



Work With Us. In Confidence.

The Mediation Process

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June 7, 2011— Mediation is a form of Alternative Dispute Resolution (ADR) used to settle conflicts before resorting to a formal trial in a court of law. The mediation process is defined as a “method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.” Black’s Law Dictionary (9th ed. 2009).

In other words, mediation is an informal way for parties to resolve controversies with the assistance of an independent mediator who is trained to help people discuss their differences. The process is non-binding in that the mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to problems. This is in contrast to arbitration, another popular form of ADR, in which a third party hears the facts of a case and makes a determination, which may be final.

The information disclosed in the mediation process is typically confidential pursuant to the agreement of the parties. The process varies, but generally begins by written submissions outlining the position of each party. After the written submissions are reviewed, each party gives a brief, oral presentation and then joint negotiations begin with the mediator steering the conversation. If the parties reach an impasse, the mediator can conduct caucus sessions consisting of private discussions with the individual parties to discuss the strengths and weaknesses of their positions along with the options available to reach a resolution of the conflict. If the mediation is successful, then parties immediately formalize their settlement via a written agreement.

Mediation can be a helpful process because it allows the parties to convey their message directly to the opposing party. When the parties approach the process in good faith with the goal of reaching an agreement, mediation can provide a quicker and less expensive alternative to litigation. In fact, many courts include mandatory mediation participation in certain types of cases before the dispute may proceed to trial. However, mediation participation does not require that the parties reach a final agreement, and litigation is still an option if the mediation session does not result in an agreement that satisfies the interests of the parties.

If you have any questions about the mediation process or other methods of dispute resolution please contact Peter J. Gregory at (585) 512-3506 or pgregory@mccmlaw.com.