

Benefits and Advantages of Mediation

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Abstract: Mediation is a structured, interactive process where an impartial third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. All participants in mediation are encouraged to actively participate in the process. Mediation is a "party-centered" process in that it is focused primarily upon the needs, rights, and interests of the parties. The mediator uses a wide variety of techniques to guide the process in a constructive direction and to help the parties find their optimal solution. Mediation, as used in law, is a form of alternative dispute resolution resolving disputes between two or more parties with concrete effects. Typically, a third party, the mediator, assists the parties to negotiate a settlement. Disputants may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community, and family matters.

Keywords: mediation, benefits and advantages of mediation, mediator, law, resolution, disputants, alternative dispute, variety of domains.

Introduction

The dominant forum where parties take their disputes for resolution is the court, but the mounting arrears within the courts, inordinate delays has made dispute resolution in India a tiring process. In the Adversary system of justice which we've in India, time, to an excellent extent is consumed over procedural wrangles, technicalities of law and inability on the part of an outsized number of litigants to interact lawyers who are well versed in law.

Main part

In its 14th report, the Law Commission refers to plan ways and means to understand that Justice is straightforward, speedy, cheap, effective and substantial.

Mediation is a casual, but a structured settlement procedure. A mediator is appointed to facilitate and assist parties in reaching an amicable dispute settlement.

Following are the advantages of Mediation:

Fast: because the amount of time necessary for the parties and therefore the Mediator to organize for the mediation is significantly way less as that needed for trial or arbitration, a mediation of dispute can occur relatively early. Moreover, once mediation begins, the Mediator can consider those issues he or she perceives as important to bring the parties to agreement; time consuming evidence are often avoided, thereby making finest use of the parties' time and resources. Even if the whole evidence gathering has already occurred, it almost invariably takes less time to mediate a dispute than to undertake it during a court.

Flexible: There exists no set formula for mediation. Different Mediators employ different styles. Procedures are often modified to satisfy the requirements of a specific case. Mediation can occur even during trial or before any formal legal proceedings begin.

Cost Efficient: Because mediation generally requires less preparation, is very less formal than trial or arbitration, and may occur at an early stage of the dispute, it's always less costly than other sorts of dispute resolution.

Brings Parties Together: Parties can save and sometimes rebuild their relationship like during a family dispute or commercial dispute.

Convenient: The parties can control the time, location, and duration of the proceedings to large extent. Scheduling isn't subject to the convenience of courts.

Creative: Resolutions that aren't possible through arbitration or judicial determination could also be achieved. A fine Mediator makes the parties recognize solutions that might not be apparent – and not available - during the normal dispute resolution process. The limit on creative solutions is about only by the variability of disputes a Mediator may encounter.

Confidential: what's said during mediation are often kept confidential. Parties wishing to avoid the glare of publicity can use mediation to stay their disputes low-key and personal. Statements are often made to the Mediator that can't be used for any purpose aside from helping the Mediator in understanding a resolution to the dispute. Confidentiality encourages candour, and candour is more likely to end in resolution.

Control: The parties control the result of the mediation and either party has the advantage of terminating the mediation, if it's felt that it's not within the interest of the said party.

Direct

Communication: During mediation, there's party to party direct communication. At least the parties have the realisation of being heard by the Mediators if the parties or either of them is being represented by an advocate.

The main characteristics of mediation are that it provides; a voluntary, non-binding, confidential and interest-based procedure. Parties are liberal to terminate mediation at any time after the primary meeting. No decisions are often imposed on the parties involved, and that they may or might not agree upon a negotiated settlement. The confidentiality principle assures that any options the

parties discuss won't have consequences beyond the mediation process.

Why is mediation important?

Cost— The Court's In-House mediation programs are covered by your filing fees. While an outside mediator may charge a fee comparable to that of an attorney, the mediation process generally takes much less time than moving a case through standard legal channels. While a case in the hands of a lawyer or a court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours. Taking less time means expending less money on hourly fees and costs.

Confidentiality— While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator(s) know what happened. Confidentiality in mediation has such importance that in most cases the legal system cannot force a mediator to testify in court as to the content or progress of mediation. Many mediators destroy their notes taken during a mediation once that mediation has finished. The only exceptions to such strict confidentiality usually involve child abuse or actual or threatened criminal acts.

Control— Mediation increases the control the parties have over the resolution. In a court case, the parties obtain a resolution, but control resides with the judge or jury. Often, a judge or jury cannot legally provide solutions that emerge in mediation. Thus, mediation is more likely to produce a result that is mutually agreeable for the parties.

Compliance— Because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high. This further reduces costs, because the parties do not have to employ an attorney to force compliance with the agreement. The mediated agreement is, however, fully enforceable in a court of law.

Mutuality— Parties to a mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to “move” their

position. The parties thus are more amenable to understanding the other party's side and work on underlying issues to the dispute. This has the added benefit of often preserving the relationship the parties had before the dispute.

Support—Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and guides the parties through the process. The mediator helps the parties think “outside of the box” for possible solutions to the dispute, broadening the range of possible solutions.

Advantages of Mediation

Mediation is well suited for many PPP and USERRA claims because it is:

Informal. The process is informal and flexible; attorneys are not necessary. There are no formal rules of evidence and no witnesses.

Confidential. Mediation is a confidential process. The mediators will not disclose any information revealed during the mediation. The sessions are not tape-recorded or transcribed. At the conclusion of the mediation, mediators destroy any notes they took during the mediation session.

Quick and Inexpensive. When parties want to get on with their business and their lives, mediation is an option to consider. Mediation generally takes less time to complete, allowing for an earlier solution than is possible through investigation.

Moreover, mediation generally produces or promotes:

Greater Degree of Party Control. Parties who negotiate their own settlements have more control over the outcome of their dispute. Parties have an equal say in the process. There is no determination of fault, but rather, the parties reach a mutually agreeable resolution to their conflict.

Preservation of Relationships. Many disputes occur in the context of ongoing work relationships. Mediated settlements that address all parties' interests often preserve working relationships in ways that would not be possible in a win/lose decision-making procedure. Mediation can also make the termination of a work relationship more amicable.

Mutually Satisfactory Results. Parties are generally more satisfied with solutions that they have had a hand in creating, as opposed to solutions that are imposed by a third-party decision maker.

Conclusion

Comprehensive and Customized Agreements. Mediated agreements often help resolve procedural and interpersonal issues that are not necessarily susceptible to legal determination. The parties can tailor their settlement to their particular situation and attend to the fine details of implementation.

A Foundation for Future Problem-Solving. After a mediation resolution, if a subsequent dispute occurs, parties are more likely to utilize a cooperative forum of problem-solving to resolve their differences than to pursue an adversarial approach.

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