

# Mediation Beats Litigation



**Purpose.** The purpose of this article is to provide you with an introduction to the mediation process in general, and to my methods in particular. The process is much more informal than a court hearing or trial. Nevertheless, the goal is a serious and important one – reaching a peaceful resolution of your controversy.

**Setting.** The setting for a mediation conference may be the conference room of a lawyer or the dining room of my home-office. There will usually be a table large enough to provide comfortable seating for all participants, their documents, and their lawyers. If there are very few documents and everyone agrees, a living room may be utilized. No court reporter will be present, and the proceedings will not be recorded in any fashion. Everything said by anybody at the session is confidential and may not be disclosed to anyone for any purpose.

**Beginning.** At the beginning, every participant will have an opportunity to present all the facts and arguments that he/she wishes to present to all other parties. All documents submitted by any party will be made available to every other party. Each party will be given the opportunity to ask questions of any other party.

**Procedure.** At that point the mediator will meet with each party privately. He may seek to clarify any fact or document presented, or the basis for any position taken. He will explore the flexibility of each party's demands. He may point out the strengths and weaknesses of each party's case, and the possibility of modification of each party's demands.

**Result.** These individual meetings will continue until common ground has been negotiated, and a result that is satisfactory to each party has been reached. The agreement will be immortalized in a written document prepared by one or both attorneys, or by the mediator. Each party will probably believe that some demands were not met, but some had been – in short, that an acceptable compromise was negotiated between the parties with the expert assistance of an experienced mediator.

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## Alternative to Litigation

When two people have a dispute and are unable to come to a peaceful resolution by themselves, the usual course is to hire an attorney and sue. There is an alternative, Alternative Dispute Resolution, commonly called ADR. There are two types of ADR, mediation and arbitration. In arbitration, the arbitrator acts as a judge and reaches a decision which is enforceable in court, if necessary. In mediation, a mediator acts as a facilitator, helping you and your adversary reach an agreement to which both parties agree. Most mediations result in a mutually acceptable agreement. However, if the parties simply cannot agree on the terms, the mediation is not successful. At that stage, both parties may elect to go to arbitration. If they cannot agree on that, either party may then utilize the court system.



If you are already involved in a law suit, you may still obtain the benefits of ADR. Any time after the filing the suit, both parties and their lawyers may agree to either mediation or arbitration. The parties and their lawyers then agree on the appropriate neutral party, the judge authorizes, and the case is now on the ADR track. The process is much less formal than a court case and proceeds much more quickly.

## Mediation Saves You Time

One of the most important things that keeps costs low when mediating is the time you save to settle a dispute. Because of the budget cuts mandated by the fiscal crisis in California, cases are taking longer to complete. Motions which typically could be scheduled in three or four weeks are now taking months. That means the trial is delayed for many more months, and, in fact, may drag on for two years or more.

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During all that time you are in constant contact with your attorney who may call you at any time, require you to produce old records and other documents. You would be spending time which could be put to better use in your business or home activities.

## Mediation Saves You Money



Time is money. What you are buying from your attorney is his/her time. The shorter the course of a law suit, the less you will pay for attorneys, court reporters, document copiers, and court costs. Only if the contract in dispute includes a provision for attorney's fees to the winner will you be able to get a judgment which includes attorney's fees, but until you are able to collect on that judgment, you have spent those funds. As for your own time, you cannot collect for all that distraction which may have cost you income and peace of mind.

If both parties are willing to negotiate in good faith, with reasonable expectations, you may be confident that a settlement will occur much more quickly. When the focus is on resolving an issue and moving on, as opposed to building a case and winning, things get settled much faster. Mediation provides the procedures for a peaceful resolution.

## Mediation Saves you Stress

You may have had the misfortune to have endured the stress and emotional upset that the progress of a case forces upon you. If not, be assured it is an experience you can well do without. By definition a court case is adversarial – you are out to defeat your opponent and get some money which he caused you to lose.

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You, and especially your lawyer, are always thinking about ways to outsmart and gain an advantage over your opponent. Starting even before your case (or your answer) is filed, you are conferring with your attorney, digging up documents, signing declarations, and probably submitting to an examination by your opponent's attorney.

These activities are not conducive to normal sleep or, more importantly, normal relations with your family. The case is a major distraction from your business and social life.

Of course, if the matter is important to you, some stress is inevitable and – some psychiatrists say – healthy. But mediation avoids most of it, and concentrates on building areas of agreement.

## Mediation Gives You Control over the Outcome



When you decide to mediate your controversy, you engage a professional to consult with you about your problem. If I am your mediator, I will meet with you to determine the facts, your desires, your fears. I will suggest the strengths and weaknesses of your case. I will do the same with the other party. Gradually the issues of disagreement will be reduced, the points of agreement increased. Whether or not a final agreement is reached is in your hands.

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## Mediation works

What do you get at the end of the mediation process? You get an agreement with your adversary – no more disputes. You will not get your total demand – neither will your adversary, but the result is one both of you can live with. All the negotiations have been confidential. Private information and business data have not been published for the world to see. You have spent less time and money, and the whole process has been less stressful.

## Mediation – GO FOR IT!

Consider all the advantages. There are no drawbacks. Whether you are a lawyer or a client, review my experience and qualifications: corporate manager, small business owner, lawyer concentrating on settling business disputes, court settlement officer. Then contact me – telephone or email. Together we can get you on the road to a peaceful resolution of your dispute.

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