigation, the parties must destroy each other’s position. Predictably, after a long and costly battle, the parties are emotionally and financially spent. Because of the economic and emotional costs, even the so-called “winner” is rarely satisfied with the result and appeal by the “loser” is common. Rarely does litigation resolve the matter to the complete satisfaction of either party or result in future relations between the parties.

### **Mediation Preserves Self-Determination**

Mediation allows parties ability to control their own fate. This element of self-determination is one of the primary benefits of mediation. Although skeptics of mediation sometimes argue that only a settlement enforced by the court is durable, the exact opposite is true. Settlements reached in mediation are followed much more regularly than court enforced resolutions. The reason is that people who spend valuable time and energy to reach a resolution in mediation are personally invested in the process and, therefore, follow through with their settlements.

## **Mediation is Cost Effective**

Mediation allows disputes to be resolved more quickly than arbitration or litigation. Mediation is typically done informally and does not require a lot of preparation. A common question is whether it is ever too early to mediate a case. The answer is “no”. Disputes only become bigger and more costly as time passes. The parties who have lived with the dispute already know enough about it to make intelligent decisions about how to resolve it. If one case in a hundred would benefit from spending additional time and money to gather more facts, then the other ninety-nine cases would save a hundred times more by settling early and not spending the time, money and emotions in continuing to fight.

### **Summary: “Mediate Now!”**

Mediation is a fast, economical, satisfying and wise thing to do before trying to arbitrate or file a lawsuit. Mediation has been shown to be overwhelmingly successful with upwards of 80% of cases resolving after mediation. Mediation is a preferable way to resolve disputes because the parties remain in control instead of giving control to a judge, jury or arbitrator. Mediation preserves relationships by encouraging parties to work together to develop solutions to a problem rather than persuade another person of the correctness of their position. Mediation agreements are much more satisfying and durable because they are reached by the parties themselves.

For more information or to schedule mediation, please feel free to [Contact Us](#).