

THE MEDIATION PROCESS
FROM THE ORANGE COUNTY BAR ASSOCIATION
NO LEGAL ADVICE IS INTENDED OR OFFERED

Your case may be scheduled for mediation. Mediation is an informal settlement conference, normally required to be completed in all civil litigation matters before the case goes to trial. The mediation is conducted by a neutral mediator (selected by the parties or the court) who acts as a neutral facilitator. Unless excused, all parties and their attorneys are expected to attend. The purpose of mediation is simply to bring the parties together in an effort to reach a settlement. There will be no judge or jury, no factual determination or formal hearing. There is no adjudication or decision made on the merits of the case.

This is an informal settlement conference normally conducted at the offices of an attorney or mediator. The mediator's fee is normally split and shared equally by all parties in attendance unless the court's mediation order requires one side or the other to pay.

At mediation you should bring your attorney, if any. The proceeding is privileged and confidential and nothing said at the mediation will be disclosed to the court. There are some rarely occurring exceptions to the confidentiality rules in Chapter 44, Florida Statutes. Settlement offers will normally be exchanged, but you are not required to make an offer unless you wish to do so. Most mediations take 2-3 hours to complete. After the initial presentations, which normally last only a few minutes, the mediator will speak to both sides and work to determine whether a compromise can be reached. The mediator attempts to determine common points of concern, possible settlement scenarios, and shuttles between the parties exchanging information and offers as they attempt to reach a settlement. Many times the parties meet in private sessions with the mediator. The mediator does not represent any side in the lawsuit and does not provide legal advice.

The statements made in mediation are not admissible in court. The judge will only be told if the case settles or if an impasse is reached, nothing further. The mediation will continue until the case settles or until the mediator declares an impasse. The mediation can be suspended and resumed if the parties and mediator deem it advisable. Any agreement you make at mediation that is signed is binding and, unless the agreement is illegal or otherwise voidable, you cannot "back out" of a mediation agreement.

At mediation, be open-minded and listen to the concerns voiced by the other side. Do not draw arbitrary "lines in the sand." Ultimately you may decide that settlement is not in your best interest, but you should give the process a chance. Appropriate attire suggests that you are serious about the litigation and enhances your credibility with the mediator and opposing counsel. The time spent in mediation is valuable. If the case is settled, countless hours and expense can often be saved and a cost-effective end of the litigation can be achieved.

ORANGE COUNTY MEDIATORS

Updated 05/20/10

Mediator # (types): C=county, F=family, R=circuit, D=dependency

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