

Mediation is considered part of the alternative dispute resolution process because mediation is an alternative to litigation and trial, which has been the traditional way of settling lawsuits. Mediation is voluntary and non binding, i.e. there is no agreement unless the parties agree there is one.

Parties that agree to proceed with a mediation do so under a mediation agreement that provides inter alia, that the process is non binding, confidential and with out prejudice. The agreement also provides that anything learned at the mediation cannot be used in any subsequent legal proceedings.

The mediator acts as a neutral third party, and as such is neither legal counsel to any party nor a compellable witness to any legal proceeding.

Generally, the parties exchange briefs approximately a week before the mediation. The briefs usually set out each parties understanding of the issues in question and their legal position. At the mediation, each party gets to fully talk about the issues as they see them. After each party does this, then there may be some rebuttal required. After this further discussion, the parties will have a better understanding of the issues to be discussed, and the mediator will produce an agenda for discussion.

As the parties go through the issues on the agenda, one or more of the parties may want to break into caucus. I may want to meet with each party to further discuss the case. Anything I learn in these discussions is confidential unless that party wants me to share this information with the other parties.

I will ask the parties about the negotiation history in the dispute and at this point parties may want to make offers or counter offers.

I should emphasize mediation is very effective at resolving disputes, primarily because all the parties are in the same room and in this process have the opportunity to measure the risk of success and failure. No party gets everything they want at trial, and at mediation I ask the parties to consider that . I ask parties to be open and flexible, and to try to understand the other's position.

When the case settles I have a memorandum of agreement that I get counsel and the parties to sign. The agreement sets out the settlement terms, the amount of the settlement, and any other relevant terms or steps.

The mediation process can take anywhere from three to six hours, and some mediations are longer and some are shorter. Mediation is a very effective flexible process used to resolve many different kinds of legal disputes.

If you have any questions, I will be happy to answer them at the mediation

Regards

David P Stark, Stark Mediation "Turning Disputes into Settlements"

