

Top Ten Reasons Why Mediation Is Better

Tobey Oxholm

Just Resolutions – Alternative Dispute Resolution

Gouldsboro, PA

1) It's private, informal and confidential

- Trials, and their results, are formal, rule-bound, and open to the public; mediations and arbitrations are informal and private except to the extent that the parties decide otherwise

2) It's faster, more convenient, and not expensive

- You decide when it happens, where, and how fast – it can happen evenings and weekends
- The mediator's fee (mine is \$180/hour) is split between the parties.

3) You pick the mediator

- Factors: training, experience, expertise, availability, and ability to relate to you and your situation

4) You pick the role of the mediation

- mediator "shuttles" between the parties, helping them find where they agree (facilitative)
- mediator evaluates the parties' arguments and offers suggestions (evaluative)
- mediator helps the parties to agree on new ways of working together (transformative)

5) You can use the mediator to your advantage

- Unlike with judges, private 1:1 meetings with the mediator are encouraged
- The mediator can help you understand the other side's thinking, and vice versa

6) You, the Client, directly participate, are in charge, and "get your day in court"

- You get to say what you want to say and how you want to say it (never happens in lawsuits)
- You get heard by someone who is highly regarded in the professional community (the mediator)
- You hear the other side's arguments directly – not filtered through your attorney

7) You decide if and when it's over

- Any agreement is only final and binding if it's in writing and signed by everyone
- It can be confirmed by Court Order or a Judgment, if that's what's agreed to
- Temporary, short-term agreements are typical, and help get to a solution of the whole dispute

8) Money is not the only result

- Better understanding of each other's perspectives and interests
- Everyone can be honest and admit that they were at least part of the problem
- You can agree on changes to contracts and rules, and on new ways of dealing with each other

9) No downside if it doesn't work

- Nothing you say during a mediation can be used against you later anywhere, ever
- A Judge will never learn anything "off the record" about you or your case
- If you don't reach agreement, you can go fight in court

10) Upsides if it does work

- You can always get more out of mediation than just the "you win-you lose" decision courts give
- You get to the end faster and cheaper
- Since the other side "wins" too, it's more likely to work long term
- Since the agreement can remain confidential, it doesn't have to be applied to anyone else