My Laws, My Courts, My Maryland:
MEDIATION

Mediation is a process where a trained neutral person, called a "mediator," helps people in a dispute talk and understand each other, and, hopefully reach an agreement. Although some courts may require parties to go to mediation, courts cannot make people reach an agreement. If you do not reach an agreement in mediation, you do not lose your legal rights. You can still go to court. This video will give you an overview of how mediation might help you resolve your case, how to prepare for and participate in mediation, and what happens after mediation.

[Benefits of Mediation]

Why should you try mediation? Mediation may protect your privacy, save you time and money, reduce stress and help repair personal or business relationships.

Unlike a court hearing which is open to the public, mediation is confidential and private. Only the participants involved in the case and the mediator are there. If you don’t come to an agreement in mediation, you can still go to trial. If you choose to mediate and you reach an agreement, you won’t have to take time off from work to go to court or spend money getting to and from court hearings. There are mediators in every county in Maryland. Most mediators work with you to find a convenient time and place to talk about your issues. In a trial, someone wins the case and someone loses. The judge or a jury makes all of the decisions. And sometimes, neither side gets what they want. In mediation, the parties decide for themselves what solutions will work for them. In mediation, you can sometimes address a broader range of issues, which may help you and the other side reach a more lasting solution. For this reason, mediation is often successful and participants are usually satisfied with the results. There are many benefits to

mediation, but you should know that mediation is not appropriate for all situations. For example, mediation may not be appropriate if there has been a history of domestic violence in the case. In addition, courts are not permitted to order the parties to mediate in a protective order case. In most court-sponsored mediation programs, your lawyer can attend the mediation with you. Talk with a lawyer if you are not sure if mediation is appropriate in your case.

[What Does the Mediator do?]

What does the mediator do? A mediator may help identify issues and options, assist you, the other person and your attorneys in exploring underlying needs, and, on request, record the points of agreement. The mediator will help you talk about the issues, focus on what is important to you, and maybe help you understand the other person's perspective. The mediator should not take sides or make judgments about who is right and who is wrong. The mediator should not give legal advice or tell you what to do. The mediator should not push you into settling your case if you don't want to. The mediator does not recommend the terms of an agreement. That is up to you and the person on the other side.

Mediation is confidential. The mediator is bound by ethical rules and should not discuss what happened in the mediation session with anyone, except in very limited circumstances. The mediator may have a duty to disclose information, however, to prevent serious bodily harm or death to a potential victim. The mediator will talk about what confidentiality means at the beginning of the session. If you have questions about confidentiality or what a mediator might be required by law to disclose, talk with your mediator.

[Who Picks the Mediator?]

Who picks the mediator? If you have been ordered to participate in mediation, or given the opportunity to participate in a court-based mediation program, the court may choose the mediator for you. Most courts draw from a panel of court-approved mediators. If you do not like the mediator the court selects, you may have the right to choose a different mediator. You may go to the clerk's office of most circuit courts and ask to review the list of court-approved mediators. You may also ask the clerk for any mediator's application form, which has information on the training, background and experience of each court-approved mediator. There are 17 community mediation centers located throughout Maryland. The Maryland Program for Mediator Excellence provides an online directory where you can search for a mediator. You can access the directory from mdcourts.gov/macro. Finally, your attorney may recommend a mediator. Before you choose a mediator, you should find out about his or her experience, how he or she approaches mediation, and ask about fees. For more information on how to choose a mediator, visit mdcourts.gov/macro.

[How to Prepare for Mediation]

How should you prepare for mediation? If you have an attorney, talk to him or her. Think about what is at stake for you and the other party. If you go to trial, are you likely to win or lose? Be prepared to discuss the issues that are important to you and those that are important to the other party. Think about what you want and what the other party might want. Try to keep an open mind.

[How to Participate in Mediation]

How should you participate in mediation? In most cases, if you have an attorney, your attorney can participate in the mediation with you. If you're not sure, ask your mediator or your attorney. If you have an attorney, talk to him or her in advance about your role and your attorney's role in the mediation. Be sure to discuss with your attorney your rights under the law and any rights you may not want to waive. Whether you have an attorney or not, the mediator is trained to know how to help both sides talk about the issues and the things that are important to them.

Be polite, respectful and listen to the other side. Have an open mind about different solutions. Be willing to brainstorm possible solutions that address the case problems in a new way. A settlement in which you get most of what's most important to you might be better than going to trial where the judge or jury may make a decision that might not go your way. Remember, it's your conversation. Speak up!

[What is the Cost?]

How much does mediation cost? As mentioned earlier, community mediation centers offer mediation for free or on a sliding scale. Private mediators will have their own fees. The cost of court-based mediation depends on the program and the court. Mediation services offered by the District Court and the Court of Special Appeals are free. In most circuit court civil cases, the court sets the fee which is usually split by the parties. Some circuit courts have free family mediation, and most courts have a process to apply for a fee waiver if you cannot afford the fees. Be sure to find out the costs before you begin.

[What Happens After Mediation]

What happens after mediation? If you reach an agreement in mediation, it should be written down. The mediator may record points of agreement reached by the parties. If you or the other party has an attorney, the attorney can draft a settlement agreement. Be sure you understand all of the points in the agreement, and that every part of the agreement is included, especially the details. Be as specific as possible. Include information about what happens if either party doesn't do what they agreed to do. The mediator may help you think about these details. If you don't understand any part of the agreement, ask! If you are worried about giving up your rights in a settlement agreement, you may hire an attorney to review the settlement agreement before you sign it. An agreement is only final and binding when all parties are satisfied with the agreement and everyone signs it. After the agreement has been finalized, it may be incorporated into a court order or kept as a part of the court file.

If you don't come to an agreement in mediation, you can still go to trial. Depending on which court you are in, you may have your trial on the same day of mediation, or some time in the future.

[Resources]

For more information about mediation, visit mdcourts.gov/macro. Information about District Court mediation can be found at mdcourts.gov/district. Click on the link that says "ADR Office." ADR stands for Alternative Dispute Resolution. If your case is in the circuit court, contact the court where your case will be heard. Details on the Court of Special Appeals' Mediation program can be found at mdcourts.gov/cosappeals. Click on the link that says "Alternative Dispute Resolution (ADR) Division."

This has been a production of the Access to Justice Department of the Administrative Office of the Courts. For more information, please visit mdcourts.gov.