

NORTH COUNTRY CONFLICT RESOLUTION SERVICES
A Program of the RURAL LAW CENTER OF NEW YORK

An Attorney's Guide to Mediation

Mediation vs. Litigation

Mediation is an informal process in which disputing parties are assisted by a trained, neutral mediator with the goal of resolving the dispute to the satisfaction of both parties. This process allows each party to be heard, present grievances, and discuss solutions, without the delay and expense of a trial.

Unlike a judge or an arbitrator, the mediator has no decision-making authority. Nor will a mediator evaluate the strengths and weaknesses of each party's case. Rather, the mediator acts as an informed facilitator helping the parties reach their own solution. Agreements reached in mediation may be committed to writing, reviewed by counsel, and ultimately converted to a court order. If there is no resolution, the case can return to court for trial or further proceedings.

Appropriate Cases

Nearly any non-violent dispute is appropriate to bring to the mediation process. Mediation avoids the time, expense and uncertainty associated with a trial and has no negative consequences. All types of cases have been resolved through mediation, though it is especially effective for those involving strong emotions, and in cases where the parties have had or must continue to have a strong relationship or shared interest. Cases involving abuse or domestic violence are never appropriate for mediation.

Stages of Mediation

Introduction... The mediator explains the process and sets guidelines.

Party Presentations... Each party expresses his or her understanding for the dispute.

Agenda and Discussion... The mediator charts the issues raised and facilitates the discussion of each issue.

Caucus... Occasionally, there are times in the course of mediation where the mediator will declare a "caucus" and speak to each party privately. Disclosures made in caucus remain confidential.

Resolution... Agreement may be reached on all or part of the issues discussed.

Suspension... Mediation may be suspended for one or both parties to seek legal advice or other information.

Multiple Sessions... If the parties are discussing complex issues, it may be decided to break it into more than one session.

What About Evidence?

Although no formal rules of evidence apply, your client should be encouraged to bring all relevant documents to the session such as contracts, estimates, repair bills, existing court orders, photographs, etc. Anything which may be helpful should be available in general. Witnesses may appear but this happens rarely. The process relies on the parties speaking for themselves in order to craft mutually acceptable solutions.

Preparing Your Client for Mediation

Evaluate the Case... Explain to your client the path through the court process and the path utilizing mediation for all or part of the dispute.

Identify Needs and Interests... You can prepare your client by helping to identify his or her interests and needs, and their relative importance. This is important since your client will be attempting to reach solutions which are consistent with his or her interests and needs.

Understanding the Other Party's interests and Needs... It is equally important to understand the interests and needs of the other party. This is critical to help your client to be successful in negotiation. Be sure that your client understands the difference between agreeing and understanding the other party's perspective.

Explain Mediation and Litigation... Litigation, by its very nature, is an adversarial process. Mediation, on the other hand, encourages the parties to work together to reach a mutually satisfactory solution to all or part of their dispute. It is helpful to note that mediation can work out the details to parts of any dispute and is not an all or nothing process. If the parties can approach mediation with open minds and a willingness to work creatively, it is nearly always possible to reach some level of agreement.

Role of the Attorney in Mediation

- **Counsels and prepares the client for mediation.**
- **Counsels the client to understand the risks, benefits and costs of litigation.**
- **Advises the client as to the cost of proceeding if agreement is not reached so the client can make an informed decision on how to proceed.**
- **Acts as expert source about legal issues, evidentiary questions, courts practice and proceedings.**
- **Assists the client in creative problem solving and the examination of available options.**

- **Consults with client throughout entire process.**
- **Participates in the review and drafting of the agreement.**

Confidentiality

Statements made and information presented in a mediation session are confidential. Mediation is not a tool for discovery. Anything said in the course of mediation cannot be disclosed to the court and cannot be used against the other party. In addition, the mediator will not testify in any proceeding. The private and confidential nature of mediation encourages the parties to engage in open discussion. This confidentiality is protected under law. The only exception to this confidentiality is the disclosure of child abuse.

How Can I Arrange for Mediation Services?

Contact the Community Dispute Resolution Center office in your county. Contact information for each of the 5 rural county offices served by the North Country Conflict Resolution Services (St. Lawrence, Clinton, Franklin, Essex and Hamilton) is listed in the general information found at the Conflict Resolution tab on this website.