



# WHAT IS MEDIATION

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# What Is Mediation?

As a useful form of alternative dispute resolution (ADR), mediation enables parties to engage in confidential settlement discussions facilitated by a neutral third party. Unlike traditional court proceedings, mediation does not rely on a legal ruling given by a judge or jury. Instead, the mediator (who is often chosen by mutual agreement) facilitates an opportunity to reach a resolution outside of a contested court venue.

## What Are the Benefits of Mediation?

Mediation offers several benefits, including:

- **Lower Costs:** Mediation is often less expensive than going to a trial because of fewer procedural requirements.
- **Time Efficiency:** Disputes resolved through mediation are often settled faster than those that proceed to trial, which can take months or even years, especially if appeals are involved.
- **Control and Flexibility:** Parties have more control over the outcome in mediation, as they actively participate in reaching a mutually acceptable settlement rather than receiving a judgment imposed by a judge or jury.
- **Confidentiality:** Mediation is typically a confidential process whereas filings and documents presented in trial court are generally accessible to the public.
- **Reduced Stress:** The collaborative nature of the mediation process is often less stressful and less emotionally draining compared to contested trial court litigation.

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## **How Much Does Mediation Cost and How Does Counsel Prepare for Mediation?**

The cost of mediation varies depending on a variety of factors, including the complexity of the case and the mediator's fees. Regarding fees, the parties typically share the costs of mediation, although it is possible to negotiate a different arrangement beforehand. Overall, mediation is generally less expensive than litigation, as it involves fewer procedural formalities and is typically resolved more quickly.

While mediation is often quicker and less expensive, it still requires thorough preparation. Key steps in preparing for mediation include:

- Developing an Understanding of the Client's Case: Legal counsel must fully understand the case, including the facts, legal issues, and perhaps most importantly, the client's goals and objectives.
- Analyzing Strengths and Weaknesses and Developing Negotiation Strategies: Counsel evaluates the strengths and weaknesses of the case to anticipate outcomes and assess risks. This analysis informs the development of tailored negotiation strategies including exploring unique settlement options and anticipating the opposing party's arguments.
- Selecting a Mediator: Counsel may collaborate with the opposing party to select a mediator. It's important to consider the mediator's experience and neutrality in this process.

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## How Is Mediation Different from Arbitration?

The non-binding nature and confidentiality of mediation are its key defining characteristics. In other words, a party is not forced or required to accept the outcome of a mediation; rather, the parties agree to engage in mediation out of a good faith desire to attempt to resolve their dispute. Arbitration, on the other hand, is a binding process that is more akin to a trial court proceeding, although less formal and subject to rules and procedures that generally expedite the resolution of the parties' claims.

Individuals and businesses facing exposure to liability or that seek redress may achieve their objectives outside of contested litigation by seeking resolution through mediation.

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