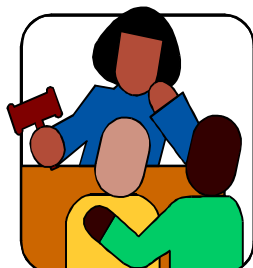


# What is mediation?

Court # 6

July 26, 2000



The Self Help Legal Center

SIU School Of Law

Carbondale, Illinois 62901

(618) 453-3217

[selfhelp@siu.edu](mailto:selfhelp@siu.edu)



# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about mediation in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer call the Self Help Center.

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Look for these symbols to tell you when to:



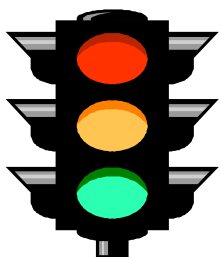
**STOP!**

You need legal representation or advice to continue.



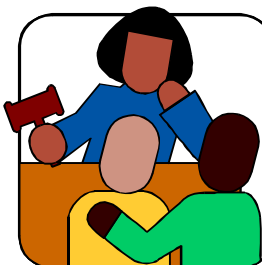
**USE CAUTION!**

This is a complicated step so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.

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# Warning to all readers



**Before you proceed with using this packet, you should ask yourself the following questions:**

**1. Have I tried to consult a private attorney to determine if this matter is appropriate for mediation?**

Some matters may require that you seek the advice of an attorney. No self-help publication, packet, or form can replace the advice and experience of a licensed attorney.

**2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?**

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them before you proceed on your own.

**3. Have I tried talking with the other disputant?**

Before you proceed to mediation, you may want to attempt to talk directly to the other disputant to see if the matter can be resolved.

Free sources of legal help

**Land Of Lincoln Legal Assistance**

**Serves the 65 southernmost counties in Illinois**

**877-342-7891**

**Prairie State Legal Services**

**Serves most of northern and north-central Illinois outside of Cook County**

**815-965-2134**

**Coordinated Advice and Referral Program for Legal Services**

**serving Cook County**

**312-738-9494**

**West Central Legal Assistance**

**Serves Knox, Henderson, Stark, Warren, McDonough, and Fulton counties**

**800-331-0617**

**Will County Legal Assistance**

**Serving Will County**

**815-727-5123**



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem.

Because this packet discusses terms and actions with which you are likely not to be familiar, you will need to refer back to the following sections from time to time:

## People you should know

This section describes people with whom you may come into contact in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

## What mediation means

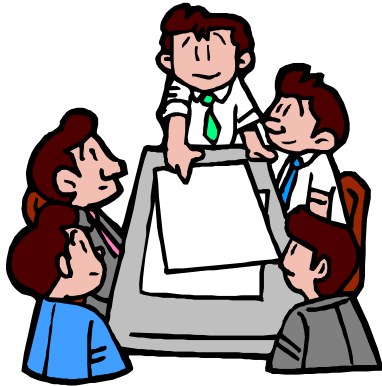
This section defines commonly used mediation terms in words that you can understand. To use the rest of the packet and any supplemental forms, you need to understand exactly what these terms mean.

## Myths and Tips

These two sections discuss commonly held misbeliefs about mediation and steps that you should take (or not take) that could make your task easier.



# Who these people are



## Mediator:

A mediator is someone who can meet with you and the person with which you currently have a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you make a decision. In some counties, mediation is required in certain types of cases, including custody.



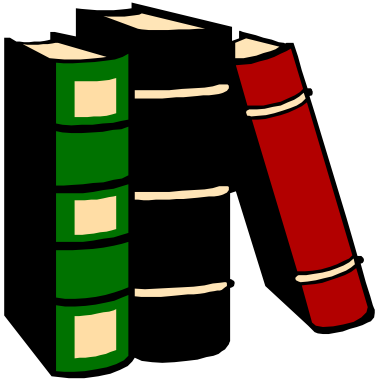
## Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court, in mediation, and in negotiation settlements. An attorney is someone with which you consult before coming to mediation.



## Judge:

The judge is the person who presides over the courtroom. In most cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled. The judge may send you to mediation or may suggest mediation. The judge will review any agreement made during mediations that are court ordered.



