



The Human Element...

The Elledge Group, Inc.

WHAT IS COURT-ORDERED MEDIATION?

-- by Trish Elledge

Mediation is the one court-ordered process designed specifically for the parties to have decision making power over the issues contained in their court case. Court mediators can be independent contractors for a specific state or court program, qualified members of a roster or voluntary professional organization, court or community volunteers, interns, or employees of court mediation programs. Most contractors or roster members of court-related mediation programs are trained professional mediators and highly experienced in mediating high-conflict cases.

Mediators are impartial third parties who facilitate the parties' communication and negotiation. Mediated discussions are held between the named parties to the case and their respective attorneys of record (if desired/applicable). Sessions are conducted either with all parties/counsel in the same room with the mediator, or with the mediator shuttling between separate rooms carrying information, proposals, and counter-proposals to and from each party.

Mediation is not a procedure involving participation by witnesses. However, some mediation sessions will have experts involved to provide information to the mediator and parties during the session. Experts do not serve as negotiation representatives. Support persons for the named parties often accompany the parties to the mediation. Most of the time, a support person remains in the hall during mediated discussions and is not allowed in the confidential mediation session itself. It is good for mediators to adopt a policy of open communication and understanding when it comes to the question of allowing a support person in the room during mediation discussions. My policy is that if Party A would like his support person in the room, Party B must agree to it. If Party B does not agree, Party A's support person must remain in the hall during the confidential mediation discussions. However, Support Person can sit with Party A while I am meeting privately with Party B, if applicable. If party B agrees to having Party A's support person present during the mediation discussions, Support Person must agree to maintain confidentiality with regard to all discussions and expressions that take place during the mediated discussions. Support Person must also sign and be bound to the Agreement to Mediate, with specific emphasis given to the confidentiality clause.

All mediation discussions remain confidential unless parties reach agreement on some or all of the issues contained in their case. When agreements are reached, they may be written into a Memorandum of Understanding (MOU), also called Mediated Agreement, and submitted by the parties/attorneys to the court for its approval and order. The agreements become enforceable under state law once they have become an order of the court.