

A LAWYER'S GUIDE to MEDIATION

An Alternative to Trial



**Civil Court of
the City of New York**

Mediation v. Litigation

Mediation is an informal process in which disputing parties are assisted by a trained neutral mediator in resolving the dispute themselves. The process allows a party an opportunity to be heard, present grievances & have a “day in court” without the delay & expense of trial. Reaching agreement in mediation is voluntary.

Unlike a judge or arbitrator, a mediator has no decision-making authority. Nor will the mediator evaluate the strengths & weaknesses of each party’s case, rather the mediator acts to facilitate the parties reaching their own solutions. An agreement reached through mediation may be written down, reviewed & “so-ordered” by the Judge. If no resolution or a partial agreement is reached, the case is returned to Court for trial or further proceedings.

Confidentiality

Statements made and information presented in mediation are confidential. What is said will not be disclosed to the Judge, cannot be used against a party in Court & the mediator will not testify in any proceeding. The private nature of the process encourages the parties to be forthright. An allegation of child abuse, domestic or other violence may be an exception requiring disclosure or reporting to appropriate authorities.

Stages of Mediation

Introduction - The mediator explains the process, its goals & guidelines.

Party Presentation - In their own words the parties & their attorneys express what the dispute is about.

Agenda & Discussion - The mediator organizes the items raised, frames the interests & concerns of each party & facilitates discussion of each item.

Caucus - There may be times when the mediator will declare a caucus & speak with each side individually which disclosures are confidential from the other side.

Resolution - Agreement may be reached on some or all of the items discussed.

Suspension - A break may occur for a party to seek legal information or advice.

Duration - The mediation may continue for an hour, during a morning or afternoon or throughout the day & may continue to another session if desired.

Types of Cases

Most non-violent disputes may be appropriate for mediation. Your case may benefit from mediation since it avoids the time, expense & uncertainty associated with trial with no negative consequences. All types of cases have been resolved successfully through mediation including those involving strong emotions, where the parties have had a relationship or shared interest or which have been lingering for a long period.

Role of the Attorney

- ▶ Attorney counsels and prepares a client for mediation
- ▶ Attorney aids a client in understanding the risks, benefits & costs of litigation as well as the likelihood of success at trial & the cost of proceeding if a negotiated agreement is not reached in order that the client may make an informed decision on how to proceed
- ▶ Attorney acts as an expert source about legal issues, evidentiary questions, & Court practice & proceedings.
- ▶ Attorney acts as an agent of reality.
- ▶ Attorney may assist the client in creative problem-solving & examining options.
- ▶ Attorney & client may consult with each other at any time.
- ▶ During the mediation, the mediator may ask for the attorney's participation in these areas & in drafting any agreement.

What Evidence to Bring?

Although no formal rules of evidence apply, a party should bring any relevant contracts, documents, estimates, repair bills, photographs or other items which might be helpful in presenting their case. Witnesses may appear but generally are not necessary since the process seeks mutually agreeable resolutions rather than fact-finding & the parties speak for themselves.

Preparing your client for Mediation

Identify Interests & Needs

In mediation, the parties are considered the experts on reaching solutions consistent with their individual interests and needs. The parties are asked to speak for themselves in the mediation session. You can prepare your client for mediation by helping the client identify his/her interests and needs and their relative importance.

Understanding Other's Interests & Needs

Understanding the other party's interests & needs can be helpful to a client's ability to negotiate successfully. You may clarify with your client the difference between agreeing with & understanding another's perspective.

Explain Mediation v. Litigation

In mediation, the parties are encouraged to work together to construct solutions in which the important interests and needs of each are met. If each party is able to acknowledge his/her own interests & to understand the other party's perspective, they may work together to creatively explore possible solutions. It is helpful if the parties come to mediation with an open mind & are able to express empathy & understanding for each other.

Where are Civil/Housing Court Mediation Programs located?

Queens Court Mediation Program

Room 117

NYC Civil Courthouse, Queens County
89-17 Sutphin Boulevard
Jamaica, New York 11435
718 - 262-7266

Staten Island Court Mediation Program

NYC Civil Courthouse -
Richmond County
927 Castleton Avenue
Staten Island, New York 10310
718 - 262-7266

Manhattan Civil Court Mediation Program

NYC Civil Courthouse,
New York County
111 Centre Street - Room 419
New York, New York 10013
718 - 262-7266

Brooklyn Court Mediation Program

NYC Civil Courthouse, Kings County
141 Livingston Street
Brooklyn, New York 11201
718 - 262-7266

Bronx Civil Court Mediation Program

NYC Civil Courthouse, Bronx County
851 Grand Concourse at 161st Street
Bronx, New York 10451
718 - 262-7266