

Frequently Asked Questions
About
Workplace, Organizational & Business
Mediation

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My mediation practice is an extension of my world view: that people in conflict can resolve their disputes peacefully, while preserving the dignity of each individual.

Since the inception of my mediation practice, I have striven to provide my clients with the most comprehensive, ethical and compassionate mediation services available. My clients have consistently achieved superior settlements which are tailored specifically to their unique and individual needs without engaging in costly and time-consuming litigation.

This document is designed to educate you about the mediation process and its benefits. It will also educate you about my background and credentials. If you have any questions about my services, please feel free to contact me. I will be more than happy to provide you with a complimentary consultation to further acquaint you with my services.

Best Wishes,

Jeffrey M. Cohen, Esq.

CONTENTS

Business Productivity and Workplace Conflicts	1
Business & Commercial Mediation Saves Time and Money	1
FREQUENTLY ASKED QUESTIONS ABOUT WORKPLACE, ORGANIZATIONAL & BUSINESS MEDIATION	3
What Is Mediation?.....	3
What Are The Advantages And Benefits Of Mediation?	3
What Is A Mediator?	4
What Is Your Training?.....	4
What Are The Cornerstones Of The Process?.....	5
Cornerstone #1: What Is Impartiality And How Does It Differ From Neutrality?	5
Cornerstone #2: What Is Self Determination?	6
Cornerstone #3: Informed Decision Making: Are Lawyers Necessary To The Process?	6
What About The Use Of Other Professionals?.....	6
What Is The Process?	7
What Is The Final Product?	7
Where Do You Perform Your Services?	8
Will You Give A Presentation About Mediation To My Organization?.....	8
BACKGROUND & TRAINING	9
PROFESSIONAL AFFILIATIONS	11

Business Productivity and Workplace Conflicts

Productivity can decrease significantly when key members of your business or organization have unresolved interpersonal or workplace-related issues. These conflicts can be a result of perceived or actual employment situations, race or sex discrimination, business practices and/or conflicts related to interpersonal issues. The dynamics of these issues can cause chaos in the working environment and can destroy the morale and productivity of an organization. Litigation can polarize members of an organization and can cost the employer and the employee countless thousands of dollars in attorney and other fees. In contrast, mediation can resolve these conflicts quickly – in most cases in a few short hours.

Mediated settlements result in agreements which are crafted by the parties, not by the courts. Statistically, parties who create their own agreements are not only more satisfied with the outcomes but they are also more likely to abide by agreements of their own design. The concerns of each party are quickly addressed, and trust can be successfully restored. The end result? Not only will the mediation process be completed in less time with lower cost and with an outcome that is more satisfactory to the participants, but you, the employer, will have more focused, more productive members of your team.

Business & Commercial Mediation Saves Time and Money

Mediation is quickly becoming the preferred method of resolving commercial and business disputes. The mediator, who is neutral and unbiased, assists the parties in exploring and achieving mutually beneficial solutions.

The benefits? Litigation costs are avoided or greatly reduced. Where litigation can take months to complete, mediation will resolve disagreements in a matter of hours. In addition business relationships can be preserved.

Areas of experience include:

- Commercial contract disputes;
- Commercial and residential real estate transactions;
- Commercial leasing disputes;
- Disputes between owners, directors, board members, partners and principals;
- Dissolution of corporations, partnerships and other entities;
- Workplace and employment issues;

A Guide to Workplace, Organizational & Business Mediation

by Jeffrey M. Cohen Esq., Professional Mediator

- Workplace discrimination issues;
- Succession planning; and
- Creation of business entities.

The mediation process can be used both prior to or after litigation is commenced. Also, parties will often engage in mediation before their disagreements ripen into full blown disputes.

Answers to some of frequently asked questions about the mediation process can be found in this publication. If, after reviewing these materials, you have any further questions, please do not hesitate to contact me. I will be more than happy to give you the information that you need to decide if participating in mediation is the right choice for you.

