

Mediation—A Peaceful Way to Resolve Business and Personal Disputes

By Janet Allen-Shaw, Pacific Mediation Services

If you had a dispute, would you file a lawsuit? Most people immediately think of filing suit, but mediation is an alternative solution that's usually less adversarial, much cheaper, and confidential. In mediation the parties, not a judge, control the outcome. The mediator serves as a facilitator guiding the parties but they decide the terms of the agreement—often a common sense, creative solution not available in court. There's no risk of an unfavorable precedent or runaway jury verdict. In business cases where time is money, a quick mediated settlement is a big advantage. A speedy resolution also short-circuits the escalating hostility that typically occurs in litigation. Mediation offers the parties a chance to preserve relationships. For these reasons, many contracts include mediation clauses and many companies have signed the "ADR Pledge," agreeing to try mediation or another Alternative Dispute Resolution process before going to court.

Most people have heard of mediation but not everyone is aware of the variety of cases where it can be useful. For example, business cases where mediation is beneficial include wrongful termination, sexual harassment, family business disputes, partnership disputes, corporate dissolutions, real estate and construction disputes, bankruptcy and product liability cases. Mediation is effective in neighborhood battles over blocked views and shared driveways. It works well in contested probate cases, such as a fight I resolved between sisters who inherited their father's house. Mediation is used extensively in divorces, including cases with complex business issues and acrimonious custody fights, often saving the parties much grief and tens of thousands of dollars. Virtually any case that would otherwise go to trial could be settled through mediation. I have mediated hundreds of these business and divorce cases in the past 19 years, helping the parties make peace with each other so they can put the dispute behind them and get on with their lives. Especially in divorce cases with children, I help the parties move past their bitterness so they can focus on co-parenting their kids in a positive way.

Some mediators practice "shuttle diplomacy" with the parties in separate rooms and the attorneys speaking for their clients; however, I like to have the parties speak to each other in a constructive dialogue, communicating their interests to one another. As each party tells his story, he feels he's had "his day in court". Through joint sessions I help parties clear up misunderstandings, get all the facts out, and see each other's perspective so they can find common ground. They move from being stuck on their rigid positions to a more cooperative stance as they work together to solve the problem. For example, I mediated a case where two couples co-owned a store until their relationship soured. They fought bitterly over who would keep the store. Through mediation they made peace and agreed one would sell and use the money to buy another business. Their contentious dispute ended in an amicable settlement. Thankfully, mediation works as well in almost every case because both sides recognize it's in their own best interest to find an efficient, practical solution that works for everyone.

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