

MEDIATION

Mediation is an informal way to resolve disputes outside of the formal legal system. The parties attempt to negotiate their own mutually acceptable voluntary settlement with the help of a neutral person.

What happens in mediation?

Usually, everyone meets together in a private room. Each party gets to speak about what is important to that party, and to hear what is important to the other side. The mediator does not decide who is right or wrong. The parties decide the outcome. The mediator facilitates the discussion. The discussions are considered confidential.

Who needs to be there?

Both parties need to be present. If one brings a friend or lawyer, the other should, or the mediator should refuse to let him or her be present. Mediation is supposed to be a “balanced” occasion.

How long will it take?

Many times mediation lasts only two to three hours. In some cases, the mediator may meet with the parties several times.

What are the advantages of mediation?

- You do not give up control of your case to someone else – a judge – to decide.
- There is no agreement unless both parties resolve their differences.
- Mediation is inexpensive or may be free or at reduced cost if a court orders this.
- Mediation is confidential.
- Mediation is usually faster than waiting for a trial.
- Mediation can preserve relationships by improving communication.
- Mediation can produce lasting agreements because the parties have created them.
- Mediation provides an opportunity for you to say what’s important to you and hear the other person’s perspectives.
- You may choose to sign a written document which can be enforced as a contract.
- If you do *not* reach an agreement, you can still have your case handled by the court or resolved in some other way.
- If you do *not* reach an agreement and you decide to take your dispute to court, neither the mediator nor anyone else can testify in court about what happened during the mediation.

What types of cases are best suited to mediation?

Mediation is required in most divorce cases, but not other types of case. Mediation works well in almost any case as long as the parties are willing and able to negotiate for themselves. Common types of cases include divorces with children. If the parties hope to have an amicable continuing relationship, mediation is especially helpful.

Are there cases not appropriate for mediation?

Cases in which there is physical or psychological abuse are generally not suited to mediation. (The abused parent has the right not to go to mediation.) If there is an extreme imbalance in bargaining power, sophistication, or knowledge of the parties, mediation may not be appropriate.

Do you need a lawyer to go to mediation?

In many if not most cases, you do *not* need a lawyer. If, however, there are substantial legal issues involved, it is best to consult a lawyer about what your legal rights are prior to coming to mediation. He or she need not be present during the mediation. Bear in mind that the mediator cannot give legal advice to the parties.

What makes a mediation successful?

The parties should have some flexibility about how differences may be resolved. Each person should be willing to listen with an open mind to the other, and he or she should freely discuss his or her own point of view.

What if your case is not resolved in mediation?

You do not give up any other options by trying mediation. You may still return to court.

What do you need to bring with you to the mediation?

You should be prepared to bring and show any documents that will help the other side to understand your point of view in the matter. You should also come prepared to explain your perspective fully. Because mediators do not give legal advice to either party, you should come prepared with legal advice or information about your case. Use this and other similar publications as a reference. Bring the papers that have been filed with the court.

How do you choose a mediator?

There are different styles and approaches to mediation. Mediators sometimes take an unassertive approach and merely try to help the parties to understand each other's position and then find common ground. Others may suggest options or even give an opinion about strengths and weaknesses of each spouse's case. You should ask your

mediator about his or her style and decide what type of mediator is best for your case. There is no satisfactory rule of thumb about which type of mediator to use. Just use your judgment.

Where do you find a mediator? How much will it cost?

Ask the clerk of a court how to find a mediator. Ask the mediator what the charge will be. There are free or low-cost mediation services in many areas of Tennessee. In order to obtain a reduced fee, you may file a motion and obtain a court order under Rule 38 of the Tennessee Supreme Court.

Who are these mediators?

Mediators are people who have training in resolution of conflicts. They have experience helping people to communicate better with each other, even when it seems impossible for any agreement to be reached.

- Mediators come from all walks of life, with diverse backgrounds and experiences. They may – but need not be – lawyers.
- Experience and training are important for becoming a good mediator.
- Mediators are good listeners, and they keep discussion going.
- Mediators are required to keep information confidential.
- You should be comfortable with your mediator and discuss your needs openly.

Why do judges encourage mediation?

Tennessee judges recognize that in appropriate cases people may achieve more satisfactory outcomes in a less time consuming and less expensive manner by using mediation. It also provides the courts with a mechanism to relieve dockets and prevent disputes from escalating.

Am I Bound by What is Decided in Mediation?

Yes, if you and the other party have signed a written document about what has been decided.

*Adapted from publications of the Northwest Justice Project
and the Maryland Legal Assistance Network.*