Also remember that the information provided is merely an introduction to my practice. In my opinion, it cannot take the place of a complimentary consultation. If you would like to meet please contact me for an appointment at either my Albany, New York office or at my Clifton Park, New York office.

FREQUENTLY ASKED QUESTIONS ABOUT WORKPLACE, ORGANIZATIONAL & BUSINESS MEDIATION

What Is Mediation?

Mediation is a method of dispute resolution which allows participants to resolve their own disputes rather than submit their issues to the courts, arbitrators or to procedures set by the E.E.O.C.

What Are The Advantages And Benefits Of Mediation?

1. Mediation is *substantially* less expensive than litigation.
2. Mediation is less time-consuming. The duration of litigation can, at its worst, be measured in years whereas the duration of mediation is measured in hours.
3. Conflicts created by an adversarial justice system can be eliminated. Rather than risk resolutions which can be imposed upon parties by the courts or other proceedings, parties can create their own agreements based upon their own notions of fairness.
4. Mediation can resolve developing conflicts before they mature into a crisis – parties often attend mediation when they anticipate that issues may arise in the future.
5. Mediation can be utilized in the “start up” stage of a business, the dissolution of a business or in succession planning to ensure that all parties are communicating effectively.
6. Businesses can resolve issues between key employees, as well as with preserve or enhance relationships with outside suppliers or other related businesses.

7. Employees who are underperforming because of workplace or divorce related issues can have their issues resolved efficiently in order to again become productive in the workplace.

8. Disputes between members of family owned businesses can be resolved peacefully without compromising family relationships.

9. Communication and understanding between conflicted parties is enhanced and trust can be restored through the exploration of each party's goals and concerns.

What Is A Mediator?

As a mediator, I act as a neutral professional who assists parties in resolving their disputes rather than risk outcomes which can be imposed upon them by the courts. Through the use of numerous psychologically based interventions and techniques, I help participants think creatively, avoid or overcome impasses and I help them to develop creative and comprehensive agreements which they find to be fundamentally fair by their own standards.

What Is Your Training?

In addition to my training as an attorney, I have many hundreds of hours of specific mediation training in the many models of mediation, the various psychologically based interventions and techniques which mediators use to assist clients achieve their agreements, as well as training in complex adaptive systems, creation of conflict resolution systems within and between organizations, conflict dynamics, medical and legal malpractice, neuro-linguistic programming, workplace, employee relations, employment discrimination, commercial disputes and commercial contracts.

Through my training, I have achieved the status of "Advanced Practitioner" from The Association for Conflict Resolution, the largest qualifying organization for mediators in The United States. In order to maintain my status, I must engage in continuing mediation education training on a bi-annual basis. In addition, I wholeheartedly abide by "The Model Standards of Conduct for Mediators", a set of ethics and standards for mediators which has been approved by The Association for Conflict

Resolution and which has been jointly approved by The American Bar Association and The American Arbitration Association.

In addition, my legal background is an important qualification to the areas that I mediate. I have been an attorney licensed to practice in The State of New York since 1984. Although my practice has concentrated in Mediation since 1992, my areas of practice have included the areas of business law, commercial contracts and commercial litigation. Obviously, my experience and training in these areas is quite helpful in assisting my clients in successfully resolving their disputes. For more information regarding my qualifications, please click on my “Background and Training” section of this website.

What Are The Cornerstones Of The Process?

The three cornerstones of the mediation process are:

1. The absolute impartiality of the mediator; and
2. The self determination of all issues by you, the client, in a way which is fair by your own standards; and
3. Participants must make educated, informed choices.

Cornerstone #1: What Is Impartiality And How Does It Differ From Neutrality?

As a mediator, I am “neutral” as to your final outcome but I am “impartial” in conducting the process of mediating your dispute. The distinction is important. “Neutrality” means that I have no agenda and that I take no stake in your outcome. You create your own agreements.

