



Mediation: What is it all about?

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Mediation is one of several methods available to parties who are having a dispute. It is used in many different areas. It is commonly used in the area of construction disputes, but it is also used in divorces and even in disputes between neighbors in co-ops. Some people might be surprised to learn how often it is used in court cases. The parties may be litigating a personal injury lawsuit, for example, and one party contacts a mediation company which then contacts all the parties to ask if they want to mediate. The idea is that mediation may help the parties to see the amount of damages they may be facing and to try to resolve it.

Since it is different from the traditional method of litigating in court, it is considered an "alternative" method of dispute resolution. Many like the idea of it, since it brings the warring parties together around a table so that they can talk or yell it out and is considered non-binding. It can be either an alternative to arbitration (which is binding) or a prerequisite for it. In other words, in some contracts the parties must mediate before they can proceed with arbitration or going to litigation in court.

It is usually provided for in a written, signed contract. It may require that the mediation be conducted by the American Arbitration Association, JAMS or even by a person chosen by the parties. As an attorney, I recommend setting forth as much detail as possible in the signed contract, because once there is a dispute, the parties are not likely to agree on much. In some cases where the case is in court, the judge will require that the parties "try" to mediate. The court cannot force you to agree on anything, but often just sitting around a table "softens" peoples' emotions.

The problem with mediation is that mediators always try to reach a middle ground. It is rarely all in one party's favor. Mediators will ask the parties what they each want. The plaintiff will give some high dollar demand and the defendant will say they do not want to pay anything. The mediator will keep chipping away at the parties by asking the plaintiff if there is "anything" less than the large dollar amount they are willing to accept and by asking the defendant if there is anything greater than zero that he is willing to pay. It is sometimes like wearing the parties down, since if you do not resolve it, you will have spent a number of hours and will have to start over in another venue. This process goes on and on with the mediator trying to help the parties find that middle ground. As always, seek legal counsel before agreeing to anything.

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