

# A Short Description of the Mediation Process

Conflict occurs whenever two or more parties believe they have incompatible goals or limited resources. Conflict is inevitable, but is destructive only when the parties cannot resolve their differences. Dispute occurs when parties get “stuck” in their normal methods of resolving conflict.

Various processes have been used by people to settle disputes, from informal discussion and problem solving to violent interaction. Mediation is a process that allows the parties to maintain control of the decision-making, while utilizing an additional party to help make the process work. The intervention of an impartial and neutral third party who had no authoritative decision-making power allows the parties to negotiate in a safe climate where all concerns, interests, ideas and information can be heard. The parties are then able to reach their own mutually-acceptable settlement of the issues in dispute.

There are several benefits of using the mediation process rather than other dispute resolution processes. Mediation is generally *less expensive* when compared to litigation or other forms of fighting. Mediation often provides a *more timely* way of resolving disputes, especially when court calendars are so full the hearings are often months apart. This is especially valuable for parties who need to have a continuum relationship, and wish to put the dispute behind them and get on with their lives. Since mediation settlements are mutually agreed upon, parties generally are *more satisfied* with the solutions compared to those imposed by a third decision-maker (e.g., a judge or arbitrator). Finally, parties generally *comply* with the terms of agreements that were crafted by themselves more often than they do when the terms are imposed upon them by someone else.

Mediators can be helpful in dispute resolution when:

The parties' emotional involvement is intense;

- Communication between the parties has not been effective, and the parties cannot change the situation on their own;
- There are serious disagreements over data;
- There are multiple issues in dispute and the parties cannot agree on the priority or even, sometimes, the existence of all issues of the dispute;
- There are perceived or actual differences in the interests of the parties
- The parties are having difficulty starting negotiations, or establishing an effective negotiating procedure

Mediation begins with the development of a rapport between the parties and the mediator. This allows the mediator to collect and analyze relevant data about the parties that will allow the development of an appropriate strategy. Once the parties are brought together at a mediation session, the mediator assists the parties to broadly define the topic areas of concern, obtain agreement on the issues to be discussed, and determine the sequence of discussion. The mediator establishes the ground rules that will provide the safe environment for the parties to discuss their concerns and interests, and then helps them generate options that would resolve their issues. The mediator then aids the parties to individually and collectively determine interest based criteria that allow assessment of the options. Then, bargaining for a final substantive agreement that best matches the needs of the parties can occur. The final part of the process is the development of a formal agreement that identifies the steps required to achieve the agreement establishes an evaluation and monitoring procedure, and creates an enforcement and commitment mechanism.