

Mediation - The Wise Alternative

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**"There is one thing stronger than all the armies in the world: and that is an idea whose time has come."-
---Victor Hugo**

There are many ways of resolving disputes—from forcing your will on the other side, to giving the opposing party everything to save a good relationship.

In attempting the former, we often resort to the courts-seeking vindication and asking a Judge to give us what we are entitled to. In the end, however, the courts rarely give us everything we want and, after many unproductive trips to court and to your attorney's office, after spending many thousands of dollars and after alienating the other side, you wonder if there could have been a better way of resolving the issues of the dispute.

On the other hand, if we reach an agreement by giving up more than we think is fair to please the opposing party so that we can have a better parenting, business or other relationship with them, we settle the dispute but we feel exploited, bitter and resentful.

There is a better way—mediation. Mediation is a voluntary settlement process in which a neutral third party or parties helps people or institutions in conflict make practical, informed decisions to resolve the issues facing them.

In mediation, the impartial mediator helps disputing parties, whether or not they are in the middle of litigation, to negotiate productively. The mediator acts solely as a facilitator of the parties' negotiations—the mediator does not make decisions for the parties or pressure either side to settle. Although attorneys can sometimes be present, it is the parties themselves that take the lead role as the speakers in the negotiations.

The mediation process itself requires only that parties in a dispute are willing to come to the negotiating table to not only express themselves, but to listen. Once the mediator is hired, one or more sessions may be scheduled. At the first session, the parties sometimes set communication ground rules, such as not interrupting or insulting the other party and truly making an effort to "hear the other party out". The parties each take turns fully expressing their view of the dispute and are encouraged to seek clarification of the other party's issues. Although a party may never agree with the other party's point of view, the mediator guides the parties to at least recognize and understand the other party's goals, concerns and feelings. After the parties agree to a working agenda, the mediator helps them gather all information relevant to the particular dispute (such as the production of documents, creating budgets, ordering appraisals and evaluations, and, if necessary, obtaining legal or other information from attorneys, accountants, psychologists or other experts).

The mediator, by setting a positive tone and empowering the parties with the information they need to make fully informed decisions, then guides the parties to negotiate a resolution which meets as many of their important needs and concerns as possible. If any third parties are directly affected by the outcome (such as children in parenting/custodial issues), the mediator helps the parties focus on their needs as well.

One challenge presented in typical attorney-led negotiations is that parties often begin the process with hardened, entrenched positions. In mediation, the mediator encourages and guides disputants to re-examine their initial bargaining positions to determine if there may be a different way of satisfying his or her true

underlying interests and concerns than pursuing the original position that they took. Parties are encouraged to look at resolving the dispute in a new way—as an opportunity to meet their needs while at the same time allowing the other party to meet their needs as well. In this way, the mediator helps refocus the parties toward win-win, collaborative and creative problem solving.

In mediation, an environment is created wherein parties realize that they have the power, ability and the inner wisdom to resolve the dispute productively; that they, more than a judge, attorney or any other third party, know best how to arrive at solutions that meet the unique needs of their situation. When resolution is achieved, if the parties wish, they will ask either the mediator or one of their attorneys to place the terms into a proposed legally binding contract for finalization.

Mediation has many advantages over litigation or negotiations on the courthouse steps. Mediation is usually much faster and less expensive; confidential (thereby avoiding public exposure of personal problems and preventing any information or statements of a party being used in court); allows you, and not the courts, to control decisions which affect your life; preserves relationships where continued contact is necessary or desired (such as between parents, family members, businesses, neighbors, employers and employees); benefits third parties affected by the dispute (such as children) by reducing conflict; allows you to resolve a dispute with dignity (versus the public spectacle that some litigation can cause); encourages mutual understanding; and, sets a pattern and precedent for constructive negotiations and conflict resolution in the future.

Mediation—the wise, effective and satisfying alternative for resolving all types of disputes.

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