

MEDIATION: SHOULD I USE IT?

WHAT IS MEDIATION?

Mediation is a way to negotiate solutions to disputes. The negotiations take place with the help of a trained mediator.



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WHAT DOES THE MEDIATOR DO?

It is the mediator's job to help with communication and to create a safe place for you to negotiate. The mediator is a neutral person who works to make sure each person has a chance to be heard, shows respect for each one's values and feelings, and explores with you workable solutions to your disagreements.

The mediator is not there to give you legal advice or to decide who is "right." The mediator does not make decisions for the parties. Some people get help from an attorney for consultation early in the process before they go to mediation or during the process. If the parties reach an agreement in mediation, the mediator will put that agreement in writing. The parties may then have their own attorneys review the agreement and put it in a legal form.

WHY WOULD THIS WORK?

There are no guarantees, but mediation has several things working for it. First, it is **voluntary**. You both must agree to mediation, and you both must be satisfied for agreement to be reached. This protects you because a decision cannot be forced on you. At the same time, it means you must pay attention to the needs of the other person for agreement to be reached between you. In some counties, mediation is mandatory, especially in family law cases and cases involving parenting plans or custody issues. Also, many court-ordered parenting plans set out mediation as the dispute resolution option to be used if a disagreement arises over the parenting plan.

Second, it is **confidential**. Basically, what you say there stays there. It cannot be used later in a court or administrative hearing. (Exceptions are threats of violence and unreported abuse). Confidentiality frees you to test out your ideas or express your needs. It gives you a chance at creative problem-solving.

Third, you have the help of a trained **mediator**. So, no one pretends that feelings and values are not part of the dispute. They are part of the negotiations, not ignored.

HOW IS THIS DIFFERENT FROM A LAWSUIT?

In court or arbitration, a “judge” listens to both sides and then makes a decision for you. In mediation, it is the people actually having the disagreement who decide how it is to be solved. Since you are part of the solution, you must work hard.

First, you need to prepare for the mediation. You must do the work to understand your legal rights and the possible results of certain choices you have to make. You must do the work to organize your thinking. You need to do all this preparation, perhaps with the help of your attorney, before mediation begins. The mediator cannot do this work for you.

Second, you must join in the mediation. It is not a spectator sport. You need to really listen to what the other person has to say; you need to express your own thoughts and feelings and to share any important information; you need to be willing to work on a variety of possible solutions until you develop one that fits you both. Your work is key to mediation’s success.

CAN I USE MEDIATION FOR MY PROBLEM?

Mediation can be used in all sorts of areas: family law, personal injury, consumer complaints, employment law, landlord/tenant disputes, collections.

However, where there has been domestic violence, mediation may not work. There can be no real agreement where it is produced by intimidation.

SHOULD I USE MEDIATION IF THERE HAS BEEN DOMESTIC VIOLENCE?

Mediation is probably not appropriate in cases of domestic violence. When there is an imbalance in negotiating power, such as in cases of physical, emotional, or economic abuse, or if one of the parties feels intimidated by the other, it is unlikely that there can be a fair outcome.

If you decide you want to use mediation and there has been domestic violence in your relationship, the survivor should have an attorney and the mediation should take place with the parties separated in different rooms.

WHEN CAN I MEDIATE?

You can mediate at any time -- before going to court, during a court case, or even after a court case is over. For example, you can mediate to clarify a final parenting plan. If mediation for your type of case is mandatory in your county, you must mediate before your case goes to trial.

If no agreement is reached, you can still use the courts. If part is solved, you will have that much less to take to court. If full agreement is reached, there is no need for a trial, but the court may still need to confirm your agreement, particularly in the family law area.

WHY IS MEDIATION A GOOD IDEA?

Unlike court, you help make the solution. It is within your control. This means you are more likely to be satisfied with any solution and more likely to live up to it.

It is less costly -- in time, in dollars and in emotions.

It is very useful where there are on-going relationships. For example, landlord/tenant disputes, employer/employee problems, parent/parent issues.

WHY DON'T MORE PEOPLE USE IT?

Every year, more and more people turn to mediation to deal with their disputes. As they are satisfied, they, in turn, recommend it to their friends. But there are two times mediation should not be used. First, where there has been domestic violence, mediation may very well not work. There can be no real agreement where it is produced by intimidation. Second, where you are not willing to work, both at preparation before mediation and during the mediation itself. Only if you put in your own time and effort can mediation be successful.

WHAT DOES IT COST?

Many counties in Washington now have Dispute Resolution Centers which provide mediation services at no or low cost. Mediators in private practice generally charge \$50 - 200/hour, depending on the type of case and the family income. Sometimes there is an additional administrative fee.

HOW DO I FIND A MEDIATOR?

Check your phone book or the Resolution Washington website, <http://www.resolutionwa.org/> for your local Dispute Resolution Center.

In the Seattle area, you may also contact the U. W. School of Law Clinical Law Program – Mediation Clinic at 206-685-4140 or <http://www.law.washington.edu/clinics/MediationClients.html>. This free service is not available in the summer and does not provide mediation for dissolutions or parenting cases.

Just as with attorneys, it is best to use a referral service to find a private mediator, if possible. You may call Legal Voice's Information and Referral line at (206) 621-7691 for referral to mediators in some areas of the state. You will also find a list of mediators in private practice at <http://www.washingtonmediation.org/findamediator.html>.