

Antippa Lawyers

since 1961

MEDIATION IS NOT COURT

Mediation may be conducted in a room in or out of a court building. However, it is not court.



THE MEDIATION OBJECTIVES

1. Mediation is almost the opposite of litigation (court or tribunal process). In litigation, a judge makes the decision. In mediation, the parties themselves make an arrangement.
2. The parties attend mediation voluntarily. The success of mediation depends upon the preparation by the parties and their legal representatives.
3. Mediation is about the parties expressing options for agreement; that those views are heard and the parties are treated with respect. This is not always the experience in court.
4. The mediator is not making a decision. So, you should not try to convince the mediator as if the mediator were a judge.
6. Finding the best solution to the dispute will not always lead to success at mediation. It is more important to convince the other side as to why they should accept your proposal for settlement. Being aggressive or emotional in the discussions may be counter-productive. It is much more productive to adopt a professional approach and point out the factual discrepancies between the party's respective positions.
7. The most successful mediations are when argumentative language is not used; instead, using co-operative approach. The legal professionals should identify the differences in the case and potential solutions to overcome those differences.

HOW STRONG IS YOUR BARGAINING POSITION?

1. The factual discrepancies in the parties' positions.
2. The evidence available in relation to the factual discrepancies.
3. The further steps required and the associated costs of obtaining evidence to support a position.
4. The range of potential results if a judicial determination were made.
5. The strengths and weaknesses of your case.
6. The strengths and weaknesses of the other parties' case.
7. Your limitations and of your witnesses should they be cross-examined in a court.
8. The limitations of the other party and their witnesses should they be cross-examined in a court.



HOW IS MEDIATION PERFORMED?

1. Be careful what you say to the mediator. He will repeat everything you say to the other side. He cannot keep a secret.
2. The mediator will push you to settle; even if this is not in your best interest.
3. Mediation begins in the 'big' room with us one side of the boardroom table and the other party on the other side.
4. Try not to show emotion or interrupt when another party is talking.
5. You can talk to us freely, in private, in the small discussion room.
6. Often, the same few issues will be discussed repeatedly either for half a day, a whole day or possibly longer. This process will continue until there are concessions made by both parties.
7. Mediation is confidential and anything said cannot be repeated in Court. However, try not to say anything in the public room except for your name and hello.
8. Even though you believe that your dispute is intractable, only 3.5% of disputes end with a judge's decision; most are settled by negotiation.
9. ANTIPPA LAWYERS has a very high rate of success with out-of-court mediations.
10. Success at mediation depends upon the attitude of the other party also. You should think about what is your real 'minimum' bargaining position before the mediation begins.
11. Never say your minimum bargaining position initially: start with your ideal outcome.

COMMON MISPERCEPTIONS

1. 'I want to look him in the eye and say that he must be fair' – you will not be allowed to do this. This type of approach is always ineffectual. It just shows your weakness to appeal to his emotion.
2. This is my opportunity to seek revenge to make him pay for what he has done. I want to cause him serious financial pain, so that he can understand the trauma he has put me through.' In the Australian legal system, no payment is made for this.

PREPARE FOR MEDIATION

1. Re-read all of your Affidavits, carefully. Make summaries.
2. If we or someone else says something which is wrong, talk about this later in private.
3. Determine your minimum bargaining position.
4. Bring paper and pen.
5. We will do all of the talking for you in the presence of the other party.

BRING WITH YOU

1. Court documents.
2. A family member or other support person.
3. Book / magazine.
4. Lunch / food / snacks.



FURTHER READING:

<http://www.antippa.com.au>

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