

6 Reasons to Mediate Commercial Disputes



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Welcome

Thanks for visiting this website! I hope you find this free e-book helpful and informative. I look forward to speaking with you about your legal matter and how mediation may be the best way to resolve a dispute, whether it's already in litigation or at the pre-litigation stage.

Although many parties and attorneys approach mediation as if it were another opportunity to try to convince a third party of the wisdom of their point of view, mediators are neither judges nor arbitrators. Rather, mediators are trained neutrals who not only facilitate negotiation between the parties, but also work with each side confidentially, compassionately, and with respect for their concerns, evaluating the strengths and weaknesses of each party's case, and even helping them assess their probabilities of success in court. This approach helps the parties to reach a reasonable settlement based on the realities of the case. Oftentimes, it is the mediator's "reality check" that helps the parties reach a solution that they themselves work out, rather than one created by a judge or jury.

The key to a successful mediation is finding an experienced mediator who both understands the particular dispute and has:

- Good people skills;
- Abundant patience;
- Ability to get "caught up" quickly on the facts and issues;
- Diplomacy, tact, and credibility;
- Creativity;
- Commitment to the process; and
- Diligence.

Additionally, the parties should prepare for mediation by ensuring that they can provide supporting documentation that may be needed during the mediation session and that those who attend the session have full authority to enter into a settlement agreement.

After mediating many cases, my conclusion is that mediation overwhelmingly results in better outcomes for all parties.

So, if, after reading this e-book, you think mediation is right for your case, please contact me.

Best regards,

Barbara

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Disputes are common in the business world and all too often destroy valuable business relationships. Whether the business interests involved are small or large, it can be difficult – often impossible – for two parties to recover after they have been pitted against one another in the courtroom. Unfortunately, no matter how valuable the relationship, a trial can lead to destruction and permanent animosity.



You want to let a judge decide for you?

Luckily, there is an alternative that offers a clear path to dispute resolution without a scorched-earth policy along the way. Mediation brings together disputing parties to resolve their matter and does so in a way that is respectful and advantageous to both parties. At the heart of commercial mediation is communication and negotiation, so nobody ever walks away from the mediation process feeling as if they were ignored or their best interests were disregarded.

Why should you consider mediation if you are involved in a commercial dispute? Here are six reasons:

1. Parties Control the Outcome

No matter how “winnable” a case might seem, there is always a degree of uncertainty when a matter is decided in court. Mediation removes this uncertainty and puts the disputing parties in control of the outcome. This removes a great deal of risk for everyone involved. If a particular outcome is undesirable by one party or the other, they can enter into negotiations, taking that resolution off the table, but being open to others. In court, there is always the risk that the most undesirable outcome for everyone involved will be exactly what a judge or jury determines is optimal.

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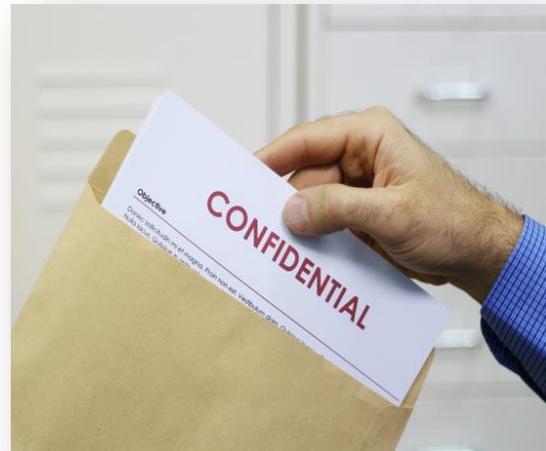


2. Customization of the Process with Flexible Options

Disputes differ in so many ways, so the methods used for resolving them should change accordingly. Unfortunately, when a matter is litigated, a one-size-fits-all approach typically is exactly what the parties get. Mediation, however, provides flexibility, both in the process of resolving the dispute and in the resolution itself. That is because mediation allows for thinking “outside the box”: brainstorming; customizing the options for resolution; and, designing an outcome that may be unconventional or completely brand new, but one that is always completely lawful and ethical. In other words: mediation makes for creative solutions! Best of all, the solutions reached are more likely to “stick,” because the individuals and businesses involved in the disputes tailor their mediation agreements to suit their respective needs and interests.

