

# What Is Mediation?



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## WHAT IS MEDIATION?

Mediation is a voluntary process in which the parties make decisions based on their understanding of their own views, each other's and the reality they face in litigation.

## WHAT IS A MEDIATOR?

A mediator works as a non-coercive neutral to help the parties negotiate an agreement that serves them better than litigating their dispute.

## WHY WOULD I CHOOSE TO MEDIATE A DISPUTE RATHER THAN GOING TO COURT?

There are several reasons to choose mediation over litigating a matter in Court;

Mediation provides a private, safe forum to resolve disputes fairly and efficiently.

Mediation enables the parties to maintain control over the outcome of the dispute. A judge or jury does not dictate what the parties have to do, how much or who you have to pay.

Mediation helps to avoid the high costs of litigation just to bring a case to Court, without attorney fees, can cost close to \$2,000.00. Rather than each party paying their own attorney fees the cost of the Mediator is shared equally.

Mediation is a confidential process that does not result in making the dispute a matter of public record.

## WHAT IS THE GOAL OF A MEDIATOR?

The goal of the Mediator is to develop the six underlying concepts of Mediation;

Enter the mediation process once the parties have made an agreement with respect to the rules to be followed during the mediation;

Develop Understanding between the parties;

Allow the parties to Own their Dispute and Conflict;

Allow the parties to express themselves in a controlled and constructive environment;

Develop the process in mediation to explore the reasons the drive that conflict and dispute between the parties;

Develop and support the autonomy of each individual involved in the conflict and dispute to help them resolve to make the connection in their relationship.

## HOW IS MEDIATION STRUCTURED TO INSURE FAIRNESS TO ALL PARTIES?

**SMITH-KEARNS Mediators are all trained to stress the process of Mediation rather than stressing a resolution of the matter. Each Mediator will focus equally on all of the stages of the Mediation.**

The initial stage of Dynamic Conflict Resolution is **Contracting**. This is a critical aspect of Mediation as it will gauge the willingness of the parties to engage in dialogue. The Mediators goal is to get the parties to lay the framework of how the Mediation will be conducted, negotiate the ground rules, explain the process and help clarify the roles and responsibilities of parties.

The second stage of Dynamic Conflict Resolution is to **Define the problem** by assembling needed 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.

The third stage of Dynamic Conflict Resolution is **Working through the conflict** by helping the parties understand that the only way out of the conflict is through the conflict. Thus, the Mediator will help the parties to organize the issues to be resolved as well as helping them clarify the needs and interests of each other.

The fourth stage of Dynamic Conflict Resolution involves **Developing and evaluating 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, as it relates to the goals of the parties and the reality of the law and other pertinent reference points, is conducted.

Once the evaluation is completed the Mediator assists the parties in Executing and implementing the options to help settle the dispute.

The final stage of Mediation is 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.

### **DOES THE MEDIATOR DECIDE FOR THE PARTIES HOW A DISPUTE WILL BE SETTLED?**

No. The Mediator is neither a judge, arbitrator nor advocate, but rather by being a resource seeks to understand each party, help each party to understand one another, help them assert their own views and become a bridge by monitoring and focusing the parties on the process.

### **DOES SMITH-KEARNS DISCOURAGE PARTIES FROM EMPLOYING ATTORNEYS DURING THE MEDIATION PROCESS?**

No. In fact, Smith - Kearns encourages the parties to include their attorneys as part of the process and add to the mediation their expertise to help come to a resolution of the conflict. Attorneys provide protection and counsel to their parties, participate in creative problem solving and advise on the law and the judicial alternatives.

### **WHAT ARE THE RESPONSIBILITIES OF THE PARTIES DURING THE MEDIATION?**

The parties in the Mediation are charged with the responsibility of working together to come up with the best resolution to the dispute. The parties can work together in the following ways but certainly are not limited to these suggestions;

Open sharing of information; identify what needs to be decided; Each party asserts own view, priorities;  
Parties understand each other; Identify reference points for decisions to agree to settlement (including the law);

Overcoming barriers to communication;  
Understand relation to adversary process;

Use Lawyers and other experts to draft fair proper and legal agreement.