

# Michael Pollack Mediation Services, LLC

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## Mediation FAQs

### Frequently asked questions about mediation

#### 1. What is mediation?

Mediation is a process in which an outside person assists two or more people or organizations in dispute to communicate, to negotiate and to make mutually satisfactory decisions on the disputes between them. It is a form of “assisted decision-making.” Mediators do not decide who is right and who is wrong, or who wins and who loses. Participants in mediation are not forced to agree to anything. The mediator’s role is to assist the participants in communicating and negotiating an agreement that is acceptable to them all.

#### 2. How do we get started?

Every mediation process is different, but normally mediation involves the following initial steps:

- The mediator is approached by one person or organization with a request for information or mediation assistance.
- The mediator contacts the other persons or organizations involved and asks if they are willing to consider mediation.
- The mediator sends to each person or group information about mediation and about the mediator, along with a mediation contract for the participants to complete. Sometimes, the mediator requests written background information on the dispute. Each participant can submit information confidentially to the mediator if there is something they do not want to disclose to the other people involved.
- A time and place suitable for all persons involved is arranged for the mediation meeting. This can be the office of one of the participants or their attorneys, or the mediator’s office, or some other neutral space.

#### 3. What happens in the mediation meeting?

The mediator welcomes each person and explains the mediation process. He or she first asks each person to talk in turn about their principal concerns. The mediator then clarifies those concerns and translates them into issues for discussion. The issues are written up and listed in order of priority. The mediator then defines the areas where the participants are in agreement or disagreement, and provides a structure for the discussions. Each participant is asked to give their views and explain their perceptions to the other on each issue, and together the participants explore options for resolving the points of difference. Thereby, an agreement is pieced together, like a jigsaw puzzle.

#### 4. Who can be present and can our discussions be confidential?

Advisers (such as attorneys, human resources specialists, or accountants), supporters, and witnesses may be present, along with anyone else if the participants agree. All who attend may be required to agree to maintain the confidentiality of the discussions.

The participants can agree on what will or will not be said publicly about the mediation. Neither participant can introduce evidence in court about what was said in the mediation, nor can they produce in court any documents prepared for the mediation. Courts want to promote settlement, so they do not allow participants to introduce evidence of statements made during settlement discussions, such as mediation, to prove that a person admitted some fact or agreed with any conclusion, unless an agreement to that effect was actually reached.

#### **5. If we reach an agreement, will it be legally enforceable?**

The participants and their advisers, with assistance from the mediator, will record the outcome of the mediation in a written document, including matters that have been agreed upon as well as issues, if any, that remain to be resolved. Courts normally accept and enforce such agreements.

#### **6. What if the other participants and I do not get along?**

This is not unusual. It is a normal part of the mediation process for the mediator to meet separately (caucus) with each participant on a confidential basis. You can also ask to speak to the mediator alone and use the mediator to facilitate communications between you and the other participants. Or you can ask for the mediation session to be adjourned if you are intimidated or uncomfortable. You can always express any concerns openly in the mediation and the mediator will try to deal with them then and there. Some of the mediator's tasks include creating a favorable environment for dispute resolution, assisting each side to negotiate, and minimizing intimidation or other causes of anxiety among the participants.

#### **7. How much does it cost?**

Mediators charge at an agreed daily or hourly rate, which is normally split equally among the participants. The fee includes preparation, actual meeting time, and other expenses such as travel. Mediation can be completed in a half-day session; most are completed in no more than a full day.

#### **8. What happens after we are done?**

Mediation agreements should spell out how long the participants have to perform their agreed tasks, including payment of money and execution of releases. Mediated agreements sometimes include clauses or terms that commit the participants to come back to mediation in the event of a breach of the agreement before initiating court proceedings. If the participants have an ongoing relationship – such as employer and employee, business partners, or franchisor and franchisee – the agreement may provide a method of working through future disputes so that the participants can resolve them on their own.

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