3. Confidential

Mediation is completely confidential – something that can be extremely important in the business world. When a commercial dispute is resolved in court, details become a matter of public record. In many cases, the general public is even allowed to sit in on the proceedings to observe everything. Mediation is the opposite – meetings are private and the details are not shared with the public or anyone not in the mediation. And, in the rare event mediation is unsuccessful, anything discussed during the process cannot be used against either party.



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4. Improved Communication

Communication is at the heart of mediation, something that might take some getting used to, but which proves invaluable in the long run. Many disputing parties have found their professional relationships greatly improved after a mediation, and in the future, should other disputes arise, they are able to apply skills they acquired in mediation to settle the issue quickly and efficiently.

5. Cost and Time Savings



The prospect of saving time and money is what brings many professionals and businesses to mediation when a dispute arises. The amount of money saved by choosing mediation over litigation is quite significant – potentially in the tens or hundreds of thousands of dollars. The process is extremely efficient, which plays a role in the financial savings, but also ensures that everyone can get back to their most important activities and responsibilities as soon as possible. Mediation eliminates the need for a lengthy discovery process and endless days spent in the courtroom. In some cases, mediation can settle a dispute in under a day! Compare that to the typical multi-year time investment in litigation.

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6. Cultural Benefits

Mediation is especially effective in commercial disputes, because it builds a cultural bridge. Business relationships are rarely cut and dried, and they can be just as complex – if not more so – than personal relationships. When these business relationships include individuals and companies from different cultures – and that includes work cultures -- things can get especially complicated. Mediation brings business associates together and helps them understand cultural issues. This builds a bridge to a solution to the immediate problem and reduces the likelihood that disputes will arise in the future because of cultural differences.



Are you involved in a commercial dispute? Do you think mediation could be the best way to resolve the matter? Barbara Starke Tishuk can help.

First admitted to practice law in Virginia in 1989, and later in Illinois, Barbara began her legal career with a Washington, D.C. law firm, concentrating on toxic torts and consumer products safety issues. Barbara later worked with a federal bank regulator in D.C. during the height of the savings and loan crisis, handling a wide variety of matters, including contract and tort claims and litigation involving real estate, environmental issues, insurance, federal and state financial institutions, and other federal regulatory agencies. She also worked extensively on privacy and consumer protection matters, and was a trainer on issues arising under international financial agreements, the Federal Tort Claims Act, the Freedom of Information Act, and the Privacy Act, among others.

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Since moving to Illinois, Barbara has concentrated her practice in real estate, collaborative divorce law and mediation. In addition to transactional matters, her practice includes handling residential and commercial landlord-tenant disputes. Barbara has also mediated many commercial matters and cases involving homeowners and condominium associations, contractor performance, and real estate installment contracts.

Barbara earned her *Juris Doctor* from American University's Washington College of Law in Washington, D.C., where she concentrated her studies in international law and banking and served as the Senior Notes and Comments Editor of the *American University Journal of International Law and Policy*. She also has a published article in the *Annual Review of Banking and Financial Law*, entitled "High Time for Closure: Yes, the Federal Tort Claims Act Applies to the FDIC as Receiver."

With a candid but compassionate communication style, competence, and attention to detail, Barbara enjoys a very high settlement rate. She believes that through open and honest communication, diligence, and demonstrable respect for each party, she can help her clients protect what matters to them and achieve practical, realistic, and lasting solutions.

To learn more or to schedule a consultation with Barbara, contact her at 630-679-0930 or by email at barbara@golawoffice.com.

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