**Disclaimer: Please Read !!**



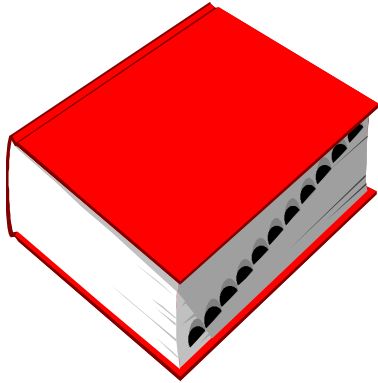
The following is a list of publications which discuss the issues of mediation. Some of these publications are specific to and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular book will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

How to Mediate Your Dispute by Peter Lovenheim

The Mediation Kit by J.W. "Zig" Zeigler, Jr.

Road to Resolution: Settling Consumer Disputes by Federal Trade Commission

Settle or Sue: What Else Can I Do? A Workbook Guide to Help You Decide by National Institute for Dispute Resolution



## **agreement**

An understanding that is reached by people with a dispute. It's usually a list of future actions to help resolve the dispute.

## **confidentiality**

An assurance that things said in mediation will be kept private. What is said in the room during mediation should remain there. The parties usually agree with the mediator that they will not call the mediator to testify in any future court proceedings.

## **court**

When the disputants can't come to agreeable terms privately, they might seek a judge to resolve their dispute in a public courthouse setting.

## **dispute**

A conflict or disagreement between two or more people. The people involved in a dispute are often called disputants.

## **mediator**

A neutral third person who does not take sides; instead, the mediator helps disputants explore options in order to resolve the dispute.

# What is mediation?



Mediation IS an opportunity for two or more persons to privately resolve a dispute with the help of a mediator. When people talk about their situation and come up with a solution with which all agree, they tend to live with the decision and are happier about the outcome. If the disputants will have a continuing relationship, they usually get along better after mediation than after a court decision.

## Mediation is NOT. . .

Mediation is NOT an attempt to decide who is to blame and it is not an attempt to get to the truth. Often, disputants remember the facts differently. It is not necessary to determine exactly what happened to make mediation worthwhile. The mediation will focus on the present and future, so that the parties will not stay stuck in the past. Mediation is not part of a police or enforcement agency. The mediator won't make the parties live up to the agreement. Once the parties make an agreement, it is up to them to enforce it.



## Where will the mediation take place?

Mediation is less formal than litigation. The mediation will not take place in courtroom. It will probably take place at the mediator's office.

## Will the mediator make a decision?

The mediator is not a judge and cannot make a decision for either party. The mediator helps the disputants work toward their own solution.

## Who gets to speak at a mediation?

Both parties will have an opportunity to state their view of the situation or problem. They will take turns telling their side of the story. After each party is done speaking, the mediator will summarize what has been said to be sure that he/she understands the situation. Then, the mediator will ask the parties for possible resolutions to the problem.

## Who decides what solution is best?

With the help of the mediator, the parties (not the mediator) try to arrive at a solution that is agreeable to everyone. The mediator will help the parties think about the possible advantages and disadvantages of a proposed solution, but will not make the decision as to which solution is best.

## Will the mediator answer my legal questions?

The mediator will not give legal advice.

## Will the agreement be put into writing?

The mediator will put any agreement, if reached, into writing for both parties. Do NOT sign any agreement that may be reached in mediation unless you intend to live up to it and you are able to live up to it.



## Is mediation confidential?

The mediation process offers confidentiality and privacy. The mediator will keep confidential all that he/she hears and asks the parties to do the same.

Any notes the mediator takes during the negotiations will be destroyed.

The only thing the mediator will keep is the final agreement reached by the parties, if they reach one.

The disputants will be asked not to call the mediator as a witness in the event that an agreement is not reached and the disputants go to court.

There may be certain exceptions to confidentiality, such as accusations of child abuse. You should check with the mediator.

## How do I enforce my agreement after the mediation?

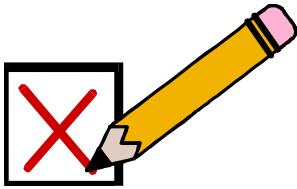
If you reach an agreement and the other party does not live up to it, the first step is to call or write the other party, ask them to comply and what the problem is.

The second step is to try mediation again.

