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Mediation Helps Businesses Resolve Conflicts Quickly and Affordably

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Mediation can save disputing parties time and money, which makes it an increasingly popular — and sometimes mandatory — form of conflict resolution for businesses and individuals involved in civil litigation. In a mediation or settlement conference, a neutral negotiator tries to help adversaries reach a mutually acceptable agreement.

Mediation is relatively new in the U.S., but its success has prompted many New Mexico courts to require that parties try to reach pretrial accords.

Why Mediation?

Mediation reduces the expense of settling a conflict and increases the likelihood that parties will quickly reach a satisfactory outcome.

Most civil trials pit one expert against another as each side tries to prove its case. Expert-witness fees can reach tens of thousands of dollars, and attorney fees mount with intensive and time-consuming pretrial discovery.

Mediation held early in the process avoids many of these costs if it leads to a settlement. A civil case typically takes more than a year — sometimes two — from its initial filing to the trial date. If a case goes to trial and ends in a judgment, it's not really over if either side appeals. Appeals can delay the resolution of the case by another two years, and a successful appeal may require a retrial, with further delays.

A court ruling is impossible to predict. As First Judicial District Court Judge Steve Herrera used to tell litigants, trying a case before a jury is a form of legalized gambling; a pretrial settlement involves less risk. Indeed, a 2013 study by the National Center for State Courts found that mediated settlements are more likely to be accepted by opposing parties — and paid on time — than are court judgments entered after a protracted, expensive trial.

Impartial Assessment

Most mediators or settlement facilitators are retired judges or attorneys with mediator experience. Their job is to impartially help each party evaluate its own and its opponent's cases.



They don't represent or give legal advice to either side, though they can offer an opinion about the strength or weakness of a legal claim or defense.

The mediator doesn't decide the case, and mediating parties can accept or reject the mediator's suggestions. Depending on the complexity of the case and the attitudes of litigants, mediation can last a few hours or a day or more.

Sessions are typically conducted caucus style: The mediator meets separately with one party and then proposes a settlement to the opponent; he then returns to the first party with a counterproposal. Multiple rounds of "shuttle diplomacy" are common, and the process often reveals important information that alters the nature and course of settlement discussions.

Success depends on each party's willingness to keep an open mind about the other party's perspective and that of the mediator. Ideally, each side weighs the reasonableness of a proposed settlement against the risk of taking a case to court.

If it's clear the parties won't compromise on a settlement, mediation ends. But a skilled mediator working with cooperative clients can often settle even complex cases. Confidentiality is key to success: Statements made in mediation can't be used in a subsequent trial should negotiations fail.

For more information, visit montand.com/practice-area/mediation-and-arbitration/. To find out if a dispute is suitable for mediation, call 505-986-2649.

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