

# Mediation Frequently Asked Questions

## WHAT IS MEDIATION?

Mediation is an Alternative Dispute Resolution (ADR) procedure used to resolve differences without resort to litigation. It is premised on the belief in everyone's capacity to resolve their conflicts when provided suitable assistance from an objective third party. Although Mediation may be Court Ordered, participation is completely voluntary. Consequently, any party or the Mediator may call a halt to the process at any time.

## HOW IS MEDIATION DIFFERENT FROM LITIGATION?

The adversarial process employed in litigation is typically time consuming, expensive and open to public scrutiny. Conversely, Mediation is much faster, cheaper and completely confidential. More importantly, in litigation all decisions are ultimately decided by the judge and/or jury, so there is a great deal of uncertainty regarding the outcome. The parties themselves make all the decisions during Mediation which gives them control over the outcome.

## ARE THERE ANY RISKS INVOLVED IN MEDIATION?

Not really. Nothing is incorporated into the agreement unless all parties consent, so there is no risk of being out maneuvered and bound by an unsatisfactory outcome. Furthermore, the parties are always free to pursue satisfaction in Court through litigation if Mediation is unsuccessful.

## WHEN IS MEDIATION USEFUL?

Mediation is useful in resolving most disputes, but this is especially true where the parties:

- Wish to maintain a personal or business relationship
- Wish to maintain control over the outcome of the dispute
- Wish to resolve the dispute confidentially
- Wish to resolve the dispute expeditiously
- Wish to resolve the dispute in a cost effective manner

## WHAT IS THE ROLE OF THE MEDIATOR?

A Mediator administrates the process and assists the parties in reaching an agreement by facilitating productive communication, providing creative alternatives, and defusing tension. The Mediator is not on any side, and is not present to judge the parties or make any decisions. Mediators do not provide legal advice, but attorney-mediators may be called upon to evaluate the strengths and weaknesses of each party's position in an effort to encourage compromise.

## WHAT ARE THE ROLES OF THE PARTIES?

The parties make all of the decisions, and determine the content of their agreement. Therefore it is important for each party to be flexible and willing to compromise.

## ARE LAWYERS PRESENT DURING MEDIATION?

Attorneys are often present during Mediation to protect their client's interests; however, their attendance is not required. Lawyers do very little talking during Mediation, because the goal of the process is to assist the parties in reaching an agreement.

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### ARE ANY OTHER PEOPLE PRESENT DURING MEDIATION?

Mediation is not like a trial, so experts and other witnesses do not attend. Third parties affected by the outcome of Mediation may be represented by counsel (e.g. a *Guardian ad Litem* may be present during Divorce Mediation to protect the best interests of a child). The attendance of family and/or friends as advocates is generally discouraged, and their participation should be discussed with the Mediator prior to Mediation.

### HOW LONG DOES MEDIATION TAKE?

The duration of any Mediation depends upon several factors, including: the number of parties involved; the flexibility of the parties; and, the complexity of the issues in dispute. Mediation is typically resolved in a few hours, but may take as long as two or more days. Your Mediator should be able to provide a reasonable estimate after being appraised of the issues.

### WHAT DO I NEED TO BRING TO MEDIATION?

A good attitude, calm demeanor, and willingness to compromise. Remember that the goal is to reach an agreement between the parties, so everyone will need to be flexible. In addition, you may wish to bring documents which support your position on the issues to be resolved.