

4.3: Mediation

Mediation is a method of ADR in which parties work to form a mutually acceptable agreement to resolve their dispute with the help of a neutral third party. Like negotiation, parties in mediation do not vest authority in a third party to decide the dispute. Instead, this authority remains with the parties themselves, who are free to end mediation if it is not working. Often, when parties end mediation, they pursue another form of ADR, such as arbitration, or they choose to litigate their claims in court. Like negotiation, mediation seeks a “win-win” outcome for the parties involved. Additionally, mediation is confidential, which may be attractive to people who wish to avoid the public nature of litigation. Discussions during a mediation are not admissible as evidence if the parties proceed to litigation. This encourages parties to be open with each other when trying to resolve their dispute. Finally, the mediation process is usually much faster than litigation, and the associated costs can be substantially less.

Unlike negotiation, a third party is involved in mediation. Indeed, a neutral **mediator** is crucial to the mediation process. Mediators act as a go-between for the parties, seeking to facilitate the agreement. Mediators do not provide advice on the subject matter of the dispute. Mediators might not possess any subject-matter expertise concerning the nature of the dispute. The value of mediators, however, is their training and experience in conflict resolution, which they use to facilitate an agreement between the parties.

Advantages of Mediation	Drawbacks of Mediation
<ul style="list-style-type: none">• Quick resolution• Less expensive than litigation & arbitration• Non-adversarial process that can preserve the relationship between the parties• Allows parties to work together to solve shared problem• Confidentiality• Set ground rules by a third party• Possibility of a “win-win” outcome	<ul style="list-style-type: none">• Requires genuine participation by parties• Results may depend on skill of mediator• No uniform rules or procedures that apply to all mediations• No guarantee of a mutually agreeable outcome

Parties often enter into a legally binding contract that embodies the terms of the resolution immediately after a successful mediation. Therefore, the terms of the mediation can become binding if they are reduced to a contract.

Mediation is often required by courts as part of the litigation process. In an effort to reduce the court’s docket and encourage the parties to settle their own disputes, parties to lawsuits often must mediate their disputes after discovery and before trial. If the parties cannot settle their dispute with the help of a mediator, the case will proceed to trial before a judge or jury who will determine the outcome of the case.

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