

Getting the Most out of Mediation

by Katherine M. Loos

The Louisiana law regarding mediation is found in the *Louisiana Revised Statutes*.¹ The stated purpose of the law is to provide encouragement and support for the use of mediation to promote settlement of legal disputes. Upon motion of any party, a court may order the referral of a civil case for mediation. However, if any party objects to the mediation order within 15 days of receiving notice of the order, the mediation order shall be rescinded. The *Louisiana Mediation Act* also contains provisions regarding the method for choosing a mediator, submission of materials to the mediator in advance of mediation, payment of costs and confidentiality. Since the Act does not provide for mandatory mediation, it has had little effect on the mediation of cases in Louisiana. In cases pending in State court, mediation remains primarily voluntary and directed by the parties.

Mediation can be a cost-effective means of resolving disputes. Most lawsuits are resolved through negotiated settlements. A very small percentage of suits which are filed ever go to trial. Mediation is a means of using an independent third party to help communicate and negotiate a settlement. Mediators have no power to make decisions for the parties; rather, they persuade the parties and try to move the case to resolution.

In most cases, a mediator is not necessary to resolve a dispute. However, mediators are especially helpful in cases where the parties have reached an impasse; the case has become too emotional for one of the parties; the case has become very adversarial; the parties have unrealistic expectations; the case is complex and/or involves multiple parties; or there is a genuine difference of opinion regarding the legal or factual issues involved.

Mediation is an opportunity for all of the parties to voluntarily come together at the same time and to focus on the same objective. Mediation provides the appropriate environment in which to discuss settlement. The presence of a mediator with no stake in the outcome helps the parties realistically assess the case and work toward a resolution which is satisfactory to all of the parties. Through a settlement, all parties avoid the cost and risks inherent in continued litigation and trial.

Preparation for mediation is very important. Before the mediation, make sure you understand all of the issues and have all of the information necessary for you to make an accurate assessment of the case. Formulate a goal and understand the specific outcome you hope to achieve. Spend some time working on a strategy before the mediation begins. During the mediation, be patient and allow the process to work. Re-evaluate your position and make sure you are being reasonable during the course of the mediation.

Disadvantages of mediation are the cost of the mediator and the time involved in preparation and participation. However, in the right cases, there is little downside to hiring a skilled mediator if the parties truly believe resolving the case short of trial is better than the alternative.

¹LSA-R.S. 9:4101 et. seq. known as the "Louisiana Mediation Act."



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