

FIVE BENEFITS OF USING

MEDIATION

TO RESOLVE A DISPUTE



InterMediate
A Dispute Resolution Group



RENE TOVAR

818-615-0770 | <http://www.imdrg.com>



Mediation has rapidly become the most common and preferred method of resolving disputes outside a courtroom. The exponentially increasing popularity of this alternative dispute resolution procedure is the product of its undeniable benefits and unparalleled advantages over litigating a dispute through trial. Each case presents its own unique issues and challenges, but an experienced, skilled mediator can almost always assist disputing parties and their attorneys by effectively and impartially evaluating the

strengths and weaknesses of each side, and in the vast majority of cases, by facilitating a quicker, substantially less expensive, infinitely less stressful, and conclusive (i.e., nonappealable) resolution. Having successfully facilitated the settlement of several hundred disputes, our neutrals have helped thousands of people, businesses, government entities, insurers, and attorneys realize the tremendous advantages of mediation, including these five crucial benefits attainable in most cases:

1. Saving Money

Win or lose, litigation is almost always expensive. Not only do the litigating parties have to pay their attorneys – either hourly fees or a percentage of their recovery (i.e., a contingency fee) – but they also generally incur substantial litigation – related expenses, such as witness fees, jury fees, court reporter fees, expert witness fees and court costs. For example, the court reporter fee for a one-day deposition or one day of trial by itself often exceeds \$1,500. Expert witnesses typically cost hundreds of dollars per hour, and their fees for a case generally total several thousand dollars.



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More complex cases may require multiple expert witnesses, so even a positive award at trial is often significantly diminished, or perhaps even wholly negated, by the high cost of going to trial. Moreover, many contracts include an attorney's fees provision requiring the party losing a lawsuit arising from that contract to pay the opposing party's attorney's fees and costs (in addition to his, her, or its own attorney's fees and costs), so the financial risk of taking a case to trial may be substantially magnified, or even cost-prohibitive.



Most or all those litigation expenses can be avoided when a dispute is resolved through mediation with an experienced, skilled neutral, which can take place at any time the parties agree to participate, even before a lawsuit is filed, or may even try another mediation after the parties have conducted more discovery and investigation. The parties themselves always remain in full and exclusive control over the resolution of a dispute through mediation, unlike a trial, where the final result is determined by the judge or the jury.

2. Resolving Cases Faster

Litigating a dispute through trial often takes a couple of years, even longer if one or more of the parties files an appeal. Depending upon the type of dispute, those years consumed by litigation often have devastating financial and emotional effects on parties. While awaiting a resolution, a personal injury plaintiff may be unable to secure the medical treatment he or she needs to quickly and fully recover, causing unnecessarily prolonged pain and suffering, and in many cases additional lost earnings and costly damages.



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Years of litigating a dispute may distract a business owner from pursuing new lucrative opportunities, or a terminated employee from paying everyday bills, or a best-selling book from being published, or a blockbuster film from being released, or divorcing spouses and their children from moving on with their lives, or any defendant or insurance company from enjoying the financial certainty and peace of mind that comes with resolving a dispute. Mediation offers disputing parties the opportunity to avoid these frequently inevitable consequences in a cost-effective, risk-eliminating, relatively informal and low stress environment.



3. Removing Uncertainty

Taking even a strong case to trial can be extremely risky. The parties entrust their fate to twelve jurors they've never met and who for the most part, frankly would prefer to be almost anywhere other than in that courtroom. Though jurors generally try their best to arrive at the "right" result, getting twelve strangers to agree upon what the "right" result is may prove elusive, and everyone has inherent biases and predispositions – usually subconscious – developed through their own individual life experiences that unavoidably affect how they view and interpret evidence. As a result, predicting how a particular jury will decide a case at trial can be very challenging.

Litigating parties and their attorneys carry their own inherent biases. Parties have a natural tendency to view the evidence most favorably to themselves, and their attorneys dutifully serve as their fiercest advocates, often causing both litigants and their attorneys to become inextricably entrenched in their legal stances. As a result, opposing parties frequently find themselves stuck at an impasse and headed down the path toward trial and all the uncertainties and expenses that entails.



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More often than not, a skilled mediator with extensive litigation and trial experience, able to view the issues and evidence from a nonpartisan, more neutral position than the parties or their attorneys, can pinpoint the strengths and weaknesses of each party's case, and effectively guide the opposing sides beyond their inherent biases, helping them arrive at an equitable settlement.

4. Preserving Parties' Privacy



There is very little privacy in litigated disputes. Documents filed in court are readily available to – and courtrooms are open to – the general public and even to the media. Indeed, courts increasingly make filed documents available on the internet for all the world to view and comment upon. Disputes often involve private, sometimes embarrassing or harmful, allegations – whether the nature of a personal injury plaintiff's injuries, or the financial status of a person or business,

or accusations of domestic violence in a child custody battle or of dishonesty in a corporate dispute – at least one of the disputing parties would strongly prefer were not aired out publicly, particularly if those allegations are untrue. Quite often, once a dispute becomes a matter of public record, or garners some publicity, the floodgates burst open, and multiple similar lawsuits that otherwise may never have been filed, follow.

Mediation, in contrast, is confidential. Information discussed and exchanged during a mediation is neither publicly filed, nor admissible in a court should the dispute eventually wind up going to trial. Mediation affords disputing parties the opportunity to resolve their differences in an informal private setting, and allows them to conceal from the general public personal or embarrassing details through a confidential settlement that is neither filed in court nor available to anyone other than the parties and their attorneys.



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Mediation also enables parties and their attorneys to discreetly consider and evaluate counter-arguments and unfavorable evidence they may not have previously discovered or impartially assessed as the neutral mediator would, rather being surprised at trial.

5. Being Heard

Litigated disputes often end up in trial due more to a lack of communication than differences between the parties. Once a lawsuit is filed, the parties frequently view that as the point of no return, and turn their attention toward “winning” and away from resolving. Consequently, all too often opportunities to amicably resolve a dispute, and avoid the time, expense, risk, and stress of a trial, are forever lost. Sometimes, had the parties enjoyed the benefit of an open line of communication, facilitated through an experienced and skilled mediator, their disputes could have been resolved far more efficiently and quickly than litigation allows.

Mediation offers the parties that opportunity to freely and confidentially express their concerns, listen to and evaluate their opponent’s concerns, and consider the input of an experienced neutral mediator. Whereas a trial is almost always solely about money, mediation affords the parties an opportunity to explore creative ways to resolve their disputes that go beyond money – perhaps including a reference letter, or a new business opportunity, or an apology, or an item of personal property, or an additional custody day with a divorcing couple’s children, or a non-disclosure/non-disparagement agreement – offering the parties a fair chance to express their own feelings and opinions, an often priceless right that may be unavailable or overlooked at trial.

For more information about our neutrals, please review their biography pages, or contact us with any Questions or to schedule your mediation at (818) 615-0770, or at rene@tovarandcohen.com for Rene Tovar and david@tovarandcohen.com for David J. Cohen.

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