

Mediation

Defined

As an overall definition of mediation, consider: "Facilitated Communications for Agreement" or "Facilitated Negotiation."

Introduction

Mediation can most easily be understood as facilitated communications toward an agreement. In mediation, participants themselves, with the mediator's impartial assistance, resolve their own dispute, seeking fairness and the maximization of benefits. Family, business, property, and organizational disputes can be effectively mediated to a fair and constructive resolution that participants believe in and will comply with.

Description of Services

Family Mediation: Divorce, separation, post-decree mediation, including the resolution of issues of custody and visitation, child support, spousal support, and property and debt division, are opportunities to fairly and constructively restructure family relations and finances. Step-family, non-traditional partnerships, prenuptial, cohabitation, parent-child, elder care, and adoption agreements can also be effectively mediated as can family business and estate disputes. In all these cases, clarity and resolution can be achieved without the trauma and expense typically associated with the adversarial treatment of family disputes. Each party's interests are fully heard and honored, both in the mediation process and in the resulting agreement. Family mediation allows family members the opportunity to fairly, clearly, and creatively structure their future relations.

Why Use a Trained Mediator

Mediation implies participants themselves accepting responsibility for reaching a fair and constructive settlement agreement. In mediation, participants maintain full decision-making power and are encouraged to exercise that power in an informed, fair, and constructive way. Mediation is a means for people to maintain control over their lives and, in a dignified and satisfying way, clarify issues and resolve conflicts. Mediation promotes future cooperation, not continued conflict. Participant communication and commitment supports future compliance.

Utilization of Independent Representational Attorneys and Experts

Participant confidence in mediation is often elevated through the use of independent "resource and review" legal counsel for individual legal advice and information. We will assist clients to identify the legal issues between them, provide access to legal information when possible, help

parties formulate questions for their independent legal counsel, and help create options for resolving those issues. We will not give individual legal advice, appear in court on behalf of any mediating party, or predict how a matter would be resolved in court. In a typical case, an hour or two of individual consultation with a personal legal advisor can go a long way toward elevating a participant's comfort and confidence in being their own mediation negotiator. Similarly, non-legal expert advice, from accounts, financial planners, child development specialists, and the like, can also be effectively utilized in mediation, often through the joint retention of a mutually-acceptable expert.

Qualities of Mediation

Central to mediation is the concept of "informed consent." So long as participants understand the nature of a contemplated mediation process and effectively consent to participate in the described process, virtually any mediation process is possible and appropriate. In terms of describing the mediation process, either during an introductory session or an introductory phase of a substantive mediation session, the following concepts and language may be helpful.

Voluntary

You can leave at any time for any reason, or no reason. If you are thinking of leaving, I encourage you to speak up and let me know why. The reasons that you are thinking of leaving can become conditions for your continued participation. For example, if you are thinking of leaving because you do not feel heard, presumably you would continue in mediation if you felt heard.

Collaborative

You are encouraged to work together to solve your problem(s) and to reach what you perceive to be your fairest and most constructive agreement.

Controlled

You have complete decision-making power. Each of you has a veto over each and every provision of any mediated agreement. Nothing can be imposed on you.

Confidential

Mediation is confidential, to the extent you desire, be that by statute, contract, rules of evidence or privilege. Mediation discussions and all materials developed for a mediation are not admissible in any subsequent court or contested proceedings, except for a finalized and signed mediated agreement for enforcement purposes. I, as mediator, am obligated to describe any exceptions to this general confidentiality of mediation. Confidentiality in mediation may be waived by you in writing, but I, as mediator, retain my own ability to refuse to testify in any contested case. We also need to define the extent of confidentiality for any "caucus meetings," meetings between myself as mediator and you as individual parties.

Informed

The mediation process offers a full opportunity to obtain and incorporate legal and other expert information and advice. Mutually acceptable experts can be retained. Such jointly obtained expert information can be designated as either confidential to the mediation or, if you desire, as admissible in any subsequent contested proceeding. Expert advice is never determinative in mediation. You, as parties, always retain decision-making power. Mediators are bound to encourage parties to obtain legal counsel and to have any mediated agreement involving legal issues reviewed by independent legal counsel prior to signing. Whether legal advice is sought is, ultimately, a decision of each mediation participant.

Impartial, Neutral, Balanced and Safe

The mediator has an equal and balanced responsibility to assist each mediating party and cannot favor the interests of any one party over another, nor should the mediator favor a particular result in the mediation. As mediator, I am ethically obligated to acknowledge any substantive bias I may have on issues in discussion. The mediator's role is to ensure that parties reach agreements in a voluntarily and informed manner, and not as a result of coercion or intimidation. If you ever feel that I, as mediator, am favoring one party over another, or any particular result over another, or if you should ever feel intimidated or otherwise unsafe, speak up. The mediation should not continue unless you come to be satisfied in all these regards.

Self-Responsible and Satisfying

Based upon having actively resolved your own conflict, participant satisfaction, likelihood of compliance and self-esteem are found by research to be dramatically elevated through mediation.