

7 Benefits of Using Early Mediation When Involved in a Contract or Business Dispute



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WELCOME



Assisting disputants and counsel reach the best results in a conflict has become my life's work. I have combined my experience with lawsuits over 33 years as a commercial and healthcare litigator with a devotion to provide the best available process and result in both mediation and arbitration.

Resolution of disputes by agreement presents varied challenges that both parties and counsel can overcome most effectively by engaging a dispute resolution professional who can guide the most effective process and provide the means to a value added result.

Competence and dedication matter. I now commit myself full-time to assisting with resolutions because I am so confident that I can provide a valuable service that is not available through conventional litigation.

I emphasize engaging in early mediation for several reasons. First, too often that opportunity is overlooked and disputes escalate and drag on, making a favorable settlement increasingly difficult as time passes and costs mount. Second, my deep litigation background and sense of fairness provides me with insights and leads to options that are not readily apparent to the parties or counsel. Third, I am dogged and determined and will keep working to help find the most valuable outcome, even if a case does not settle right away.

I am committed to the idea that, since almost all disputes settle before trial, since there is tremendous waste and inefficiency in our current system, and since most disputants don't want to take the risk or incur the cost of a trial, there is clearly a better way than "business as usual" in most cases. Taking the step to engage in mediation as early as possible will provide an opportunity and result that simply is not available otherwise.

Sincerely,

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Mediation early on in a dispute is often overlooked and certainly underutilized as an effective resolution option because it is not considered the norm. Clients and attorneys engage in a dispute as they always have, without regard for the benefits and opportunities available through early intervention and finding mutually advantageous solutions outside of the courtroom before a case escalates.



While mediation has found growing acceptance and use, because optimism regarding eventual success in court can run high at the outset of a dispute, it takes effort on the part of attorneys to convince clients that their dispute could be more effectively and satisfactorily settled early in a case. By discussing with a client that pursuing a win-loss scenario through protracted litigation usually is not in his or her best interest – he or she might well be the loser

by virtue of the cost and time required to obtain a favorable court decision, and litigation means giving up control - increases the likelihood the client will consider early mediation.

What are the benefits of using early mediation in contact and business disputes?

1. Focus

One of the most important benefits of mediation is the ability to **focus on and develop the issues that matter most**. Instead of getting bogged down with expensive, and usually unproductive, procedural wrangling, disputing parties can concentrate on what they truly need to accomplish through a resolution of the dispute. This creates an environment conducive to faster and far less expensive final resolution, resulting in greater client satisfaction with both the process and the outcome. Mediation creates an environment in which the disputing parties are focused on finding a solution that works for both of them.

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2. Clients' Interests Remain Front and Center

Keeping the respective and potentially often mutual interests of clients at the forefront of the mediation process allows for a more **value-oriented** outcome than when entrenched positions and purely legal claims are the basis for bargaining. The focus is on the best overall outcome, as opposed simply to one party winning and the other losing. There is great value in ensuring that both parties walk away from the mediation satisfied that the process has fully addressed their interests and needs, which is particularly important when there is the potential for a continuing beneficial relationship.

3. Exchange of Information is Productive

In mediation, counsel can agree to a stepped, less costly means of exchanging information and addressing legal issues necessary to fully assess, and then ultimately resolve, the case. Mediation includes a straightforward exchange of information, as opposed to a formal, cumbersome discovery process during litigation that can turn into a very costly battle of posturing and asserting power in and of itself—for no good purpose useful to the client.

4. Even “Unsuccessful” Mediation Can Lead to a Successful Outcome

Not all early mediations result in an immediate settlement, but usually that process has set the stage for the parties to come to a resolution far sooner and with less cost and distraction than they would have had. Even if not resolved immediately, a case is much better positioned to be favorably settled at an earlier point than it would have been otherwise, once the parties dig in and spend inordinate amounts of money, which make a positive outcome so difficult, if not impossible, the longer proceedings continue.



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5. Mediation Benefits Counsel

Early mediation can be a case and practice management tool for attorneys. It allows them to manage their time and resources, while still keeping client interests at the forefront. Early mediation eliminates unnecessary work and allows counsel to manage their caseload more effectively.

6. Preserves Mutually Beneficial Relationships



In every business or contract dispute, a situation exists in which both parties originally derived some benefit from their connection. This mutually beneficial relationship is at increasing risk the longer negotiations drag on, and especially if the issue ends up in the courtroom. Early mediation makes it possible to protect this relationship and, in some instances, even improve upon it through negotiated adjustments. In fact, **consider the dispute a**

business opportunity, not a burden. This paradigm shift can produce results unimagined in an adversarial battle of attrition. Effective mediators create a sense of trust and common purpose during the process, allowing disputing parties to engage together to discover and agree upon terms that never would have come to light otherwise.

7. Creates Client Loyalty

Attorneys who guide clients on the best path to meeting needs through negotiation, rather than useless posturing, become trusted confidantes. In fact, attorneys ultimately put themselves at risk when they instinctively “go to the mat” fighting for clients, eventually losing client support

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and patience amidst a lengthy, stressful, and expensive battle. The best, most effective advocates do not view mediation as a threat to their “tough” reputation or to their income; rather as it becomes an opportunity to build a long-term professional and fruitful relationship with clients.

Is Mediation Right for Your Dispute?

Are you involved in a business, contract or healthcare dispute? Has your attorney suggested mediation or do you believe it is your best option to resolve the matter quickly and efficiently? Are you an attorney seeking to guide a client toward the most positive result obtainable, gaining trust and loyalty? Peter Benner can help.

Peter is a highly experienced, accomplished mediator. He is committed to mediation as a powerful, cost-effective resolution tool. Time and time again, Peter’s mediations convert burden and risk to opportunity--creating value for the parties that is not obtainable, or even apparent, though an adjudicated determination.

Peter works to ensure parties have complete trust and confidence in the process and in him as the mediator. He is a careful and active listener, who understands the importance of the key elements of a productive process: trust; identifying and meeting needs; generating value where possible; working creatively and persistently through the barriers to resolution; and positively engaging the parties themselves to contribute most effectively to the solution that serves them best. His process guidance encourages parties to be constructive and to see and take advantage of the opportunities presented as the mediation unfolds.

If you would like more information or you are interested in scheduling a consultation with Peter, contact him at 860.337.1882 or by email at peter@pwbresolve.com.

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