

Catalyst Mediation

Why Mediation Works : the “Win-Win” Solution

There are a number of reasons why mediation (the presence of a trained, independent facilitator) can help people involved in a dispute to create positive discussions that will lead to a mutually agreed or win-win resolution.

1. Effective negotiations have never really occurred in the first place.

Effective negotiations require that “people issues” be separated from the problem.

One party may perceive the other as being unreasonable and become suspicious of their desire to reach a settlement. As a result, the real problem is all but ignored and what is characterized as negotiation is really a series of personal attacks questioning the credibility, good faith and reasonableness of the other party.

These negotiation sessions are often characterized by hard bargaining, unrealistic proposals and other tactics which only emphasize the differences between the two parties. As a result, they become more defensive and entrenched in their positions, and refuse to make concessions. No common ground can be found in that environment.

In a mediation, the mediator controls the communication process so that unproductive discussions are avoided. With skilful direction of communication by the mediator, the focus of the negotiations will gradually shift from the emotional issues to a constructive resolution of the real problem at hand.

2. Mediation works when the ultimate decision makers sit at the table with the sole purpose of resolving their dispute.

Many prior negotiations take place between parties who do not have the authority to make the settlement decision. For example, this is often the case when negotiations are with middle-managers who believe that their job is dependent upon looking strong in the eyes of their superiors. In a perfect mediation, the person with the ultimate decision making authority is present.

3. Direct Communications

During a mediation, parties have the opportunity to hear directly from the other side and in turn, are given the opportunity to directly educate and influence them.

These direct communications allow for both sides to fully understand the other parties’ position and to eliminate misperceptions. Often parties will comment that they have heard something for the first time and now understand where the other party is “coming from”. As a result, a mediation session provides each side with a more realistic view of the opposing position, allowing for the consideration of settlement proposals that otherwise would have been rejected as being “off the wall.”

4. Testing Solutions

Mediation allows each side to “test market” a settlement proposal either with the mediator in confidence or by giving the mediator permission to convey the proposal to the other side as a “what if”.

Even if not authorized to convey a proposal to the other party, the mediator is able to determine whether the parties are in the same “ballpark” and whether or not a proposal is likely to be accepted by the other party. This allows each side to fully explore settlement options without negotiating against themselves, otherwise know as the “he who speaks first loses” method of negotiation. Everyone fears that any reasonable settlement proposal will be rejected by the other party and will then become the starting point for the next round of negotiations. This problem is eliminated in the mediation process.

5. Realistic Assessments

Mediation offers each party a realistic look at their case and the result they are likely to achieve if they do not reach a solution. As the mediator helps them to become clear on what they can "realistically" expect to achieve without a settlement, initial positions often become more reasonable and flexible.

6. Mediation assists the parties in developing options for settlement.

The more options that are developed, the greater the chances of success.

In a legal setting, the only option available is normally an award of money damages. When engaged in a confrontational negotiation, parties are likely to overlook creative settlement options that involve other types of "value". It is the mediator's job to help identify and expand the menu of options so that less obvious solutions and alternatives can be explored.

By pointing out the advantages of these suggestions and comparing them to the result that might be obtained if they don't settle, the mediator can often open the parties' eyes to the benefits of a solution which they have not seen before.

7. The Presence of a Mediator

Notwithstanding the failure of prior negotiation efforts by the parties, the mediator's task is to reduce mistrust and emotional barriers and assist the parties to focus on the real issues involved in the dispute.

The mediator can then assist parties to explore realistic options for settlement and can recommend a negotiation strategy designed to achieve a settlement that meets their needs. In the hands of an experienced mediator, settlements can be achieved over 80% of the time, even if prior protracted negotiations have been a total failure.

Any other questions?

If you have any other questions please contact Jeremy Scuse or David Semple by phone, email or letter at the address below.

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