

MEDIATION SUMMARY

What is Mediation? Mediation is an informal dispute resolution process in which a trained, impartial and neutral person (who may but does not have to be an attorney) facilitates communication and negotiation among persons involved in a dispute in an effort to help those persons achieve understanding and resolution by agreement.

Format. The mediator and all participants usually will meet together for joint discussion, and the mediator also may meet separately with participants for private discussion.

Mediator Role. The mediator will guide, rather than direct, discussions and negotiations. The mediator will ask questions and may suggest different ways of resolving the dispute, but the participants themselves will decide whether and how the dispute can be resolved. The mediator will help the participants to identify their concerns and interests, generate possible solutions, choose a mutually acceptable solution and implement that solution. The mediator is not a judge or arbitrator and will not decide the dispute or impose any settlement upon the participants. The mediator will not act as an advocate or legal advisor for any participant. The mediator will not express an opinion on who is right or wrong.

Participant Role. All persons involved in the dispute commit to participate in the mediation in good faith with the intention to resolve the dispute by agreement if possible. The participants must be sincerely interested in resolving their differences, must be willing to trust in the mediator and the mediation process, and must be willing to talk openly and honestly about the dispute with the mediator and all participants. Mediation is most effective when participants listen to each other carefully and are respectful of each other, the mediator and the mediation process.

Confidentiality. The mediation process is private and confidential. Anything said during the mediation process should remain in the mediation room and should not be used or disclosed by any participant for any reason outside of the mediation room. No record is kept of the mediation process, and any settlement agreement and/or agreement to mediate among the participants will be the only written record pertaining to the mediation. The terms of any settlement agreement are shared only with the participants themselves, the mediator, the agency or organization that referred the participants to mediation, and the legal system, if applicable. Confidential information disclosed to the mediator in the course of mediation will not be divulged by the mediator unless the mediator is required by law to make disclosure. Examples of circumstances that could require mediator disclosure include child abuse or neglect, abuse or neglect of the elderly or of an adult handicapped person, crimes committed, or when the mediator is under a court order that requires disclosure. All notes, records or other documents kept or received by a mediator while serving in that capacity are confidential. The mediator may not be requested or compelled to produce or divulge such items or to testify in regard to the mediation in any legal proceeding or forum.

Timeframe. A mediation typically will be scheduled to occur over a half day or a full day, depending on the complexity of the case. In some cases more time is needed, and in some cases less. The determining factor is the mediator's judgment concerning whether the participants are making progress toward resolution - the mediator will continue the mediation as long as he or she feels that further progress is likely and will end the mediation when he or she determines that no further progress is likely.

If Resolution is Achieved. In the event that resolution is achieved, the mediator will work with the participants to create a document signed by all participants that memorializes the terms agreed to between or among the participants.

If Resolution is Not Achieved. In the event that resolution is not achieved, the participants lose nothing as their rights remain intact and are not altered. The participants retain the option to return to mediation at a later time if they wish.