The concept of “impartiality” relates to the actual process of mediation that leads to the creation of your final agreements. This concept, sometimes called “omnipartiality”, means that during your negotiations, I must be on both sides and on no side at the same time. This allows me to help each of you brainstorm, develop your options and ultimately assist you in resolving your conflicts.

Cornerstone #2: What Is Self Determination?

According to Standard I of The Model Standards of Conduct For Mediators, adopted by the Association for Conflict Resolution and approved by the American Bar Association and the American Arbitration Association, "Self Determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome." Essentially, you are in control of the decision making process.

Cornerstone #3: Informed Decision Making: Are Lawyers Necessary To The Process?

In most mediation cases, lawyers play an important but limited role. As your mediator, I take no stake in your outcome but I take a strong stake in ensuring that you make educated choices; thus, it is important for you to understand all of the intricacies that go into achieving a comprehensive settlement, including how the law might apply to your situation. It is unethical as a matter of law for one attorney to give legal advice to both parties without creating a "conflict of interest". An attorney can be disciplined by The Bar Association for such conduct.

It is thus my strong recommendation that each party to the mediation process consult with an attorney of his/her own choosing either prior to or shortly after commencing the mediation process. Although attorneys are not present in the process, they will give you independent legal advice about the topics you must discuss in mediation. Your attorneys will then be asked to review your final mediated agreement to ensure that you understand the legal ramifications of the choices you have made. Finally, they will prepare the legal documentation necessary to achieve your goals. Remember, the decisions that you make in mediation can, in many cases, have significant consequences regarding the members of your organization or regarding your business relationships. Having a trusted, objective advisor will help the participants in mediation the knowledge necessary to make comfortable, meaningful and long lasting choices.

What About The Use Of Other Professionals?

My clients do not necessarily limit themselves to speaking with attorneys in order to make informed choices. Depending upon the issues you bring to the table, you may want to speak with other professionals in order to

obtain the information necessary to make informed choices. I have had clients consult with accountants, financial advisors, business consultants, psychologists, human resource advisors and appraisers, to name a few.

What Is The Process?

In workplace and business related mediation, I design mediation models specific to the issues presented. Depending upon circumstances, I will have to determine the effectiveness of mediating on site or in my office. In addition, I must determine the frequency of the sessions, which can run from one to several hours. In some instances, I will require the submission of written statements prior to the first session.

I ensure that all topics which must be considered are discussed. I use many psychologically based interventions and techniques to have my clients “shift” from “positional bargaining”, (“win-lose” negotiation) to “interest based negotiation” (“win-win” negotiation). Creative solutions are achieved by exploring mutually advantageous models which serve the interests of all parties. If the process requires more than one session, I will advise the parties of what we will be covering in the next session and I will tell them how to prepare for the next meeting.

What Is The Final Product?

At the end of the process, I will prepare a “Memorandum of Understanding” containing all of the specific terms of your agreement. This is not a legally binding document. In some instances, each client will have their Memorandum reviewed by an attorney in order to understand the legal ramifications of the choices that have been made. If legal documents are required, the attorneys will prepare the appropriate paperwork necessary to reflect the parties’ agreements.

In many instances, however, the agreements contained in the Memorandum are simply implemented by the participants.

Where Do You Perform Your Services?

Depending upon the circumstances presented by each case, I will either conduct the mediation on your site or I will conduct the mediation in either my Albany, New York offices or at my Clifton Park, New York offices.

When I travel to locations outside of the greater Albany, New York/Saratoga Springs, New York area, special arrangements must be made for my travel, lodging and for securing an appropriate location for conducting the mediation. With appropriate advance notice, I can be available for travel to any location in the United States.

Will You Give A Presentation About Mediation To My Organization?

I truly enjoy public speaking! If you would like me to educate the members of your organization about the advantages and benefits of mediation, please do not hesitate to contact me. I will tailor a presentation to meet your specific needs.

