

Tuesday, April 25, 2023

STAGE 1:

- Welcome everyone (*ask for names*). How would you like to be addressed?
- Thank you for inquiring about mediation, and I hope you will find the process productive.
- My name is _____. I am a court-certified mediator and have plenty of conflict resolution and negotiation experience. (*My co-mediator and I bring many years of experience to the session*).
- I understand that you're both interested in mediation sessions?
- What brings you to mediation today?
- Have either of you participated in mediation before?

WHAT IS MEDIATION -

- I'm going to go through a brief review of mediation before we begin:
- Mediation is a process in which a neutral (Mediator) assists parties to a dispute to find a **MUTUALLY** acceptable solution to their dispute. Participants (you) will take charge and have the opportunity to reach such an agreement.
- Typically, parties will list the points they are interested in discussing, their goals for mediation, and the outcomes they would like to see.
- Any number of issues or a variety of topics can be discussed through mediation, from family-related matters to business concerns and everything in between.
- Some goals may be to maintain or strengthen relationships, while others may be to resolve disputed financial compensation or dissolve a business partnership.
- Desired outcomes can vary depending on the situation and the parties' goals. It is important to remember that **mediation is a forward-thinking process**. The focus of mediation will not be centered around the details which have led to mediation but on the collaborative process to create a mutually satisfying agreement that will be relied on in the future. Therefore, it is essential to recognize that this process depends on parties' willingness to be creative, collaborate, share responsibility for obligations, and make compromises. To help facilitate effective collaboration and problem-solving, I will ask questions and assist each of you through what is often known as "reality testing." This is to help all parties determine whether the agreement they are creating is manageable in the long run.
- Many people find mediation to be a beneficial, efficient, and inexpensive means to resolve their disputes. However, it is entirely normal and likely that during this process, there will be periods of emotional strain or tension as we explore all the possibilities to craft a unique and effective agreement.
- As the mediator, I will facilitate discussions, help identify and clarify issues, and explore potential solutions while remaining impartial at all times.
- Mediation is voluntary. Either party or the mediator may decide to stop the mediation at any time for any reason. (*In such an event, your dispute will return to the court, and the Judge will hear your case*).

4 LEGALS -

- There are several things you need to be aware of before you agree to mediate. The most important of these are:
 1. As a mediator, I cannot provide legal or financial advice, make evaluations, render an opinion or make decisions for you.
 2. You may have an attorney present or consult an attorney at any time.
 3. You may have a mediated agreement reviewed before signing and are encouraged to do so.
 4. Any mediated agreement may affect your legal rights.
- In the end you will decide the outcome.

CONFIDENTIALITY -

- For online mediations: THIS MEDIATION IS NOT BEING RECORDED.
- No party is permitted to record any mediation sessions, and all parties agree not to record any mediation sessions. Please let us know if any party has additional people in the room with them.
- Mediation is a confidential process.
- I will take notes throughout the session to help us remain organized as we progress through this process. All notes are confidential and will be destroyed once the mediation is over. No party may be asked to share their notes. Parties are expected to respect the privacy and confidentiality of this process and involved parties.
- No party may be called to court to testify as a witness to the mediation.
- Everything said or written in this mediation by all the parties present is confidential and may NOT be used in any subsequent judicial or administrative procedure except as allowed by statute.
- Those exceptions include:
 1. A mediated agreement signed by both parties as it remains a part of the public court record.
 - i Such as if this is a court referred mediation.
 2. Parties agree in writing to waive confidentiality.
 3. Credible threats to inflict harm or bodily injury.
 4. Ethics complaints against a Mediator.
 5. Statements or communications to plan, attempt to commit, or conceal a crime.
 6. Materials otherwise subject to discovery but not used in this mediation.
and
 7. Other reasons provided by law or rule.
- Mediators are also MANDATORY REPORTERS for:
 - ★ SUSPECTED CHILD ABUSE OR NEGLECT,
 - ★ CREDIBLE THREATS OF VIOLENCE, and
 - ★ PAST OR FUTURE CRIMINAL ACTIVITY

CAUCUS -

- Throughout the mediation, I may ask to meet with each of you individually at some point during the mediation. This is known as a caucus.
- During these individual meetings, everything that is discussed with me will be confidential between that party and myself.
- I will not discuss the matters with the other party unless consent is given to do so, and each party is welcome to discuss those matters with the other party once we are back in the group session.

BREAKS -

- Please ask if anyone needs a break, and we will all pause briefly.
- This facility is equipped with _____ (restrooms, fountains, vending machines, etc.). They can be located by _____ (provide directions to amenities).

DO THE PARTIES WANT TO MEDIATE?

- If both parties agree to continue with the mediation, then:
 1. Each party will have ample opportunities to explain their perspectives, and we will alternate turns.
 2. Each party will need to remain civil and respect the other's time throughout this process.
 3. Therefore, to make the most efficient use of your time, let's agree to allow each party to present their side uninterrupted. This also helps the mediator understand the important issues being discussed.
 4. If you have questions during our conversations or want to raise additional relative points, please write them down and ask them when it is your turn.
- There are alternatives to mediation that parties may find more useful or beneficial, such as litigation.
- However, mediation is often less costly, more flexible, and allows parties to create unique, individualized agreements that a court cannot make.
- Deciding to address disputes through mediation can be concerning for many parties. As the mediator I will work to ensure everyone's safety and comfort throughout this process. If at any time someone is uncomfortable, a caucus can be requested, and we can speak individually about the matter.
 - Does anyone have any concerns they'd like to voice?
 - What questions does everyone have?
 - Does everyone understand this process?
 - (To other mediator) Do you have anything to add?

