

California Arbitration & Mediation Service (C.A.M.S.) is an Association of Independent Dispute Resolution Professionals. Our purpose is to provide affordable, efficient and professional neutral services for parties involved in disputes of all kinds. Our typical mediation process is as follows, though each mediator will modify the process to suit his or her style.

GENERALLY

Mediation is, in its simplest terms, the facilitation of communication among parties to a dispute. The mediator may be a lawyer, another professional or a non-lawyer mediator. All of the C.A.M.S. panelists are practicing lawyers or lawyers who have left the practice of law to be an ADR professional. Mediation is NOT the practice of law. Mediators, even if lawyers, do not give advice to the parties nor do they advocate for either side. The keystones of mediation are mediator neutrality and confidentiality.

CONFIDENTIALITY

Mediation is a confidential process. Mediation confidentiality does not prevent the parties from sharing what occurred at mediation with others (though a settlement agreement resulting from the mediation may). Confidentiality in mediation means several things. First, nothing said or done at mediation is admissible in a trial or arbitration. Anything prepared by the parties specifically for mediation is not admissible outside of the mediation. However, a document or other piece of evidence that would otherwise be admissible is not rendered inadmissible because it was used at mediation. Second, communication to and from the mediator by the parties and counsel is confidential as to the other parties unless the mediator is given permission to share the information with the other party(ies). Anything said during mediation stays at mediation. Though it is often helpful that the mediator be allowed to share facts and evidence between the sides, if the parties wish to keep something confidential, it will remain so. Finally, the mediator is not a witness. The mediator may NOT testify in a subsequent proceeding nor are the mediator's notes or records of the mediation admissible.

There are exceptions to the confidentiality that apply only to criminal proceedings.

CONVENING

This part of the process begins at the first contact by one or both parties. During this stage, the mediator will gather information about the dispute including the identities of the parties and counsel if the parties are represented. It is also at this point the mediator will do a check to see if there is conflict that may prohibit him/her from accepting the matter.

Since the mediator is neither a lawyer nor a judge, there is no prohibition

preventing the mediator from speaking with either side individually before the mediation. Ethics demand that when doing so, the mediator should discuss only information needed to prepare for mediation. Few mediators will entertain discussions about the facts or merits at this stage. General issues regarding the matter to be mediated, payment and engagement arrangements, location of the mediation, parties to attend, etc., are central to these discussions. The mediator will stress that it is essential for parties with actual authority to make decisions and settle the case be present at the mediation.

During this period, the mediator may decide, or ask for party input, whether the parties want to mediate jointly or in separate “caucuses.” The mediator will also inform the parties of the process as far as briefs or statements to be provided and when regarding the date of the first session. Mediation briefs or statements may be as informal as a handwritten memorandum or a formal document on pleading paper. The purpose is to briefly tell the mediator about the conflict and what the party wishes to achieve from the mediation, particularly if there is a money demand. The brief should include either a summary of documents outlining monetary damages being sought or, if they are not voluminous, actual receipts. Parties should also be able to provide information about medical or other liens (particularly MediCal or Medicare) before the mediation begins.

Payment for the mediation must be received by your individual mediator before the mediation session can be confirmed. C.A.M.S. has relationships with some firms and organizations based upon past business in which case accommodations can be made, but first time clients and all individual clients must submit payment before confirmation. The cost for most mediations is divided equally among the parties, but the parties must agree to the division before payment is due. Sometimes, one party may be responsible for the fees. Whatever the case may be, the responsible party or parties must make payment before the date is confirmed.

OPENING

Mediators have different approaches to the mediations they conduct. Some prefer joint sessions where all of the parties are seated together in the same room. If the parties are represented, then the attorneys are present, though sometimes parties waive representation for mediation. During this stage, the mediator will do formal introductions and explain the process briefly after which the mediator will invite both sides, one at a time, to tell his/her story.

If the mediation is being conducted in separate caucuses, the mediator will send the parties to separate rooms for privacy. The mediator will visit each party individually for the entire opening process.

The parties will be reminded mediation is at its heart, a voluntary process. There is no standard for “good faith” or such measure of the process. Once a party has appeared, s/he has satisfied the obligation. However, if the parties are mediating according to the terms of a contract or statute, the parties must observe the rules of the governing contract or statute. Even though mediation is a voluntary process, a mediator will usually exert every effort to keep the parties in session and the negotiation proceeding. Most mediators believe parties should give the process a chance to work for them.

DISCUSSION

Once the introductions are completed and the parties have told their respective stories, in joint session, the negotiations will continue from that point with the mediator as the facilitator to control the process. If the matter is conducted in separate caucuses, the mediator will visit each party privately carrying messages, demands, offers, proposals, etc., back and forth between the parties. In separate caucus mediations, the parties never have to speak with each other unless they wish to do so.

ENDING

Most of the negotiations take place during the discussion session. As the matter continues toward resolution, the mediator typically will keep notes on the progress so an accurate written agreement results. If the parties reach impasse or stalemate, it will be decided if the mediation should recess or adjourn for the parties to proceed to other forums to achieve their remedies. If the mediation is recessed, the confidentiality sticks with the process so the parties can continue to negotiate either through the mediator or directly. If the matter reconvenes, it will continue from where the last negotiation ended. The goal is a mediated agreement.

Some mediators assist with the agreement, some do not. Whichever process is used, it is incumbent upon the parties and/or the lawyers to carefully review and understand all of the terms of the agreement so there are no misunderstandings at a later date. Since the mediator is only facilitating, the mediator is not responsible for the content of any agreement. If an agreement is signed, the matter is settled. If either side breaches the agreement, the aggrieved party may enforce the mediated agreement through litigation. Most mediated agreements are executed and satisfied with no enforcement litigation necessary.

SPECIFIC MEDIATOR PROCESS: DON CRIPE

Virtually all of my non-family law mediations are conducted as separate caucus unless the parties request otherwise. The C.A.M.S. facility can accommodate joint and separate sessions.

I request at least an informal statement be provided to me 5 business days before the scheduled session. I do NOT require formal briefs. I prefer the brief/statement be sent via email. I provide a simple statement outline the parties may use (attached) if they wish, but it is not required. It does, however, provide all of the questions I would like to have answered before the mediation. If the parties have more than about 5 pages of exhibits, etc., they may refer to them in the statement/brief, but please do not send them early unless they are of special importance for preparation. Otherwise they will be reviewed and discussed during the mediation.

I urge the parties to dress comfortably. Mediation can be stressful and lengthy. Data suggests that the more comfortable the parties are during mediation, the more relaxed they are. It is YOUR case and YOUR mediation, so I do not set rules of attire.

Individuals may bring a “moral support” person who will be allowed in caucus. That person must sign and agree to all of the confidentiality provisions to attend. Also, though I encourage the parties to rely upon support people as they wish, the negotiation must be between the mediator and the party/lawyer. The support person should not step into the process.

Our facility is housed in a 100+ year old building. We have decent access for people with physical needs, but respectfully request parties and counsel to inform us ahead of time so our staff can make necessary arrangements.