



Senior Legal Hotline

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SENIOR LEGAL FACT SHEET

Mediation: An alternative to court for dispute resolution

What is mediation?

Mediation is a process in which a neutral individual, the mediator, helps two disputing parties communicate. The goal of mediation is for both parties to reach a deeper understanding of the issues in dispute and come to an agreement.

Some key elements of mediation are:

- (1) Mediation is a **voluntary** process – Nobody can force you to participate. Either party is free to end the mediation at any time and for any reason.
- (2) **Self-responsible** and **informal** – Mediation allows both parties to reach an agreement in an informal setting, without going to court. Mediation encourages parties to work together to solve their dispute(s) and to reach the best agreement possible. With mediation, no rules, regulations or judgment is forced on any party. The parties can agree upon rules and reach their own agreement.
- (3) **Confidential** – By law, any statements or proposals for settlement made in mediation are confidential. This is to encourage both sides to speak freely and share ideas for solving their dispute -- what they say cannot be used against them later in court or in some other setting outside the mediation. *(This does not prevent facts or evidence that are brought up in mediation from being used later in court if normal court rules would allow them anyway. If you're not sure whether it's a good idea to say something, get legal advice first.)*
- (4) **Impartial** – The mediator is responsible to help both parties reach their goals. The mediator cannot favor one party's interests over the other's.

What is the role of the mediator?

The mediator helps the parties reach a complete understanding of the dispute, including the interests of both parties. The mediator is neutral. He or she is not an advocate for either party. The mediator helps both parties reach an agreement in which both parties achieve some, if not all, of their goals.

The mediator helps both parties become clear about their expectations for an agreement and helps them reach their goals. To do this, the mediator may ask tough questions for each party

Please turn the page

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to reflect on. The mediator also helps each party see the big picture regarding the dispute. This may keep them from focusing on irrelevant facts or legal issues.

The mediator also works with both parties to separate the people from the problems. Due to the potentially high emotional impact a dispute may have, a party may need a mediator's assistance in moving past negative feelings toward the other party so the parties can work together for a solution

What types of disputes go to mediation?

Many civil disputes and some criminal cases can be mediated. The only requirement is that the parties agree to participate in the process. Mediation is not limited to legal disputes. If you are experiencing problems communicating with someone else or are unsure how you should approach someone with whom you have a dispute, mediation may be of value.

Will mediation take the place of courts in resolving disputes?

Mediation is an alternative to going to court. With some disputes, mediation may not be your best option. Also, a decision to try mediation does not prevent someone from going to court. If you participate in mediation and no agreement is reached, you can still file a lawsuit.

Courts may require mediation in some types of cases, for instance family law disputes over child custody and visitation. Some California courts may require mediation be tried in certain civil disputes.

Can an agreement made in mediation be enforceable in court?

Yes. If both parties sign a written agreement, it is enforceable in a court of law.

Where can I find a mediator?

The Senior Legal Hotline (SLH) has a mediation department. This newly formed program is free and conducts mediation by telephone. The SLH mediation department handles civil disputes that are appropriate for mediation. We do not handle any criminal matters. The SLH mediation department will only mediate cases between parties directly, not their attorneys, though we encourage both parties in a mediation to seek legal advice.

If you would like to resolve a dispute from the comfort of your own home or office, the SLH's telephone mediation may work for you. Phone mediation may be especially valuable to people who live in rural areas and lack easy access to existing community mediation services.

Most counties in California have community mediation programs. They use volunteer mediators to resolve civil disputes. Some programs do not charge a fee, while others charge on a sliding scale depending on a party's income. Please contact us to see whether your county has a community mediation program and if you would like to be referred to it.

Your county court may also have mediation programs or a referral list of local private mediators. Private mediators can be found in the Yellow Pages. They usually charge an hourly fee for both parties.

If you have questions about mediation or think your dispute would be best resolved through mediation, contact SLH. Our advocates can discuss the option of mediation and may refer you to the SLH mediation department or another resource.

If you are over 60 in California, you can get free advice by phone from the Senior Legal Hotline regarding your questions about this or any other legal issue. Hours of operation are Mon.-Fri. 9 to 12 and 1 to 4, and until 7 p.m. on Thursdays. You can also submit your question by e-mail from our web site, www.seniorlegalthotline.org.