

Mediation in the Delaware Municipal Court FAQs

What is mediation?

Mediation is an effective, well-established, dispute-solving process in which a trained, impartial professional (the mediator) applies well-developed strategies to guide discussions between disputing parties to assist them in finding and adopting their own solution to their dispute. Because the parties know their individual needs better than anyone else, they are in the best position to craft a solution that fits their individual needs. Because people tend to be more satisfied with solutions that they have crafted for themselves, they are more likely to comply with the terms of such solutions than with a decision imposed on them by a court order.

Why should I try mediation?

Mediation allows the parties to control the outcome of their case. Mediation is conducted in an informal, private, confidential setting, while trials are conducted in a public forum subject to formal rules of procedure and evidence. Mediation typically results in settlements sooner than court litigation could otherwise be concluded. While costly appeals can delay implementation of court judgments, there are no appeals when the parties reach a settlement in mediation. Successful mediation is nearly always much less costly than results obtained in litigation. Even if mediation does not lead to a settlement, the parties gain invaluable insights into the elements of the dispute and the positions of opposing parties that are very helpful in preparing the case for trial.

What issues can be mediated?

Most any dispute that is the subject of a lawsuit and can be the subject of successful mediation. As long as the parties negotiate in good faith, mediation can be effective. Very often in otherwise uncontested commercial and collection cases, the parties use mediation to negotiate payment plans and terms that ensure payment of the debt while avoiding garnishment and other costly and oppressive collection proceedings.

How long does mediation take?

Every mediation is different. Preliminary screening and preparation can take as little as thirty minutes, after which many parties experience successful negotiations in as little as one hour.

How much does mediation cost?

Mediators typically charge an hourly rate, much as attorneys do. Most often, the parties agree to split the mediation costs. Parties sometimes fear that mediation may simply add costs to an already costly process. However, mediation early in the process often leads to a settlement more quickly and at a fraction of the cost of proceeding to a trial.

May lawyers participate in mediation?

Yes. Parties are encouraged to seek the counsel of an attorney who may appear and participate in mediation.

May other people attend mediation?

Yes. Parties may have a support person accompany them to mediation regardless of whether the party is also accompanied by a lawyer. With the help of the mediator, the parties must agree on the terms and conditions under which they participate in mediation, including the role of any support persons.

Can offers or statements made in mediation be used against a party?

No. The [Ohio Uniform Mediation Act](#) found in Chapter 2701 of the Ohio Revised Code promotes mediation by strongly protecting the confidential nature of communications and discussions during mediation. With few exceptions, everything said in mediation is confidential. In court, offers of settlement made in mediation are not admissible, and the Mediation Act prohibits either party in a trial from disclosing communications made during mediation. After mediation is conducted, the parties and mediator may only reveal to the court the parties who attended and whether negotiations led to a settlement.

When is mediation not appropriate?

Mediation succeeds only if all parties are able and free to openly express positions, needs, and desires. This is unlikely if one party has been the victim of domestic abuse, manipulation, or intimidation by the other party. The mediator will screen the parties privately for such issues and terminate mediation upon discovery that a party has been the victim of abuse by another party.

What if mediation fails to lead to a settlement?

If mediation does not result in a settlement, the court will schedule the matter for trial in due course.

What if I refuse to participate in mediation?

While discussions during mediation are confidential, the mediator and either party may disclose to the court that a party has refused to participate. A party who fails to comply with a court order, may be required to appear in open court and explain the failure. Uncooperative conduct prior to trial can impair the party's prospects for success when the case proceeds to trial.

Who "runs" the mediation?

The mediator controls the process, but not the discussion between the parties. The mediator will endeavor to ensure that the parties are respectful of each other and that each party has an equal opportunity to be heard. The mediator will also aid the parties direct their discussion to issues that are helpful in resolving the dispute. If a party is disruptive, disrespectful, or threatening, the mediator or an opposing party can terminate the proceedings.

How do I find a mediator?

A [roster of qualified mediators](#) who are familiar with mediation procedures in the Delaware Municipal Court may be found at www.municipalcourt.org under the topic "mediation of civil cases."

Does the mediator decide the outcome of mediation?

No. The mediator merely supervises the process and guides the parties in their discussions toward a mutually satisfactory solution to their dispute. The mediator is not a judge and cannot require the parties to do anything or agree to any proposal. The mediator does not issue legal rulings, or provide legal or financial advice to either party.

Whose side is the mediator on?

The mediator is impartial. Before beginning mediation, the mediator will gather information from the parties to ensure that the mediator has no interest in the outcome of the dispute and bears no bias for against any party. The parties should disclose any information or concerns about anything that might jeopardize the actual or perceived impartiality of the mediator.

Does the mediator work for the court?

No. Mediators are independent contractors. The parties are free to retain any mediator they choose. If the parties cannot agree, the court will designate a mediator. The parties must retain and compensate the mediator as the parties and the mediator agree.

Do mediators follow ethical standards?

Many mediators subscribe to the [Model Standards of Conduct for Mediators](#) jointly drafted by the American Bar Association and the American Arbitration Association. Many mediators also belong to professional organizations including the [Ohio Mediation Association](#) and the [Ohio Academy of Mediators and Arbitrators](#) which develop and promote ethical standards for mediators.

What is the best way to prepare for mediation?

The most important elements for successful mediation are good faith, a positive attitude, an open mind focused on obtaining the most cost-effective solution to the dispute, not merely on "winning" or "beating" the other party. Parties should further prepare by gathering and bringing to mediation all documents related to the dispute.

When is the best time to conduct mediation during a lawsuit?

It may be best to conduct mediation as early as possible. One of the key advantages of mediation is that it can be much less costly than litigation. If the parties conduct costly litigation *before* conducting mediation, one of the key advantages of mediation may be lost or compromised. Even in these cases, however, a mutually agreeable settlement reached in mediation protects the parties from further costs and the risks inherent in proceeding to trial.