

FOCUS ON MEDIATION

- One of the most common ADR methods
- Voluntary
- Confidentiality guaranteed

- Future oriented
- Mediator is a trained neutral with process expertise
- Mediator does not “decide” anything

- Mediation is oriented to *self-determination* by the parties
- Involves a structured process
- Is codified in Virginia law – citations are included herein

GOALS OF MEDIATION

- Allow parties to express their feelings and views of the dispute and its impact
- Help parties see each other's perspectives
- Help clear up misunderstandings
- Help determine underlying interests
- Help parties recognize their overlapping interests and areas of agreement
- Help parties devise their own solutions, building on the interests they've identified

Role of Mediator

The mediator is a non-directive facilitator of the parties' own journey to their own resolution

The mediator:

- Helps parties talk about their concerns
- Assists parties with their looking for and thinking about options for resolving things
- May provide analytical assistance in certain circumstances
- Welcomes conflict
- Follows the participants
- Asks questions, suggests process steps
- Respects the parties' needs and interests
- Leaves responsibility for resolution to the participants
- Stays optimistic

Attorney/Party Preparation for Mediation

- Clarify party goals and objectives
- Prepare to be open-minded; consider alternative goals
- Identify interests and needs
- Consider goals, objectives, interests of *other* parties
- Select mediator
- Prepare to *listen* – a *critical skill*
- Determine who will make opening statement
- Be aware of differences between mediation and litigation
– *future*, not past oriented
- What documents, visual aids will be useful during opening statement

Attorney/Party Preparation for Mediation

Quality preparation has been identified as one of four elements facilitating the likelihood of a successful mediation

- American Bar Association Section of Dispute Resolution, Task Force on Improving Mediation Quality 2008

Mediation Process

- Preliminaries: Agreement to Mediate
- Mediator's Introduction/Orientation
- Narrative Stage/Opening Statement by Parties
- Issue Identification/Agenda Setting
- Problem Solving Stage
- Agreement

CAUCUSES

- Used by mediator to:
 - Gain control of the process
 - Allow party to vent or share information
 - Ensure party heard/understood what was said
 - Move beyond impasse
 - Find out more about a party's interests
 - Provide opportunity for party to explore strengths and weaknesses of their case and of the other party's case

Using Caucus Effectively

- Provide opportunity for party to consider their BATNA (Best Alternative to a Negotiated Agreement) and WATNA (Worst Alternative to a Negotiated Agreement)
- Encourage creativity in identifying solutions
- Set agenda, and prepare party for the next joint session
- Encourage information sharing by party
- Reinforce confidentiality, and identify information that mediator can share with the other party