



Beneficial Tools for Your Business Mediation and Arbitration

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Forward thinking business executives are increasingly turning to business mediation and arbitration for both internal and external conflict prevention and resolution.

Business mediation is a relatively new approach to dealing with conflict that incorporates some of the best practices of traditional methods of conflict resolution while offering additional unique benefits as well.

Globally, mediation and arbitration clauses are becoming commonplace in employee manuals and vendor and customer contracts. Most important of all, conflict prevention, or early conflict intervention, resolves issues before the deleterious impact on profitability occurs.

Benefits of Mediation

Results of a recent survey by the Charlottesville Regional Chamber of Commerce indicate that mediation is rarely used to resolve business conflicts in the Charlottesville region. In other parts of the country, business mediation is the process to which businesses in conflict turn first.

Why? What do businesses elsewhere know about mediation that is not readily understood here? They know that their businesses will profit from the benefits of mediation which are absent from the other methods of resolving conflict.

Businesses in Mediation:

Control the outcome

Participation in mediation is voluntary and the parties maintain control over the outcome of the conflict. With the assistance of a neutral third party, called a mediator, the parties fashion their own solution. Generally this means both parties find a solution from which they will both benefit—a win-win solution. Contrast this to a court or arbitration decision in which control of the outcome has been relinquished to a judge or an arbitrator. Here the outcome usually makes one party a winner and the other party a loser.

Save valuable relationships

In mediation the parties work together to reach a mutual agreement and in the process are provided an opportunity to save their relationship. During the mediation process, it is not uncommon for collegiality and cordiality to return. And, when the parties continue to live and do business in the same community, this may be the biggest benefit of all.

Save time

The entire mediation process including scheduling and the actual mediation session can be accomplished in a few days or weeks, whereas civil suits can take months or even years.

Save money

Swift resolution to conflict minimizes distractions that impact management and workforce productivity. In addition, timely resolution, mediation may lower dispute related legal fees.

Benefit from professional guidance

A mediator is a trained professional whose role is to help the parties communicate and to provide a framework for non-confrontational dialogue. A mediator never acts as a judge or jury. An agreement is reached only if both parties are satisfied with the concepts and language of the agreement.

Attorneys representing the parties are welcome in the mediation process and parties without attorneys are encouraged to have their agreements reviewed by attorneys prior to signing them.

Create an enforceable agreement

The agreement reached by the parties to mediation is a contract enforceable in court as a contract.

Retain the option of using the judicial process

By taking their conflict to mediation, the parties do not relinquish their right to battle it out in court should their mediation fail. (Nationwide, just over 80% of mediations result in agreements.)



Keep issues confidential

Professional mediators are bound by a code of ethics which includes a requirement that they keep confidential all matters discussed during mediation. This differs starkly with information and decisions rendered in civil court which become public record.

How and Why Mediation Works

In business mediation parties to the conflict meet in the presence of a mediator to find a solution that pleases both parties. A mediator is a person trained in the mediation process who has no interest in the outcome of the conflict. (For Business Mediation the parties will want to select a mediator who has a business and/or legal background.)

During the mediation the parties discuss all the facts they believe are relevant to the conflict; agree on the issues that must be resolved, brainstorm possible solutions to each issue; and reduce their final solutions to a written agreement. Arcane procedural and evidentiary rules are not used in mediation.

The mediation session rarely lasts more than two hours. If an agreement is reached during the session, it is reduced to writing and is enforceable in court as a contract. If an agreement is not reached the parties are free to take their dispute to arbitration or to court. It is noteworthy that fewer than 20% of the conflicts brought to mediation are left unresolved! In the words of retired Virginia Supreme Court Chief Justice Carrico, "generally...most any civil dispute is amenable to mediation."

Arbitration: How it fits in and how it Works

Arbitration is another, More traditional, process for resolving business related conflicts. In recent years it has also gained favor from businesses who want their disputes settled quickly and economically by a person with no interest in the outcome-a neutral person(s).

In using arbitration, parties retain some control by choosing the arbitrator(s) and the rules to be used at the hearing. However, unlike mediation, they do relinquish the final outcome of the conflict to the arbitrator. Much like having a private judge, after hearing both sides of the issue, the arbitrator renders a decision. In binding arbitration, the arbitrator's decision is final and, only in the rarest of circumstances, will a judge overturn the decision.

While arbitrators are generally trained in decision-making, its detractors may point out that there is a relationship between words "arbitration" and arbitrary".

Mediation and Arbitration Finding Favor

The swift rise in business mediation and arbitration popularity is not limited to the parties in conflict. Courts are increasingly encouraging parties to try mediation before their trial. And, in some states, courts will not even set a date for trials until mediation or arbitration has been exhausted. They fully subscribe to the philosophy that parties are generally happier with the outcome from mediation and arbitration than those who bring their conflict to court.

Lawyers are increasingly suggesting that their clients consider mediation and arbitration as options for solving their conflicts. Even the most skilled attorneys cannot guarantee the outcome of litigation but they can make risk assessments based on their knowledge of the law and court room experience. A growing number of lawyers, nationwide, feel their clients are better served by employing mediation or arbitration strategies first, and only using litigation as a final option.