

The information contained here is by no means a fully comprehensive discussion of Mediation. It is provided for informational purposes only. Since it is not possible to address all features of Mediation here, inquiries are invited by request. Please feel free to send an online request, or to call the office, for more information.

Litigation or Mediation?

Litigation is an adversarial process, a "fight" played out in the Court room. It is an old system of dispute resolution based on the idea that out of this fight, the truth will emerge to allow the Judge to make the right decision. Because of the adversarial nature of the system and due to its complex rules, it is advisable to hire legal counsel, both to understand the procedures involved, and more importantly, to act as an effective voice in the Court room.

Unlike litigation, Mediation does not involve lawyers. The parties come to their own settlements with the help of a single, or multiple "neutrals" who act as Mediator. Generally, lawyers are not allowed to participate in mediation sessions with their clients.

The goal of Mediation is facilitate the parties into finding a "fair mid-ground" in the dispute and by doing so create a "win-win" for the parties in their Agreements.

Unlike litigation, issues of any kind can be mediated, even if they are not legal issues. Decisions about these issues can be written into an Agreement which may become part of a legal settlement.

Also unlike litigation, Mediation protects privacy. Court litigation requires either an agreement between the parties which is adopted by the Court, or an Order from the presiding Judge to keep confidential information about the litigation.

Mediation provides confidentiality throughout the process.

While in Court litigation each party's testimony is presented in open Court, in

What does Mediation look like?

There are generally no outside parties in Mediation sessions, that is, no attorneys, financial or psychological professionals are present in the room with the parties and Mediator. In that way the parties are the only people representing their own interests during the sessions where settlement decisions are made.

There may be a single Mediator, or there may be Co-Mediators working with the parties to come to settlement terms which will end the dispute.

All participants sign a Participation Agreement, and any participant, including the Mediator can chose to walk away from the mediation if it becomes reasonably clear that there is no Agreement forthcoming.

The only requirements in Mediation are that the parties agree to Mediate, and that the parties mediating are the decision makers, with authority to come to a binding agreement.

The Mediator may not address the legal details of the dispute and as a neutral, will not validate any of the parties' viewpoints, legal or otherwise. The Mediator's job is to facilitate the parties to resolve their own issues, whether their agreement is in line with a particular legal viewpoint, or not. Of course the parties cannot agree to a solution which involves anything illegal in their Agreement.

Each issue which is resolved is written into a Settlement Agreement which once signed, is considered full and final settlement of that issue. That is, issues which have been settled cannot be later brought into Court for a different determination.

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the presence of the other party, during Mediation sessions meetings held with an individual party, have an added layer of confidentiality and need not be shared with other parties to the dispute. In this way Mediation is valuable in cases involving sensitive issues or information.

Any issues which have not been settled in Mediation may later be brought into Court to be resolved.

The Mediator may never be called as a witness, or to provide evidence in the Court litigation process. Also, any discussions which have taken place during Mediation sessions may not be used in Court litigation. All participants in Mediation are protected by confidentiality.