GAIN CONSENT -

- Today, this process will proceed through a few stages and last about ____ hours.
- Is this a process you would like to participate in?
- Is this a process you can commit to for working together to reach a resolution that you each can live with?
- Do you both wish to continue with the mediation?
- Does anyone require any ACCOMMODATIONS to assist in their participation in the mediation process?
- HAVE THEM SIGN THE AGREEMENT TO MEDIATE.

STATE 2 - ISSUE IDENTIFICATION

- **NO PROBLEM SOLVING --- ONLY ASK CLARIFYING QUESTIONS.**
- I would like to start by getting a better understanding of the dispute at hand. This first part of the process we will focus on gathering information and gaining a greater understanding of the situation.
- I usually start with the person on my left (or the plaintiff). Please give me some information about the situation between you and _____:

(RESTATE WHAT YOU HEAR)

1. What are you here to resolve today?
 2. What is it that you wish to accomplish today?
 3. What would you like to discuss during mediation?
 4. What concerns are you hoping mediation will resolve?
 5. What is the overall goal for the outcome of mediation?
 6. What are your expectations for mediation?
 7. Who needs to participate to meet your goal (*i.e. is everyone who needs to be at this mediation invited*)?
 8. Are all the people who must participate in finalizing these decisions here today?
 9. How will you know that the mediation work is done (*is there any personal indicator for a stopping point*)?
 10. Are there any time limits on this process (*deadlines, practical limits on time commitment, etc.*)?
 11. Manage expectations by asking "What if?" questions
 12. What is the nature of the conflict?
- Can you please provide **examples of these behaviors** to help me understand the specific behavior?

TRANSITIONING TO THE OTHER PARTY DURING ISSUE IDENTIFICATION -

- I know it's hard not to respond to what you just heard. I want to remind you that I am not here to decide who is right or wrong. I aim to gain more clarity around what each of you needs to move forward.
- So I would like to find out from you:
(RESTATE WHAT YOU HEAR)
 1. What are you here to resolve today?
 2. What is it that you wish to accomplish today?
 3. What would you like to discuss during mediation?
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DETERMINE THAT THIS SITUATION IS APPROPRIATE FOR MEDIATION.

GO BACK BETWEEN EACH PARTY AND ASK WHAT THEY WOULD LIKE TO ADD -

DO THAT TWICE

- Is there anything you'd like to add? (RESTATE WHAT YOU HEAR)

GLOBAL SUMMARY OF THE ISSUES:

- Does this describe what you are here to resolve today?
- If you can't capture what they said, ask them to capture it in 1 or 2 words.
- Write the issues on a chart or whiteboard.

STAGE 3 – PROBLEM-SOLVING -

- Where would you like to begin?
- Which issues would you like to work with first?
 - If parties disagree, ask them how they would like to decide where to start (*i.e. flip a coin, etc.*)
 - Explain different reasons for starting with different types of issues (*i.e. easier, most urgent, etc.*)
 - Let's begin with _____ (*provide a rationale for it*).
- Discuss issues in more detail and dig deeper to discover the interests behind the issue
 - What is important to you about _____?
 - What specifically does _____ give you?
- Confirm interests.
- Transition into brainstorming
 - Considering _____ issue, your challenge now is to create some options.
 - We're going to come up with many ideas. Just because you offer them does not mean you agree to it. Nothing is agreed to until it is in writing and signed.
 - Given that you both value _____ and its important to you, (**SAY THEIR NAME AND THEIR INTEREST**), and its important to you (**NAME OF OTHER PARTY AND THEIR INTEREST**), your challenge now is to create some options that meet both your common and individual interests.
 - EX: Given that you both value HONESTY, and it's important to you, JIM, THAT EVERYONE COMMUNICATS WELL, and it's important to you SARAH, THAT FINANCES ARE PAID ON TIME, your challenge now is to create some options that meet both your common and individual interests.
 - You each stated that you want to accomplish_____. How close are you to reaching that goal?
 - What other ideas might you have to get that accomplished?
- Evaluating options
 - Is there an option or options here that would meet both of your needs?
 - Who will do what, how, when, and where?
- Dealing with IMPASSES
 - What is the best alternative to a negotiated agreement?
 - EX: Worst and Best Alternative to A Negotiated Agreement
 - Consider caucus, breaks, homework
 - Refocus parties on what is important – common ground, goals, moving forward
 - Is _____ behavior moving you towards where you want/need to go?
 - Remind parties of goals

STAGE 4 – TRANSITIONING INTO COMMITMENT TO AGREEMENT –

IMPORTANT TO CONSIDER WHEN WRITING AGREEMENTS:

- Is the plaintiff seeking court costs and attorney fees?
 - Did you address that in the agreement?
- Is the plaintiff going to drop the court case?
 - Did you address that in the agreement?
- A written agreement is public information.
 - Do the parties need to share private or confidential information (*phone numbers, emails, financial accounts, addresses, etc.*)?
 - Do not include personal information in the agreement document.
- How would you like me to capture that?
- Is this agreeable to you both?
- Is this something you both can live with?
- How would you like to address any other issues that may come up in the future?
- Address:
 - Who, what, when, where, how.
 - Try to arrange the agreed-to tasks, solutions, etc., in a way that alternates between each party instead of putting everything on one person.
 - EX: "Sarah will write the check on Monday. Brenda will put the check in the mail on Tuesday. Sarah will call the post office on Wednesday."
 - Do not begin any agreed-to arrangements in a negative manner.
 - EX: Instead of "Sam will not borrow the car on Fridays," write "Jim will use the car on Fridays, and Sam will ask permission to use the car when necessary."
- Is this something you would like to test out between this session and the next session (*or a specific amount of time*)?
- How would you like to approach possible future disputes related to this agreement?

CLOSURE –

- Now that you have reached an agreement....
- What do you need from each other once you leave this room (*phone numbers, emails, addresses, etc.*)?