



## MEDIATION - FREQUENTLY ASKED QUESTIONS

### WHAT IS MEDIATION?

Mediation is a process where a neutral third-party mediator, helps people in conflict find a mutually acceptable resolution. Mediation is an efficient and cost-effective way to resolve disputes. It can be used to settle legal disputes, mend relationships at work, or help families reduce conflict. The key to mediation is that it opens a roadway to resolution, whether it occurs during or after mediation, and helps to expedite a negotiated settlement. Mediation is voluntary and can take place in person, by videoconference, or by telephone.



The mediation process includes the following stages:

- ◆ **PRELIMINARY STAGE:** Agree to Mediate and Preparation to Mediation
- ◆ **NEGOTIATION STAGE:** Share Information and Finding Solutions
- ◆ **CLOSURE STAGE:** Mediator's Memorandum and Attorneys' Agreement

### WHAT IS THE ROLE OF THE MEDIATOR?

The mediator is a trained and experienced professional in helping the parties reach a mutually acceptable agreement. The mediator's role is to facilitate communication between the parties, help them understand each other, and find solutions. Mediators do not take sides or reveal confidences. Also, the mediator does not provide legal advice, counseling, therapy to either party but may express legal opinions on the merits of the case and make recommendations to the extent it helps facilitate a settlement. The parties will rely upon their attorneys and their own judgment in arriving at a resolution of the dispute. The parties have a right to consult with and have an attorney present.

### IS MEDIATION CONFIDENTIAL?

YES. All mediation communications and documents stay confidential and privileged. Any information obtained during mediation cannot be used against any person, and the mediator cannot be called as a witness, to the extent allowed by the Uniform Mediation Act 710 ILCS 3/1, et. seq. All persons who take part in mediation will sign a "Confidentiality Agreement,"

### MUST THE PARTIES MEDIATE IN GOOD FAITH?

YES. The parties must agree to mediate in good faith with a sincere desire to reach a mutual resolution of their dispute, otherwise there will be no resolution. Either party, or the mediator, may terminate mediation at any time if efforts become futile or inappropriate. If mediation is terminated prior to conclusion, the parties will still be responsible for the mediator's time and expenses.



## **IS MEDIATION APPROPRIATE IN ALL CASES?**

NO. Mediation may be improper in situations where there is a lack of good faith; where one party has significantly more power and resources; there is a conflict of interest between the mediator and one of the parties or any other impediment, such as domestic violence. The Illinois Mediation Act 710 ILCS 35/6 et al., Domestic Violence Act 750 ILCS 60/1 et al., and Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., mandate that all parties report any prior, or threat of violence, abuse, neglect, harm, or planning the commission of a crime.

## **CAN I MEET WITH THE MEDIATOR IN PRIVATE?**

YES. The mediator is authorized to have a private meeting, or communication (called a caucus) with a party or their counsel, separately without the other party or their counsel present. This happens a lot and it is the “guts” of mediation. All communications or documents shown during a private caucus with the mediator, will not be revealed to the other party, unless otherwise allowed.

## **CAN I CONSULT WITH MY ATTORNEY OR OTHERS DURING MEDIATION?**

YES. In fact, it is strongly encouraged to consult with your attorney, and to have your attorney present at mediation. Other third parties such as accountants or experts may be allowed if it assists to resolve a case. For example, in custody cases, minor children sometimes take part if the parties and mediator agree. The child’s age and maturity will be a deciding factor.

## **WHAT DOES MEDIATION COST?**

Private mediators, who are attorneys, will charge between \$250 and \$500 per hour, plus any expenses, for all time spent by the mediator, regardless of the mediation outcome. My firm charges \$400 per hour. The average total is between \$3,000 and \$8,000, depending on each case. However, the parties typically split this cost, so they only pay one-half of these fees. The parties will sign a mediation agreement with my firm, with a \$1,000 deposit from each party before mediation starts.

## **DOES THE MEDIATOR PREPARE THE AGREEMENT?**

NO. But the mediator does prepare a non-binding *Memorandum of Understanding* upon conclusion or termination of mediation, memorializing the proceedings had during mediation. Any binding agreement between the parties shall be drafted by the parties' attorneys.

## **WHAT HAPPENS IF THERE IS NO RESOLUTION?**

The parties will continue with their legal case. But the inability to reach a full agreement does not mean you have failed. To the contrary, mediation advances a case towards settlement quicker than an unmediated case. The mediation process helps identify significant issues and clarify each party’s priorities, points of agreement and disagreement. This allows the parties to explore areas of compromise and find creative solutions. It opens the door for further negotiation. In fact, many cases settle soon after mediation. So, mediation is never for naught.





## WHAT'S THE DIFFERENCE BETWEEN LITIGATION & MEDIATION?

Litigation versus mediation is best weighed by comparing each issue under both methods. The result is mediation wins over litigation. Studies show that 90% of all cases are settled and compliance with a mediated agreement is much higher.

### LITIGATION versus MEDIATION

Issue	Litigation	Mediation	Benefits of mediation
Time Period	Lengthy	Short	Avoids delays; participants can get on with their lives
Total Cost	Very Expensive	Inexpensive	Higher satisfaction; less financial stress
Confidentiality	Public records	Confidential	Avoids negative publicity
Decision-making	Left to the court	In the hands of participants	Greater commitment to follow-through; greater sense of "fairness" by participants
Communication	By attorneys	By the parties	Clarity; may improve long-term relationship
Agenda	Set by the court	Set by the parties	Participants feel greater sense of control
Emotions	Often ignored	Considered	Greater satisfaction with result
Control	By attorneys and the court	By the parties	Participant may end mediation at any time; participants feel empowered
Compliance	Unknown	High	Less chance of re-litigation

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