



**Notice:** This guide is for informational purposes only and does not provide legal advice or create a mediator-client relationship. You should contact a mediator to obtain advice with respect to any particular issue or problem.

## Mediation – Overview & Frequently Asked Questions

### Overview & Examples of Mediation Scenarios:

The following scenarios illustrate occasions when mediation may be a good process fit for a conflict between two people. Once mediation has been chosen as a course of action, the mediator will typically meet (by phone or videoconference) with each party individually and then organize a conversation between all parties, facilitated by the mediator. In many instances, the mediation participants reach an understanding or agreement about how best to move forward together and the mediator may assist them in writing up their agreement to memorialize their understanding.

#### *Scenario 1: Neighbor Conflict*

*Greg has had a problem with their fencing and the cows have been escaping regularly. Greg's neighbor has called Animal Protection services and filed a complaint twice. If the neighbor calls a third time, Greg could face a fine or a court summons. Greg and the neighbor could work with a mediator in mediation to address (1) keeping the cows on Greg's property, (2) their neighborly/working relationship and/or (3) how future complaints could be handled. The mediator would assist Greg and the neighbor to address these and any other topics that would help them avoid an escalated conflict in the future.*

#### *Scenario 2: Workplace Issue A*

*Julie has been working for her employer for a year. Julie has had several interactions with her employer that have left her feeling uncomfortable where her employer talks down to her, which leaves her feeling belittled. Julie also senses that her employer has become frustrated with their dynamic as well. The business is small and therefore does not have a Human Resources department. Her only option is to talk with her employer directly, but she does not feel comfortable doing that. Julie could ask her employer to participate in mediation to discuss ways they can improve their working relationship and productivity.*



### **Scenario 3: Workplace Issue B**

*Grace, who is Korean American, has noticed some changes in her manager's behavior toward her since the start of the pandemic. Whereas they used to have a friendly relationship, her manager has made some comments about "her people" and has asked questions about what things are like in China, behavior that has made Grace increasingly uncomfortable. Grace reaches out to HR to learn about mediation to see if a mediator could help them discuss the impact of these comments on Grace.*

### **Frequently Asked Questions:**

#### ***What is mediation?***

Mediation is a voluntary process in which a neutral third party (the mediator) assists the parties in resolving their dispute or conflict by facilitating their negotiation.

#### ***What is the role of the mediator?***

The mediator's role is to help the parties have a more productive conversation to enable them to reach an agreement or settlement. The mediator is not a judge and has no authority to impose a settlement.

#### ***Is the process confidential?***

When parties enter into a mediation, they sign an Agreement to Mediate in which they agree that the entire mediation process is confidential and privileged, except where disclosure is required by law. Moreover, information obtained in the course of the mediation concerning (a) child abuse or neglect, (b) elder abuse or neglect, (c) the risk of serious harm to an individual, or (d) unlawful activity may be disclosed to appropriate authorities.

#### ***What are the advantages of mediation over litigation?***

Mediation enables parties to take control of the resolution of their dispute, to speak directly and be heard, and typically allows for more creative solutions as compared to litigation, which is a long process decided by judges, juries and appellate courts.

#### ***How much does mediation cost?***

Many mediators offer a sliding scale based on their standard hourly fee (generally between \$300-600/hr) or pro bono (complimentary) services depending on the financial circumstances of the parties. Regarding duration, the mediator and participants will decide at the outset on the duration of the mediation. Depending on the number and types of topics the participants bring to the mediation, the mediation may last between 2-4 hours. In some instances, participants are interested in continuing the discussion and/or scheduling a "check-in" follow up session with the mediator as well.

#### ***\*Can I participate in mediation virtually?***

Yes, mediation can be conducted by phone or by videoconference (e.g., via Zoom, etc.), as well as in person.

***Will the mediator write our agreement at the end of the mediation?***

If the parties in the mediation are able to reach an agreement, they will determine what specific terms are included in the agreement. The mediator can assist the parties in this process, such as by helping to draft a Memorandum of Understanding or drafting the terms of the agreement as dictated by the parties.

***What happens if a mediation participant fails to do what they said they would do in mediation?***

One benefit of mediation is that the participants decide what any mediated agreement will look like, which typically results in participants following through on their commitments. Participants also enter the mediation with the understanding that mediated agreements can be drafted as legally enforceable contracts.

This guide was written in collaboration with Audrey Lee, J.D. Senior Mediator, Boston Law Collaborative, LLC



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