

## 7 Advantages of Including Mediation as Part of Your Dispute Resolution Process

By Marvin Motley

There are many advantages to including mediation as part of the dispute resolution process. However, let's start with a clear understanding of mediation and how it differs from arbitration and litigation.



In **mediation** a mediator who is a “neutral party” works with both sides in the dispute to craft a voluntary resolution to the dispute. The word “voluntary” in this case means the solution to resolve the dispute is one agreed to by both parties. The mediator cannot impose a resolution or force either party to agree. If the parties can't agree on a resolution during the mediation, they continue in whatever dispute resolution process governs their relationship. These are usually either litigation or arbitration.

In **litigation** a lawsuit is filed in either state or federal court by one of the parties against the other to enforce their legal rights or collect damages based on the action or inaction of the other party. The case is heard after a lengthy discovery process and decided by a judge or jury who hears the evidence and decides, based on the evidence, who wins and who loses. This process can take years and the decision is usually subject to appeal, which can further delay resolution of the dispute.

In **arbitration** the parties select an arbitrator or a panel of arbitrators to hear the evidence and decide the resolution of their dispute. Arbitration is usually less expensive and much quicker than litigation in resolving the dispute. This is because the parties select an empowered arbitrator to act as the “judge” in resolving their dispute. The arbitrator manages the dispute resolution process, hears the evidence and makes a decision which is binding on the parties. The decision of the arbitrator, unlike that of a judge, usually cannot be appealed. There are extremely limited grounds to overturn an arbitration decision, but generally, if you don't like the decision you are stuck with the result.

The advantages of mediation are as follows:

- **Speed** – The parties can meet promptly to see if a resolution to their dispute can be reached.
- **Cost** – Mediations are usually conducted in a single day eliminating months or years of attorney's fees.
- **Flexibility** – There are more options available for resolving a dispute than just monetary damages. Non-monetary options, which would be unavailable in litigation or arbitration, can be crafted to address the interests of the parties.
- **Relationship Preservation** – Mediation is often less damaging where the parties have an ongoing or strategic relationship.
- **Mediation does not preclude the use of other dispute resolution approaches.** If the mediation is not successful, the parties can proceed with another dispute

resolution process. Since the vast majority of disputes are resolved prior to the completion of litigation, courts often encourage and sometimes require the parties to attempt to mediate the dispute at some point during the proceedings.

- **Mediation supports the future resolution of the dispute by clarifying the facts, issues and interests of the parties.** It also provides a forum to evaluate the strengths and weaknesses of the parties' positions.
- **Mediation provides a forum for the parties to be heard and unload some of the "emotional baggage" that prevents them from moving forward to resolution.** There is always an emotional component to any dispute. Helping the parties address this aspect of the dispute can be the key to finding a resolution that both sides can live with.

Given these advantages, I would encourage you to give mediation a try the next time you have a workplace or business dispute.

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