

# Considering Mediation? Looking for a Mediator? Some Information to Help You Select a Mediator

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## Mediators Are Professionals

Mediators come from many different disciplines, such as law, social work, psychology, education and religion. Depending on the issue involved in the dispute, you may feel most comfortable with someone who has subject-matter expertise or you may want to use co-mediators who represent different disciplines. If you have a divorce or custody issue, you may want to find male/female co-mediators who have experience in family law and therapy. Some community mediation centers that mediate cross-cultural disputes often select co-mediators that mirror the parties and use an adult/youth co-mediation team for parent/youth conflicts. Other situations may benefit from a mediator with expertise in a particular issue, such as church law, land use policy, real estate, etc..

Mediation is not the practice of law; but some people believe that the mediator should be familiar with laws at issue in the dispute. For example, there are ADA Mediation Guidelines and special training for those who mediate disability-related disputes. In Pennsylvania, mediators who work for the Department of Education Office for Dispute Resolution must complete a 40-hour mediator training workshop that covers special education law and must participate in annual continuing education workshops.

## Mediator Training and Qualifications

Currently in Pennsylvania, while there are no licensing or certification requirements for private mediators, there are court rules that set out specific qualifications for mediators who accept court-connected custody mediations. Those rules mandate that mediators have a bachelor's degree and have completed a 40-hour accredited custody mediation program. Some county rules are more stringent.

At the national level, credentialing of mediators is a controversial topic. There is a debate over whether a higher education degree is necessary. Many people feel that a mediator's communication skills are a better indicator of effectiveness than a college degree. Others believe that credentialing is not needed because quality control is dictated by the market; incompetent or ineffective mediators will not be hired a second time.

At a minimum, a mediator should have completed a basic mediator-training course (the PA Council of Mediators recommends a minimum of 22 hours). Mediators listed on various rosters may have completed additional training in a specialty area, such as divorce, child custody, special education, environmental, multi-party, public policy, etc.

Mediators at many community mediation centers are also required to complete an initial apprenticeship and take a certain number of continuing mediation education hours each year to remain on the roster.

In the absence of licensing or certification, your mediator's affiliation and/or active participation in a professional organization may be some indication of his or her qualifications, ability and commitment to the practice of mediation. The leading professional organizations in Pennsylvania are the Pennsylvania Council of Mediators (PCM) and the Alternative Dispute Section of the state and local Bars. Nationally, the primary organizations mediators belong to

are the Association for Conflict Resolution (ACR), the Victim-Offender Mediation Association (VOMA) and the National Association for Community Mediation (NAFCM).

## **Mediation Experience**

Don't assume that because someone says s/he is a mediator that s/he has actual mediation experience. Completing a mediator training program does not demonstrate that an individual is qualified to mediate every dispute. Unless a newly trained mediator is willing to volunteer for a court-based program or community mediation center, those who take mediator training may have a difficult time actually being selected to mediate a case. Most private mediation services require at least some experience before adding a mediator to their roster. To be safe, ask your prospective mediator how many cases s/he has mediated. Because of confidentiality it will be difficult to get personal references outside those agencies that administer special rosters. Speaking with respected colleagues is also a great way to find a good mediator.

## **Mediation Styles**

When selecting a mediator, you may benefit from exploring the various mediator styles and choosing a mediator who practices a style that fits your needs. Three basic mediator styles are widely used: evaluative, facilitative and transformative.

### **Evaluative Mediation**

Evaluative mediation looks more like a settlement conference in the legal arena. The mediator is directive, may give advice and may point out case weaknesses when asked. Evaluative mediators are often selected because of their subject-matter expertise. The parties expect the mediator to evaluate their positions and advise them in regard to the settlement. Some people feel that evaluation jeopardizes the mediator's neutrality because the assessment invariably favors one side over the other.

### **Facilitative Mediation**

Facilitative mediation is a process designed to help the parties move off of hardened positions and, instead, identify their underlying interests. The mediator drives the process and the parties retain self-determination over the resolution, if they are able to reach one. Facilitative mediators do not give advice or predict how a court might rule on the situation. Some facilitative mediators will, however, contribute ideas during the brainstorming stage if the parties get stuck, and will help the parties evaluate the options they brainstormed by asking "reality testing" questions.

### **Transformative Mediation**

Transformative mediation was introduced in the mid-1990s. It is client driven. Based on the ideals of empowerment and recognition, the goal of transformative mediation is to increase the parties' capacity to work things out by acknowledgment of and empathy toward the other. This style emphasizes communication between the parties over problem-solving. The goal is not settlement, and it has no linear process.

### **Eclectic Mediators**

Some mediators value becoming proficient in more than one style of mediating so that they can employ the style that responds to the needs of the parties. Mediators tend to favor a style that suits their personality.

## Things to Expect from a Mediator

A mediator should reveal any potential conflict of interest, whether it is prior knowledge of one of the parties, or some unrecognized connection that comes to light during the course of the mediation. If the mediator judges that the conflict is substantial enough to cast doubt on his/her neutrality, s/he will withdraw from the mediation and help the parties find a replacement mediator. If the conflict seems minor, the parties can jointly decide whether or not to proceed with the mediator.

Confidentiality is a hallmark of the mediation process. It gives people a safe space to bring out and explore all aspects of an issue. You should expect confidentiality in all your dealings with a mediator. By statute in Pennsylvania, mediators are granted confidentiality in their work with clients before, during and after the mediation. The only matters a mediator may report to others are threats of bodily injury or damage to property under circumstances constituting a felony, as well as any conduct during the mediation that causes direct bodily injury to a person. Be sure to ask the mediator if his/her agency or program has other reporting requirements about the mediation session or its outcome.

## Costs

Most mediators charge an hourly fee reflecting their training, experience and other qualifications. There may be a different rate for preparation time prior to the mediation session. Many community mediation centers charge a modest fee or suggest a donation to cover the session; some offer fees based on a sliding scale.

A mediator should not guarantee or imply that a mediation will produce any particular outcome or result. You should not be charged a contingent fee or a fee based upon the outcome of the mediation. Nor should the mediator give or receive commissions, rebates, or other payments for a client referral. You should be able to get a written explanation of the basis of the mediator's fees and expected costs.

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Check the [“Locate A Mediator”](#) link. This may be a helpful resource to start finding a mediator. Please be aware that a listing on the web site is not an indication that PCM has screened or endorsed any particular mediator. Mediation consumers need to take their own needs and criteria into account when selecting a mediator.