

me·di·a·tion *noun* \,mē-dē-'ā-shən the act or process of [mediating](#); *especially* : intervention between conflicting parties to promote reconciliation, settlement, or compromise.

MEDIATION FAQs

What is mediation?

Mediation is a form of alternative dispute resolution (ADR) used by parties to a dispute to resolve the dispute. In most civil cases, some form of ADR is ordered by the Court. Mediation is the most popular form of ADR used by state and federal courts to facilitate the settlement of litigation. It is a process whereby a trained, third-party mediator facilitates the settlement discussion and negotiation between the parties in a confidential, informal conference.

Mediation is a voluntary process; the court has the power to order parties to a case to participate in mediation, but the parties are not obligated to reach an agreement.

Why are we required to participate in mediation?

Mediation is a court ordered process, ancillary to the litigation process. The court has the power to order parties to a case to participate in mediation, but the parties are not obligated to settle. Statistics show that 95% of all civil cases are resolved without a trial, either by dismissal, settlement, or because of mediation.

Who has to participate?

All parties to the case are required to attend, in person. For businesses, a person with full authority to settle is required to attend. Most often, counsel for the parties attend as well.

When will mediation take place?

Mediation can occur at any time, before litigation is commenced, during litigation, or even during an appeal. Usually, it occurs after litigation commenced, after most discovery is complete and the facts and issues are clarified. Mediation can occur in one session usually lasting about 3-4 hours, or over multiple days.

Where will mediation occur?

Usually at the mediator's office, or some other neutral site, although it is fully negotiable between the parties. Sometimes convenience to most parties controls the choice of location.

How does it work?

The process is managed by the mediator. While each mediator has their own style, the process tends to follow a fairly standard protocol:

- Before the mediation session, each party submits a confidential written statement of issues and position to the mediator.
- At the opening session, sometimes all parties are together for preliminary discussions. However, very early on the parties typically are separated.
- The mediator proceeds to meet separately with each party, shuttling between rooms.
- Offers and counteroffers are shared, issues discussed and clarified, and options discussed.
- The mediator cannot give legal advice, make any binding decision, and should allow the party to make their own, informed decision on settlement.
- Statements and offers made in mediation are confidential and are not to be disclosed to the Court, or anyone else.
- A settlement agreement made at mediation, and signed by the parties, is a separate binding and enforceable contract.

Who chooses the mediator?

Usually the attorneys for the parties pick the mediator, from a list of trained and certified mediators. It is best, but not required, that the mediator have practice experience in the area of law at issue.

Who pays the mediator?

Usually each party pays half the mediators fees. One reason for this is to avoid the appearance of bias or lack of neutrality.

Do I have to prepare for mediation?

No, but you should. Even though court ordered, most participants in mediation have tired of the litigation process and come with a degree of openness towards compromise. It is important to work with your counsel to develop a settlement strategy to achieve an acceptable settlement. Since the process is informal, the mediator is often in direct communication with the party, albeit with counsel present. Nonetheless, this is still a negotiation and each side has competing agendas. Thus, one should have a plan as to what offers should be made. It is also important to consider the ramifications of certain options to settle so that rash decisions aren't made and impediments to settlement previously considered and alternatives developed.

What happens if we don't settle?

The case proceeds with the schedule set forth by the Court. The parties' can return to mediation, or continue their own, direct settlement negotiations.