

BYPASSING THE COURTS: MEDIATION
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Mediation is the process whereby two or more parties to a dispute use a neutral third party to assist them in reaching a settlement. The process is voluntary, so it only works when both parties are willing. It involves negotiation, where the parties themselves are present, but the mediator works to facilitate settlement, that the parties themselves have been unable to reach. The result doesn't bind the parties legally and if it doesn't work out, they can still take their dispute to arbitration or to court.

The mediator has special skills in resolving disputes, and knows the subject matter of the dispute. He or she helps the parties to identify the real issues between them, and tries to find a settlement that satisfies the interests of both parties.

By working with the parties on their underlying interests, a mediator can achieve a result at settlement that no other form of dispute resolution can do. For example, in arbitration, or a court proceeding, one party wins and the other party loses. Clearly, this is always unsatisfactory to the loser. But in a mediation, there is no loser. It is a win win situation if the parties come to a settlement.

The mediator achieves this by concentrating on the real interests of the parties and not on their positions or their rights in law. Often their rights in law are what entrench parties in opposite camps and lead to delays in the normal court system. But by looking to the interests of both parties, the mediator gets right to the heart of the problems and works with the parties - together and separately - to achieve a mutually beneficial result.

There are obvious advantages to mediation including speed, cost savings, and confidentiality.

When a mediator is appointed, time is scheduled for the mediation and any relevant documents are exchanged in advance. There are no formalities to argue about, such as the relevance or admissibility of documents. The parties agree on their documentation, or there cannot be a mediation. The mediation is heard at the appointed time, and unlike the court system, no other case is being mediated that day before the same mediator. As a result, there's no delay for hearing,

and the parties are not wasting their time.

The parties save money because, since procedures are informal, there are no technical delays and no appointment backups. The parties share the cost of the mediation equally. Each has a commitment to a solution that works. In many cases, they also have a need to continue doing business together, and want to put a dispute behind them quickly and with mutual satisfaction. Mediation achieves this result.

Confidentiality is another advantage of mediation over the normal court system. The parties set their own terms of reference for the mediation. Any discussions during the mediation and involvement by the mediator may not be repeated before a court in a later proceeding if the mediation fails. As a result, neither party is prejudiced by what takes place in the mediation in the event of failure, and the parties have every reason to be fully frank in their negotiations.

Mediations also contain the issues in a case. For example, when a case is allowed to go on longer, additional disputes sometimes arise in the framework of the case, and it becomes more complex, delayed, longer and more expensive. Mediation avoids all of these problems. In addition, when the parties reach and sign an agreement, it becomes enforceable, just like any other agreement.

Mediations are flexible and are available to almost any kind of dispute. The key to success is the willingness of the parties to work together creatively to find a settlement with the assistance of a skilled mediator. This person should have the trust of both parties and, of course, must be objective and neutral in order to facilitate settlement.

Mediation has been available for a long time, but it has recently come to the forefront of dispute resolution. Parties have suffered delays in the judicial system for a long time, and should be aware of their alternatives.