



Mediation Guide

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JAMS Mediation Guide *A Guide to Mediation for Lawyers and their Clients*

The Mediation

What actually happens in mediation? The following information is provided to demystify the process and assist you in your preparations. The procedures discussed herein are those normally followed in a dispute that is mediated through the auspices of JAMS.

Mediation can be described as an assisted negotiation. The mediator is neutral and has no bias against any of the parties or their positions. He/she is the facilitator who assists the parties in reaching an agreement that is acceptable to them. The agreement is not imposed upon the parties; it is reached through the facilitated negotiation process typical of a mediation proceeding. Judges and arbitrators make decisions that are imposed on the parties. Mediators may be requested during the course of a mediation to provide their evaluation of the probable outcome of a dispute were it to be litigated or arbitrated. If there is such an evaluation, it is done at the request of the parties but is not binding upon them unless they request and agree to it. The formal procedures found in court or arbitration proceedings are not present in mediation proceedings. There are no rules of evidence or set procedures for the presentation of facts or positions. Before mediation commences, the parties and the mediator agree upon the procedures that will be followed. It is the party's proceeding; they can fashion it in any way that makes sense to them and the mediator. This absence of formality provides for open discussion of the issues and allows the free interchange of ideas. Thus, it becomes easier to determine the interests of the parties and to fashion a solution that satisfies those interests.

The Mediators

The mediator is an invaluable neutral resource to all participants in the mediation process. Lawyers, insurance professionals and their clients use the knowledge and skills of a neutral mediator to plan negotiation strategies and develop options for settlement. The mediator keeps the process focused and moving forward.

Neutrals at JAMS, which include lawyers, former judges, psychologists, and others, are highly trained, experienced professionals. They receive mediation training in the classroom and by observing experienced mediators in the mediation process.

Our mediators are chosen because of their training and experience. Their biographies are available at www.jamsadr.com. The parties jointly pick the neutral that they wish to use in the mediation proceeding. On occasion they will interview one or more of the neutrals before making their choice. They frequently check references before deciding on a particular neutral.

The Preliminary Meeting

In most cases, the mediator will meet with the parties and/or their representatives prior to the joint mediation session. Sometimes, for the sake of convenience, a conference call substitutes for the initial meeting.

This initial meeting or conference call provides:

- An introduction to the participants and the mediation process.
- An opportunity to discuss issues affecting settlement which are important for the mediator to know in advance
- An opportunity to determine what information would be helpful for the mediator to have at or in advance of the mediation.
- An appropriate time to discuss any concerns a party might have about the mediation and his/her role in the process.

The Joint Meeting

When all of the procedures have been agreed to and a mediation agreement has been signed, the mediation session or sessions are scheduled. The mediation normally commences with a joint conference among all of the parties and their counsel. The joint session provides an opportunity for each participant, either directly or through counsel, to express their view of the case to the other participants and how they would like to approach settlement. The opening statements are intended to begin the settlement process, not to be adversarial or a restatement of positions. This session may last anywhere from a few minutes to many hours depending on the number of participants and the complexity of the issues. The mediator will let you know in advance how to prepare for this session.

Mediation is a voluntary, non-binding process using a neutral third party to help the parties reach a mutually beneficial resolution of their dispute. A mediator helps the parties reach a resolution by facilitating communication, promoting understanding, assisting them in identifying and exploring issues, interests and possible bases for agreement, and in some matters, helping parties evaluate the likely outcome in court or arbitration if they cannot reach settlement through mediation.

The mediator will often act as "devil's advocate" in these sessions to explore how realistic the positions of the participants are and what is possible considering the no agreement alternative. The mediator often assists parties to prioritize interests and options for settlement and to assess the relative strengths and weaknesses of positions.

Once settlement is achieved, the mediator will record it for signature immediately to prevent second thoughts from destroying a good agreement.

Evaluation by the Mediator

Most mediations commence with the mediator as a facilitator, not an evaluator. An early evaluation by a mediator often destroys his/her effectiveness to act as a neutral. When appropriate, and in consultation with the

participants, mediators will provide a formal or informal evaluation and analysis of the case, to focus on strengths and weaknesses, likely outcome at trial, and value of the case. Quite often, risk analysis tools are used in the evaluative process. A mediator's evaluation is simply that and nothing more; it is not binding upon the parties unless the parties agree to the contrary.

Follow Up

In some cases, telephone conferences occur following mediation sessions if no agreement has yet been reached. Sometimes, further information is required for the process to continue or additional people may need to be involved in the decision making process.

Agreement

The mediator will work with counsel to finalize a settlement agreement and determine the procedures necessary for implementation. The mediator is available to provide assistance throughout the process.

Summary

If you have any further questions about the mediation process or about JAMS, you are welcome to contact any of our offices to speak with a case manager. We welcome your questions.

For more information, please call your local JAMS office at 1-800-352-5267.