MEDIATION PROCESS EXPLAINED

The mediation process allows parties involved in a conflict to resolve their differences with a minimum of expense and in a manner that is frequently more efficient and far less expensive than a trial in a court of law. In mediation a neutral third person, referred to as a mediator, encourages and facilitates the resolution of the dispute in an informal, non-adversarial manner.

The mediator is not a judge and has no power to command a settlement or decide on a winner or loser. His or her duty is to allow each party to present their case and then, through negotiation skills, facilitate communication to assist the parties in reaching a satisfactory settlement. The parties decide, with their attorneys' advice, whether a settlement is in their best interest. Mediation is an effective means of allowing the parties to control their destinies without relinquishing these decisions to a judge or to a jury. A mediation settlement provides the parties to a dispute with (1) a guaranteed result, (2) no risk of an adverse decision at trial, and (3) closure.

If all parties resolve their dispute, the mediator will reduce the agreement to writing for the parties and counsel to sign. **This is a binding contract.** If the parties cannot or do not agree to the terms of a settlement, they may either agree to a postponement, or request a mediator to declare the mediation at impasse, meaning simply that the parties cannot agree to resolving the dispute through mediation.

COMMON QUESTIONS AND ANSWERS ABOUT MEDIATION

WHAT HAPPENS WHEN WE GET THERE? The parties will meet via Zoom or at an agreed upon location at which time the mediator will explain the basics of the procedure to all those present. Counsel for each of the parties has the right to present an opening statement about his/her client's position. A party also, should he or she wish, may address issues at this time. After opening statements, the parties may continue to meet as a group or, if more effective, they will break into separate groups, referred to as "caucuses."

The mediator will then meet with each group privately in individual sessions. The mediator may repeat this for the duration of the mediation or may rejoin the parties together as a group if that would be beneficial to the mediation process. If the parties agree to a settlement, or if the mediation does not result in a settlement at the end of the mediation, they will meet as a group to sign the settlement agreement or to adjourn, because the parties requested an impasse.

CAN I BE FORCED TO SETTLE MY CLAIM? Absolutely not. This is a voluntary process based upon your conclusion, with your attorney's advice, that settlement at mediation is in your best interest.

WHAT HAPPENS IF WE DO NOT SETTLE? The case continues to wind through the court system until the judge or jury renders a decision resolving the dispute. You have lost none of your legal rights, but mediation does allow you to maintain control of your destiny. You will have limited control of the decision after submitting it to a judge or jury.

IS EACH PARTY AUTHORIZED TO SETTLE? Prior to the commencement of the mediation, each party, through counsel, represents that they have final decision-making authority to settle.

CAN ANYTHING I SAY BE HELD AGAINST ME IF WE DO NOT SETTLE? No, the basic premise of mediation is that it is a confidential, safe environment, where the parties can explore the possibility of settlement. Each party and counsel will agree to abide by the rules of strict confidentiality, and there are penalties for violation of the rules.

WHAT RULES GOVERN MEDIATION? There are many rules which govern the mediator. The principal rule is that the mediator must remain neutral to all parties. You may tell the mediator confidential information that he or she will never reveal to the other party or parties unless you specifically authorize such disclosure. Sometimes, however, it is invaluable to disclose certain information to the mediator, with the advice of your counsel, which you want the mediator to share with the other party to convince them that settlement is in their best interest.

As stated before, nothing said within the context of a mediation is admissible in a subsequent court proceeding. All parties are bound by this rule of confidentiality. Further, the mediator must determine if there is a potential conflict of interest prior to the mediation. Under certain circumstances, a mediator should decline the mediation because the situation creates the appearance of or a lack of impartiality.

IS MEDIATION ADVERSARIAL? No. For mediation to be successful, the parties must have a collaborative attitude. They have a problem, and the problem is that there is a dispute that is on track to an expensive, winner take all, ending process. Successful mediation lets the parties use their power of self-determination to craft a mutually acceptable resolution.

At mediation, the parties must realize that neither side will convince the opponent that they are right, and the opponent is wrong. The attorneys must address the issues, the facts and the problems in a manner that promotes positive negotiation, and be hard on the problem, but easy on the people.

WHAT IS THE ROLE OF THE ATTORNEY? The attorney should prepare as if he or she is going to trial. Their goal is to present to the decision-maker on the other side, the facts in favor of his or her case, such that the opponent recognizes the risk of trying the case and agrees to work toward a settlement.