

# Mediation: Myth vs. Fact



Patrick L.  
Rodgers, JD  
Mediator  
February 2010

As an alternative dispute resolution process Mediation is misunderstood and confused with Arbitration. Mediation like arbitration is an alternative to parties litigating their conflicts or disputes in Court. However, Mediation differs immensely from Arbitration. Mediators act as a neutral to help parties reach a resolution to their dispute between themselves.

Mediation is useful resource to business owners who may have issues with partners, vendors, subcontractors and or employees that they are not able to resolve. Mediation is a cost effective process that protects a business owners bottom line. As such, business owners do themselves a disservice by not opting to use Mediation when they are involved in a conflict or dispute.

All conflict can be resolved. Mediation is a process in which a neutral mediator is enlisted with the consent of all parties to reach a compromise and settle a dispute. Settlements reached in mediation are stronger. Parties input into the resolution increases their respect for the agreement. This allows parties to come up with their own resolution to a dispute without the need for expensive litigation.

The Mediator is neither a judge, arbitrator nor advocate, but rather a resource helping each party to understand one another. **A Mediator** works to develop an understanding between the parties by allowing the parties to express themselves in a controlled and constructive

environment. Mediation provides a private, safe forum to resolve disputes and enables the parties to maintain control over the outcome of the dispute. Mediation not only avoids the high costs of litigation; it is a confidential process that does not result in making the dispute a matter of public record.

Though not mandatory, **a Mediator should** encourage the parties to include their attorneys as part of the process. Attorneys provide protection and counsel to their parties, participate in creative problem solving and advise on the law and the judicial alternatives.

## How it Works ...

**Step One:** To get the parties to lay the framework of how the mediation will be conducted. We will negotiate the ground rules, explain the process and help clarify the roles and responsibilities of parties.

**Step Two:** Define the problem by assembling information, exploring the understanding of the parties' view of the problem, identifying areas of agreement and disagreement, exploring possible legal outcomes, seeking the parties desired results for the outcome and to clarify alternatives that exist if mediation does not continue.

**Step Three:** Evaluating the options that would resolve the dispute. The mediator assists the parties in drafting negotiated options satisfactory to either or both parties. Once all options are negotiated and put on the table, a thorough evaluation of the options is conducted.

**Final Step:** The CONCLUDING AGREEMENT. After all the options are explored and an agreement is reached it is time to reduce the agreement to writing. Once the agreement is drafted the parties will have an opportunity to review along with their attorney and other experts.

If you are a business facing issues that you cannot resolve with a partner, vendor, subcontractor and or employee please keep in mind an alternative to arbitration or litigation, Mediation.