

## Mediation

### A powerful alternative to litigation

By Renee Rubino, Esq.

Mediation is sweeping the nation as a powerful way to resolve legal matters - from divorces to business disputes. In New Jersey, more and more courts are instituting mandatory mediation upon the filing of a complaint before litigation can proceed. This article will explain what mediation is and why it is rapidly becoming such a powerful and successful option for resolving legal disputes.

Mediation is a process by which a neutral third-party (the mediator) assists individuals, couples or businesses in designing a resolution to their dispute without the need for a costly and protracted court battle. The mediator is specially trained in facilitating communication and negotiation between parties. It is important to note that not all mediators are attorneys. In selecting a qualified mediator, it is advisable to search for an attorney-mediator who has legal experience in your area of concern, whether that is divorce or a business dispute. The mediator will not render a decision or comment on the merits of either side's case. Rather, the mediator helps the parties clarify the precise issues and negotiate their own solution. It is a powerful alternative because the parties, not lawyers and judges, control the process. The parties meet according to their own schedule. Legal representation is not only welcomed, it is encouraged. The lawyer's roll, however, is limited to advising and assisting the parties with regard to specific legal questions that arise.

Most importantly, decisions are not imposed upon the parties by a judge or jury. Mediation is often a more successful alternative because the parties themselves create a settlement that best meets the needs of all those involved. In contrast, when a decision is imposed upon the parties by a judge or jury, the result is often

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more litigation. The "losing" party may file an appeal, which can trap you in litigation for another year and may cost thousands more in legal fees. With mediation, a solid and final resolution is more likely to occur because the parties themselves negotiate and agree to the final terms.

Flexibility is another factor that makes mediation such a strong alternative to litigation. Most litigated cases, for example, typically end with one side "winning," the other "losing," and a sum of money being awarded. There is no room for creativity in the courtroom. With mediation, however, the parties can discuss and explore options that might never be mentioned in a filed complaint, such as a future exchange of products or services instead of money damages. This type of flexibility is particularly helpful when the parties want to maintain an amicable relationship, such as in a family business or companies that have done business together for many years.

In divorce cases, this type of flexibility is crucial. Who better to determine a visitation and parenting plan for children than the parents themselves? In litigation, a judge will hear a little testimony from each side and impose a decision. With mediation, the parties can meet as often as necessary to create a plan that works best for them and their children. The same holds true for the equitable distribution of assets and all other issues that must be resolved in a divorce. Unlike litigation, divorce mediation focuses on preserving family relationships. If requested, other professionals can be utilized, such as financial experts and mental health specialists. The parties learn to resolve their differences in a way that preserves family dignity.

Other examples of the benefits of mediation over litigation include far less money, time and anxiety. As for cost, mediators generally charge an hourly rate of anywhere from \$250 to \$350. In divorce cases, the couple will typically meet with the mediator once a week for an hour long session. The cost is paid at the end of the session and split by the parties. The length of the entire proceeding depends on the couple. Many have already agreed to the most significant aspects of the separation, such as custody and visitation, and need only a few visits to finalize and memorialize the details. Others prefer to go through the process more gradually and may take a break for a month or more. The only additional costs that one should be aware of include a review of the final agreement by independent attorneys, and the filing of the court documents by one of those attorneys. While it is not absolutely necessary to have an attorney review the agreement, it is strongly encouraged. Even if your mediator is an attorney, he or she is acting in a neutral capacity for both parties and cannot give legal advice.

Few things are more upsetting than being involved in a lawsuit. When the suit involves a divorce, the emotional components rise exponentially. It does not have to be a battle. Litigation by definition is adversarial. Mediation, on the other hand, teaches people how to focus on their most essential needs and interests, as opposed to taking a "position" and digging in at all costs. A mediator can help people set aside their positions and emotions and focus on options for a successful and healthy resolution.



Unfortunately, conflict is inevitable. Fortunately, there is a more civilized and dignified way to resolve conflict. That way is mediation, a legal solution that you design. ■

For more information on mediation, contact Renee Rubino at 973-320-5294 or visit [www.rubinoesq.com](http://www.rubinoesq.com).