The third step is to use outside resources. Depending on what the other party is doing is not doing you may want to sue this person for violating the agreement. You may want to report the person to the police, not for violating the agreement, but for the conduct.

# How to prepare for mediation

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**1) Get the names, addresses, and the phone numbers of the people involved in the dispute.**

The mediator needs this information to contact everyone to see if they will mediate.

**2) Find a mediator whom both parties can agree on.**

It is important that everyone is able to trust the mediator.

**3) Set up a time to mediate. The parties involved should work with the mediator to agree to a location, time and place to mediate.**

**4) Prepare yourself to listen with an open mind.**

Remember that flexibility in mediation is important. Disputants get better results when they can reach an agreement together.

**5) Gather the proper documents.**

These are documents which are regarding the matter in dispute and may help to explain the situation to the mediator. Depending on the mediator, he or she may or may not look at them, but the mediator will encourage you to share them with each other. The documents may help you and the other party understand what is in dispute, and, also, may help explain your point of view regarding the matter. Proper documents include: contracts, receipts, leases, photos, or other records or reports.

**6) The person with the authority to reach an agreement should attend the mediation.**

For example, you would mediate a dispute between you and your hair-dresser over a bad haircut. You would not send your brother.



**Not all disputes are appropriate for mediation. Mediation works in situations where:**

the parties have to work together or get along after the dispute is over;

they need to preserve their relationship;

they want to resolve their dispute privately; or

they want something that a judge or court cannot give them.

## **Typical examples of problems that can be mediated are:**

neighbor disputes over noise, litter, pets, or property lines;

small claims matters, such as disputes over repairs or bills;

landlord/tenant problems over leases or living conditions;

nursing home complaints;

disputes among public housing residents;

family problems between parents and children or between siblings over living arrangements or family routines; and

consumer complaints regarding the quality of goods or services.

**Mediation does NOT work where the parties have a history of violence.**



## Southern Illinois:

Alternative Dispute Resolution Clinic  
Southern Illinois University  
Lesar Law Building  
Carbondale, Illinois 62901-6281  
Phone (618) 453-3257

## Chicago area:

Center for Conflict Resolution  
11 E. Adams Suite 500  
Chicago, IL 60601  
Phone (312) 922-6464

If your problem involves a product or service that you purchased and you are unhappy with it, check with the Better Business Bureau in your area. To find a local Better Business Bureau, see the telephone directory.

Check the Yellow Pages; look under "Mediation Services"

Check with the Circuit Clerk in your county. In some counties, the courthouse can provide you with a list of court-approved or sponsored mediators.

In some counties, the Attorney General's office will mediate certain types of disputes including consumer cases.



## **The Mediator gives legal advice.**

The mediator does **not** give legal advice to the disputants. The mediator may suggest possible best and/or worst case scenarios arising from the dispute and possible litigation, but this is done only to alert the disputants to their options.

## **Mediation is similar to going through counseling services.**

Although mediation may include the acknowledgment of feelings, a mediator's purpose is **not** to resolve past feelings through counseling or therapy. The mediator is there to focus the disputants on future conduct and goals in an attempt to help the parties avoid future disputes.

## **Mediation is a process where the disputants come to work on a compromise.**

The goal of mediation is an agreement with which everyone can agree. It does **not** always require a compromise. It does require that each person is open to listening to the other.

## **The Mediator makes the decision for the parties.**

A mediator does not make decisions for people involved in a dispute. A mediator only encourages open communication. The mediator will try to point out common goals between the parties. *Arbitration* is when the person that listens to the parties makes the decision that guides the parties future conduct.



## **Be polite:**

Be prepared to listen respectfully until it is your time to speak. Speak to those involved in mediation with respect. Remember the other disputant is the only one who can agree to a resolution which may resolve the dispute.

## **Be prepared to explain what you want out of mediation:**

Consider what meets your emotional, economic or other needs. What can you give the other party in order to get what you want? Which of your goals are realistic?

## **Don't invite/bring people to the mediation who are not directly involved.**

You may not want to bring people to the mediation if they have little to do with the dispute. Only the people directly involved can suggest (and agree on) solutions that will solve the problem at hand. If you bring people, therefore, that are not involved, the mediator may not let them take part in the mediation.