BACKGROUND & TRAINING

Jeffrey M. Cohen has been an attorney and a mediator in private practice since 1984. His practice has concentrated in the mediation of disputes involving divorce, separation, business, commercial, organizational and workplace related issues since 1992.

At present, Mr. Cohen serves on the Board of Directors of the Association for Conflict Resolution (ACR) (www.acrnet.org) the largest mediation organization in The United States. Among his various duties, he is the present Chairman of the ACR Ethics Committee, which is charged with the creation and promotion of best ethical practices for mediators and other alternative dispute resolution professionals.

Mr. Cohen has earned the designation of "Advanced Practitioner" from this organization, and as a result has been admitted to the ACR "Academy of Family Mediators." This designation requires that he engage in bi-annual continuing mediation training in order to maintain his status. Since the inception of his mediation practice, Mr. Cohen has accumulated over 500 hours of specific mediation training from many of the finest mediation training programs and individual trainers in both the United States and Canada, including multiple trainings with The Harvard Program on Negotiation at the Harvard Law School and The Cornell ILR School.

In addition to his present duties with The Association for Conflict Resolution (ACR), he has served on the ACR Certification Task Force, a committee charged with creating specific standards for the certification of mediators who are members of this organization. Mr. Cohen has also served on as the Co-Chair of the ACR Legal Committee, as a member of the ACR Insurance Committee and as a member of the ACR Grievance Committee, where he co-authored grievance and review standards for complaints made against members of the organization.

Mr. Cohen has taught numerous continuing legal education courses to his peers on subjects related to divorce, family law, mediation, and the ethics of mediation. These courses have been sponsored by such organizations as the New York State Supreme Court, Appellate Division, Third Department, and the Albany County Bar Association. In addition, he has guest-lectured on the topic of

mediation as a method of dispute resolution to numerous organizations and schools, including Albany Law School and the Association For Conflict Resolution National Conference, where he lectured on the topics related to commercial and business mediation. He is a regular guest lecturer at the Syracuse University School of Human Ecology regarding the Ethics and Standards of Practice for Mediators.

Mr. Cohen has worked as a contract mediator for the United States Equal Opportunity Employment Commission regarding issues of employment discrimination. He has also mediated both commercial conflicts and workplace disputes for various organizations, including the Social Security Administration. Mr. Cohen was also a panel mediator for the American Arbitration Association.

Mr. Cohen is also the cofounder and, since 1990, a co-presenter of the acclaimed "[Kids First After Divorce](#)" Program, a New York State certified parent education program for adults with children who are experiencing divorce or separation and who seek to learn the effects of divorce and separation. Participants in this program learn not only the effects of separation and divorce on both children and their parents, but also about the court system and alternatives to litigation.

Mr. Cohen is a "Law Guardian" (trained children's advocate) certified by the Appellate Division of the Third Department of the New York State Judiciary and has taught continuing legal education courses to legal advocates for children throughout the New York State Third Judicial Department.

Mr. Cohen is also a founding member of [Mediators Beyond Borders](#), a humanitarian organization that promotes the peaceful resolution of conflict worldwide.

PROFESSIONAL AFFILIATIONS

- “Advanced Practitioner” with the Association for Conflict Resolution
<http://www.acrnet.org/>
- Member of The Association for Conflict Resolution "Academy of Family Mediators" (AFM AP)
- Member of the Association for Conflict Resolution Family Section
<http://www.mediate.com/acrfamily/>
- Member of the Association for Conflict Resolution Workplace Section
<http://www.mediate.com/acrworkplace/>
- Member of the Association for Conflict Resolution Spirituality Section
<http://www.mediate.com/acrspirituality/>
- Founding Member of Mediators Beyond Borders
<http://www.mediatorsbeyondborders.org/>
- Member, New York State Dispute Resolution Association, Inc.
- Former “Panel Mediator” for the American Arbitration Association
<http://www.adr.org/>