

..... 7 BENEFITS TO

USING MEDIATION

in

BUSINESS DISPUTES



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WELCOME

During my over 40 years of practice in the Phoenix, Arizona metropolitan area both in the private and public sectors I have come to appreciate the advantages and disadvantages of litigation in the federal, state, and bankruptcy courts. Although litigation results in a final resolution, its disadvantages include the high expense of participating in the process, the attendant delays and stress, and the uncertainty of result.

Mediation offers an attractive alternative. It is less expensive, can provide a more timely solution, and allows parties to shape their own resolution of the dispute. That resolution can often take the form of a remedy that is not available from the court.

They say that variety is the spice of life. During my practice I've had the opportunity to experience the variety that comes with representing many different types of clients, ranging from Fortune 500 companies to sole proprietorships, startups and family businesses. Mediation can assist all these types of businesses in resolving disputes economically and expeditiously. My experience both as a mediator and as an attorney representing litigants in numerous mediations has allowed me to understand what works best in the mediation process and the different approaches that a mediator needs to utilize to assist the participants in coming to a mutually acceptable resolution.

I am gratified that you have considered utilizing my services as a mediator to assist you. My pledge to you is one of integrity, neutrality, persistence and diligence. I am not afraid to be versatile in my approach, utilizing multiple techniques, to achieve a mutually satisfactory and fair result.

Respectfully,



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Mediation is an effective method for resolving personal, business, and professional disputes. Not only does it offer a process that is simpler and less combative than litigation, it reduces the odds of disputing parties turning against one another in the long run. In business, this can be particularly advantageous when a relationship is mutually beneficial and likely to continue.

There are two approaches to mediation, and understanding the differences between the two is essential for successfully using mediation in business. These approaches can be combined and one can be used during one phase of the mediation while the other can be used in different phases.

Facilitative mediation was the original form of the practice. Using this method, the mediator structures a process that assists the disputing parties in reaching a resolution and facilitates their communication. This includes questioning, validating and searching for common interests with the goal of ultimately helping the parties reach a mutually beneficial resolution. Mediators do not give legal advice or play a direct role in creating the final outcome. Basically, facilitative mediators are in control of the process and the disputing parties are in control of the outcome.



The other type of mediation is evaluative. In **evaluative mediation**, the mediator assists disputing parties in reaching a resolution by examining and discussing the strengths and weaknesses of each party's position. The mediator advises each side what a judge or jury is likely to do if the dispute reaches litigation and the risks each faces in proceeding with litigation. In evaluative mediation, the mediator is



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focused on the legal rights of the parties, as opposed to the needs and interests of the parties, and the fairness of the outcome. Evaluative mediation is often the approach used in court-ordered mediation and often focuses more on meetings between client's attorneys and the mediator, as opposed to the disputing parties themselves.

Both forms of mediation offer several benefits, including:

1 EMPOWERMENT

Mediation empowers both parties involved in the dispute and allows them to take responsibility for the resolution. This empowerment is often the key to a successful and satisfying outcome. There is a greater likelihood disputing parties will happily comply with the outcome when they played a role in developing the details.

2 UNDERSTANDING

In the instance of evaluative mediation, disputing parties are able to fully understand the potential outcomes of pursuing litigation. Instead of assuming their case is winnable, they are given the "cold, hard truth." This makes them better equipped to make the best decision based on the details of their case and might help them gain willingness to compromise, knowing the alternative might be even less advantageous.

3 COST

Mediation is less expensive than litigation. It eliminates a number of court fees and might not even require individual representation from attorneys. Even if attorneys participate, the process takes less time and results in fewer billable hours. Since the bottom line is always a factor in business, this makes mediation more advantageous than the alternatives.



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4 WINS AND LOSSES

Litigation produces a win-loss situation. Resolving a dispute in court means someone walks away happy with the result and someone else will feel slighted. Mediation eliminates this win-loss scenario. A successful mediation leaves both parties feeling satisfied and potentially creates a win-win situation. Plus a mediation can explore means for resolution that may not be available in a court proceeding.



5 CONTINUED RELATIONS

Mediation brings together disputing parties to resolve an issue together. Since both play a role in the resolution and it is possible for both sides to be happy with the outcome, a continued relationship is possible. If a business relationship is mutually beneficial, mediation makes it possible for this relationship to continue.

6 CONFIDENTIALITY



In litigation, all discussions held in the courtroom are a matter of public record, as is the outcome of the trial. In contrast, in mediation, everything except the final outcome is private. Discussions held during the mediation sessions are confidential. Not only are they not a matter of public record, they cannot be used in the future, should the dispute progress to another form of alternate

dispute resolution or litigation. Disputing parties are free to speak openly and honestly with the knowledge and assurance anything they say will remain private. This not only protects business interest, it also makes it easier to resolve the dispute.



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7 EFFICIENCY



Mediation offers an efficient solution to business disputes. Businesses, vendors, clients and anyone else involved is able to return to their important work as soon as possible. Some mediation sessions take as little as a single morning or afternoon. When your bottom line is affected by how you spend your time, this efficiency can be extremely important.

If you are involved in a business dispute and hoping to avoid the expense and time-consuming nature of litigation, David B. Goldstein can help. He is an experienced mediator, litigator and transactional attorney, concentrating his practice on commercial litigation and bankruptcy, antitrust, copyright, trademark and computer law, creditors' rights and business transactions.

Mr. Goldstein is a contributing author to the State Bar's Arizona Civil Remedies text and has written articles for several legal publications. He also has served as a director and president of the Phoenix Industrial Development Authority and currently is a member of the Board of Directors of Gomper's Habilitation Center for disabled children and adults.

Mr. Goldstein earned his law degree from the Harvard Law School, where he was a finalist in the Ames Moot Court Competition. He is on the list of certified mediators for the United States Bankruptcy Court for the District of Arizona as well as a member of the State Bar of Arizona with section memberships in the areas of: Alternative Dispute Resolution; Antitrust Law; Bankruptcy Law; Business Law; and Intellectual Property Law. His clientele includes nationally-known and publicly-traded companies, banks, manufacturers, real estate development and management companies, and computer service and software vendors.

For more information or to schedule a consultation, contact Mr. Goldstein at 480.991.9077 or by email at dbg@hgplaw.com.

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