

FREQUENTLY ASKED QUESTIONS: WHAT TO EXPECT AT MEDIATION



For many people, mediation is a new experience. The following questions and answers should clarify what the process will be like, and what to expect.

Q: How does mediation work?

A: Mediation is held in a conference room. The mediator welcomes the parties and counsel, if any, conducts introductions, and spends perhaps 10 minutes or so talking about the process of mediation. The mediator will ask everyone to sign the Agreement to Mediate, which covers (1) Cooperation, (2) Confidentiality, and (3) Mediator's Role, and will answer any questions anyone has about the process.

Prior to the mediation, the parties may have submitted pre-mediation memos or other documentation to the mediator, with information that they wish the mediator to know ahead of time.

Q: Will I have the opportunity to speak?

A: While everyone is together, which is referred to as being in "joint session," the mediator will invite parties and/or counsel to share their perspective about what brought them there. The mediator will request that each person allow whoever it is that is speaking, to speak freely, without interruption. The mediator will follow up to see if there is any further information to share, or any questions that anyone wishes to ask, before everyone breaks into "separate session." At that point, typically the parties separate into different conference rooms.

Q: I'm not sure I want to speak. Do I have to? Can my lawyer do the talking for me?

A: The opportunity to share your perspective is just that: an opportunity. It is not a requirement. Every mediation is different, and the choice is up to you.

If the dispute is a legal matter that has been in litigation for some time, where depositions and other discovery have occurred, often there is no substantive joint session. On the other hand, if the dispute is at an early stage, and no detailed written information has been exchanged, the parties may not have had the chance to fully communicate with each other, or to be heard, and may appreciate this opportunity.

Although it can be uncomfortable, it is generally far better to hear where the other side is coming from in a respectful, confidential environment with a mediator, then in a courtroom in the heat of adversity, with only a limited ability to share information.

Q: What happens once we are in “separate session”?

A: You will meet with the mediator, share additional information that may not have been shared in a joint session, and begin the process of seeking resolution of your concerns and/or monetary position, with the help of the mediator.

Q: What is the mediator’s role?

A: The mediator functions in a neutral capacity, and engages in “shuttle diplomacy,” facilitating both communication and negotiation. The mediator will discuss with each party the reasons they feel as they do, identify their goals in seeking a specific resolution, and explore other potential options for resolution.

The mediator provides additional relevant information, assists with ensuring understanding of differing perspectives, and aids in generating options for resolution. Ultimately, the mediator ensures that the final agreement is documented in a Settlement Agreement, so that you have a binding resolution at the close of the session.

Q: I’m not optimistic. What are the chances that mediation will be successful?

A: Mediation is successful the majority of the time. In our experience, mediation is successful over 90% of the time. That’s not a guarantee, but it should provide some reassurance that if you stick with the process, it will result in an outcome that you are satisfied with.

Q: Why does mediation work?

A: Mediation works for several reasons. You have the benefit of an experienced, knowledgeable and neutral third party, who (1) knows the potential legal ramifications of your dispute, (2) understands the nature of conflict and the impact it has on personal and professional lives, and on business; (3) establishes a respectful environment for productive conversation, focused on educating each other fully regarding perspectives; and (4) directs the parties’ discussion toward ultimate resolution that each side can live with.

Q: I already know where the other side is coming from. How is mediation going to help?

A: What typically happens in mediation is that new information is learned, that was not known before the mediation. That new information can be factual or legal in nature, or can be something as simple as how a party expresses how they feel about the situation, that may have been unknown. Circumstances may have changed, or the mediator may be able to provide information based on their knowledge or experience, that the parties were not aware of. It is this new information that generally “opens the door,” and allows parties to think about resolving their conflict in a way they might not have been open to before.

Q: How long does mediation take?

A: Mediation generally lasts from a half-day to a full-day. Most resolution occurs in one session. On occasion, follow-up communication may be needed.

Q: My conflict isn't really legal in nature. Does the same process apply?

A: Generally speaking, yes – but with a workplace conflict, the separate sessions may not occur, or they may be more limited. In addition, when on-going relationships are at issue, several sessions will likely be needed to ensure accountability and that progress is being made in improving the relationship. Finally, workplace mediations do not result in a “Settlement Agreement,” but instead, they result in agreements to make specific changes in methods of communication, to organizational structure, or to other conditions relating to employment.

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