

HOW TO CHOOSE THE RIGHT MEDIATOR FOR DISPUTE RESOLUTIONS

When a negotiation escalates into a dispute, most managers understand the value of seeking out a mediator for professional assistance with the matter. The question of whom to hire, however, is less clear-cut. What type of expertise should your mediator have? and where should you look for him?

When choosing a mediator, keep in mind that you need not accept the proposals that he makes. In other words, you have total power to prevent mediation from leading to an undesirable outcome. As a result, the only risk of mediation is that you will expend time and money without reaching agreement. Indeed, one Fortune 100 company is so firmly convinced of the value of mediation that, as long as the other party seems to genuinely want a good-faith resolution, it will get a list of experienced mediators from a reputable and neutral mediation agency and let the other side select anyone on the list.

Procedure for choosing a good mediator

For those new to mediation, **begin by getting a list of mediators from a reputable provider agency.** You can find these agencies by searching under “dispute resolution” on the Internet and/or by inquiring with your organization’s legal department. You should ask the mediators for the names of the chief negotiators for each party in the last three cases that they mediated. (The chief negotiator will typically have been the party’s lawyer, although this is not always the case.)

Next, **contact these chief negotiators and question them about their experiences with the mediators that you’re considering.** According to these expert mediators, their success comes from focusing on three key areas:

- **Rapport:** The mediators agreed that the key skill of a successful mediator is the ability to develop rapport—a relationship of understanding, empathy, and trust—with each of the disputing parties. A sense of rapport can encourage parties to communicate fully with the mediator, often providing her with the information she needs to find a mutually acceptable settlement. One mediator said that rapport is essential to building the trust needed for parties to share “their interests, priorities, fears, weaknesses.” “This information is often the key to settlement ... their telling me what they haven’t told the other party,” the mediator said.
- **Creativity:** Another key talent of successful mediators is creativity—the ability to generate novel solutions. This ability clearly springs from a focus on interests. Only by understanding each party’s interests can a mediator generate creative solutions that satisfy each party. “It is vitally important to be able to think of new ways of dealing

with issues,” one mediator told me, “inventing options that acknowledge feelings, perceptions, and hurts that might otherwise block meaningful and fair resolution.”

- **Patience:** It is also important that your mediator be patient, giving you and your opponent as much time as you need to fully express emotions and ideas, while at the same time focusing intently on the primary task—dispute resolution. “I am tenacious,” one mediator said. “I don’t give up. I have sat with parties who have claimed they simply don’t see a way to a resolution and said, ‘Well, we’ll just sit for a while and think more on it.’ Most parties are loath to send the mediator packing, so they sit and usually think of something, especially if I occasionally throw out an idea.”

Steps to conduct a successful negotiation

As compared with other forms of dispute resolution, mediation can have an informal, improvisational feel. Mediation can include some or all of the following six steps:

1. Before mediation begins, **the mediator helps the parties decide where they should meet and who should be present.** Each side might have lawyers, coworkers, and/or family members on their team, depending on the context.
2. With the parties gathered together in the same room, **the mediator introduces the participants, outlines the mediation process, and lays out ground rules.** She also presents her goal for the mediation—for example, to help the parties come to agreement on the issues under dispute and improve their relationship.
3. Following the mediator’s introduction, **each side has the opportunity to present its view of the dispute without interruption.** In addition to describing the issues they believe are at stake, they may also take time to vent their feelings.
4. After each side presents its opening remarks, the mediator and the disputants are free to ask questions with the goal of arriving at a better understanding of each party’s needs and concerns. Because disputing sides often have difficulty listening to each other, **mediators act like translators, repeating back what they have heard and asking for clarification when necessary.** If parties reach an impasse, mediators diagnose the obstacles that lie in their path and work to get the discussion back on track.
5. If emotions run high during a joint session, the mediator might split the two sides into separate rooms for private meetings, or caucuses. Often, but not always, **the mediator tells each side that the information they share in caucus will remain confidential.** The promise of confidentiality can encourage disputants to share new information about their interests and concerns.

6. **At this point, it's time to begin formulating ideas and proposals that meet each party's core interests**—familiar ground for any experienced negotiator. The mediator can lead the negotiation with all parties in the same room, or she can engage in “shuttle diplomacy,” moving back and forth between the teams, gathering ideas, proposals, and counterproposals.

About 80% of dispute mediations lead to resolution. Depending on the complexity of the issues, mediation might last mere hours, or it could take days, weeks, or months to resolve. Some resolutions will truly be Win-Win; others will be just barely acceptable to one or both sides—but better than the prospect of a continued fight or court battle. If the parties come to consensus, the mediator will outline the terms and may write up a draft agreement. If you fail to reach agreement, the mediator will sum up where you have left off and may engage you in a discussion of your non settlement alternatives.



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