

Wayne Kosaka

Mediation Primer

What you need to know about Mediation.

Have you been asked to mediate or are you seriously considering an alternative to taking legal action to resolve your dispute? This quick guide will familiarize you with the process.

What is Mediation.

Mediation is a voluntary, alternative dispute resolution process where the parties in dispute utilize a neutral third-party called a mediator who facilitates communication and helps the parties develop a mutually acceptable resolution to their conflict.

The benefits of Mediating:

- Both sides have ample time to be heard and “tell it from their side”.
In a court setting you have very little time to tell your story.
- By choosing to mediate, the parties control the outcome. Unlike litigation where a judge or jury will decide the outcome for them.
- The dispute and settlement is confidential and can be resolved quickly.
- The costs and time involved is far cheaper than hiring and paying an attorney, paying court fees or taking time off of work to be in court.
- Able to maintain a personal or business relationship with the other side once the dispute is over.

What is a Mediators roll.

The mediator is there to facilitate the mediating process. This entails establishing dialogue between the parties, helping the parties understand the issues, generate options and to assist both parties craft and enter into a mutual agreement to reach closure. The mediator is bound to uphold a process that serves both parties fairly and equally as an impartial third- party with total neutrality.

What a mediator isn't.

The mediator is not a judge or arbitrator who will hand down a verdict or ruling at the end of the meeting. Nor does a mediator manage the execution of an agreement.

When is the right time to Mediate.

At any time you wish. Irrespective of whether or not proceedings have been issued at Court or at what stage your dispute may have reached. Chances are the parties have already tried to work out their differences, communication has broken down and they are at an impasse. This is the perfect time to consider mediation.

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Q. Who decides the outcome of the mediation?

A. You both do. The mediator does not decide the outcome. The decision making is left entirely to the parties themselves.

Q. What if the other party doesn't want to mediate?

A. Mediation is entirely voluntary. All parties involved must agree to mediate before a mediation can take place.

Q. I'm concerned about confidentiality in the mediation?

A. All discussions during the mediation process are confidential - in other words, anything you say in the mediation stays in the mediation and cannot be used later in court or another legal action. All parties read and sign a confidentiality agreement enforcing this rule.

Q. What happens if there is no agreement at the end of the mediation?

A. Mediation is not suitable for every case but it can help either party understand the issues a little better. Often this can lead to later discussions between the parties or even a second mediation session.

Q. If we come to an agreement is it enforceable?

A. Yes. If settlement is achieved. Typically the parties with the help of the mediator will draft, review, approve and sign a settlement agreement. This agreement is enforceable like any other contract once it is signed.

Q. How long should I plan for the mediation?

A. It is difficult to put a time clock around mediations depending on the complexity of each case but a typical mediation averages about 3 hours. If more time is needed, both parties need to be willing to pursue additional time or schedule an continuation at another date. It's best to not have nothing else planned that day.

Q. I have some items to show. Can I bring them?

A. Yes. If you have documents, photos or any other items that will help explain the situation or your position. Normally you will share these with the other party as well as the mediator.

Q. Who should attend a Mediation?

A. Normally only the disputing parties and the mediator are present at the mediation. This encourages open conversation and dialogue between the parties. The mediator may decide to have a co-mediator or observer present and will inform you ahead of time.

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Q. I don't think I can be in the same room with the other person, what will happen?

A. A mediation is conducted and carefully monitored by the mediator. Often parties will be separated –Caucus – in different rooms so you will be comfortable speaking to the mediator about the issues without the other party present. Please advise the Mediator ahead of time if this is the situation. The other party needs to be informed and room arrangements have to be made.

Q. If it does not settle can the mediator be a witness if this goes to trial?

A. No. The mediator can neither be a witness in court nor talk to anyone about your case.

Q. Who organizes the Mediation?

A. The mediator is responsible to organize an agreeable date, time and location between the parties.

Q. How much will it cost and who pays for it?

A. There is a standard cost for case input and the mediation session. If you are on a low income or in receipt of public funding, you may be eligible to a discounted or sliding scale fee. Usually both sides pay the mediation fee in equal proportions and it is paid in advance of the mediation.

Q. Is there a refund if it doesn't settle?

A. No. The fee is paid for the mediator to manage the case and facilitate the mediation, regardless of the outcome. However, the majority of cases do settle, though there can be no guarantee of success.

Q. What happens of the day of the mediation?

A. The parties arrive 10 minutes ahead of the scheduled mediation session. The mediator will privately “check in” with each party before the mediation starts. The mediator will start with a short opening and then the parties will begin their mediation. Periodic breaks may occur depending on the length or nature of the session. Once the parties have reached an agreement, the mediator will assist the write-up of the final agreement which is read and approved by all the parties.

If you have further questions please contact me at wayne@waynekosaka.com or call 415 755-3835.