

THE BASICS OF MEDIATION

What is mediation?

Mediation is a voluntary process that uses a neutral third party to facilitate a discussion of disagreements and attempting to reach an agreement that settles those differences. Mediation gives people an opportunity to be heard and to listen.

Advantages of Mediation:

- **Effective.** More than 80% of all cases reach an agreement.
- **Saves Time and Money.**
- **Greater Compliance.** Parties are more likely to abide by an agreement they have helped design.
- **Voluntary with Parties in Control of the Outcome.** Parties volunteer to mediate and contribute to resulting final agreements.
- **Decreases Stress and Disruptions.**
- **Preserves or Improves Relationships.** This is especially important with family cases where the parties may have on-going dealings with each other or with children or other family members.
- **Private and Confidential.** Generally, interaction during mediation is confidential, encouraging an honest discussion of facts, views and feelings. The resulting agreement is not confidential.
- **Improves Skills for Resolving Future Disputes.** An important goal of mediation is to teach problem solving tools so that those skills can be used should disputes arise in the future.

The Role of the Mediator:

The mediator assists the parties in discussing their differences in constructive ways, identifying the problems and reaching realistic solutions. The mediator does not take sides in a disagreement nor make decisions as to who is right and who is wrong regarding the conflict.

The Role of Attorneys in Mediation:

While parties may participate in mediation with or without attorneys present, attorneys have a critical role to play in ensuring the parties have a clear understanding of their legal rights and obligations. Mediators are not permitted to give legal advice. Because mediated signed agreements are legally binding and may be incorporated into a court order, parties who mediate should seek legal advice from their own attorneys to make certain they are well informed and clearly advised about the ramifications of the decisions they are making.

The Mediation Process:

Introduction:

The mediator first explains the process and sets ground rules. Participating parties sign a mediation agreement which, among other things, binds them to confidentiality and forbids them to subpoena mediation materials or the mediator in any subsequent legal proceedings.

Presentation of View:

First one party and then the other explains his or her view of the conflict and the issues they wish to discuss in mediation. The mediator summarizes what each has said and to be sure that everyone is clear on the facts that have been presented. This continues with each party taking a turn as long as it is necessary to get issues on the table.

Problem Solving:

With the help of a mediator, parties focus on identifying the real issues and addressing them. Possible solutions or agreements are discussed either until a solution is reached and agreed upon or until the parties decide that resolution cannot be reached.

Depending on the needs of the parties, additional information may need to be gathered or work may need to be done to look for other possible solutions. In those cases, subsequent sessions may be scheduled after the initial session.

Resolution:

An agreement is written when the parties reach agreement. Parties may waive their right for review of their proposed agreement by an attorney and sign an agreement or they may take a draft written agreement back to an attorney for review before signing. If questions arise during a review by an attorney, parties can agree to return to mediation to further discuss the issues and finalize the agreement, if necessary.

Preparing for Mediation:

Before participating in mediation, parties should come to the mediation session with 1) a realistic view of the issues in dispute; 2) a clear understanding of his or her needs and goals; 3) an explanation of the dispute from his or her viewpoint.

How To Be Successful in Mediation

Success in mediation means getting the best possible result with the lowest possible cost, both emotional and financial. The key to that result is that the decision makers in mediation are the parties and not a judge, lawyers or mediators. The way to achieve the best result is to come to mediation with the desire to reach a good resolution and end the dispute. This may require parties to be flexible and open to the possibility of finding a creative solution to a conflict with a result that both parties can live with more easily than if a solution is forced on them.