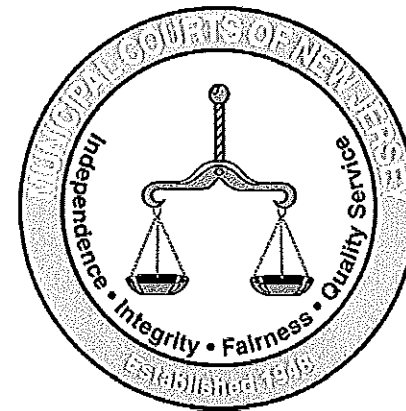


MEDIATION IN THE MUNICIPAL COURTS



New Jersey Judiciary
Deborah T. Poritz, Chief Justice
Philip S. Carchman, J.A.D.,
Acting Administrative Director of the Courts

September 2005

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WHAT ARE THE BENEFITS OF MEDIATION?

Mediation is a free program that lets the parties take an active part in solving their own dispute, rather than leaving the decision-making to others. In addition, mediation offers other benefits, including:

- the result may benefit all of the parties and provide a “win-win” solution;
- what goes on in mediation is confidential, with a few exceptions;
- the final agreement can be custom made to meet the unique needs of the case and the parties;
- the parties establish early, direct communications and understanding about the important issues of each side;
- trained mediators assist the parties in coming up with more creative solutions not usually found in the traditional courtroom situation; and
- there is no cost to the parties for mediation, and it may offer a more relaxed and meaningful alternative to the traditional trial process.

INTRODUCTION HOW MEDIATION SOLVED A DISPUTE BETWEEN NEIGHBORS A Story with a Happy Ending

Dan Willow arrived at the municipal court office in his town one morning and asked how he could file a case against his neighbor, Clara. According to Dan, Clara had a dog that barked late into the night until Clara arrived home. He had spoken with Clara, but had been unable to resolve the problem.

Court staff gave Dan a complaint form to complete. After reviewing the complaint, the court administrator said that Dan and Clara’s dispute could be resolved easily and quickly by mediation.

Dan was told that his case would not go directly to a judge, but instead would be handled through mediation. The court administrator briefly explained the mediation process and gave Dan an informational booklet about mediation in New Jersey.

Both Dan and Clara received a notice in the mail scheduling their mediation session. On that date, Dan and Clara met the mediator assigned to their case. The mediator sat with Dan and Clara and permitted each one to explain his or her side of the story. Clara learned that Dan worked early in the morning and that when her dog barked it kept him from

getting a good night's sleep. Dan learned that Clara's job often kept her working late into the night to meet important deadlines.

To solve the problem, Clara agreed to bring her dog to obedience school, and, in the meantime, Dan agreed to wear earplugs to bed. Dan also agreed to withdraw his complaint. When they left the mediation session, Dan and Clara both felt that they had come to a reasonable agreement that they could each live with.

BACKGROUND

The New Jersey court system understands that your case is very important. In some cases, going before a judge would be the most effective way to end the dispute. However, in many cases, experience has shown that other methods may be more effective, efficient and meaningful to the people involved.

Sometimes a municipal court judge may refer a case to mediation. Even when the judge doesn't require a case to be mediated, the person who brings the case to the court and the defendant may request mediation. New Jersey Court *Rules* 7:8-1 and 1:40-1 *et seq.* explain mediation in detail.

WHAT ARE THE ROLES OF THE PARTIES AND THEIR ATTORNEYS, IF ANY, IN MEDIATION?

The parties are required to make an honest effort to cooperate with the mediator, keeping in mind that the goal is to arrive at a solution that both parties can accept. Both parties must take part in discussing the agreement because it is their case and their settlement. If the parties have attorneys, the attorneys may accompany their clients to provide assistance. The mediator will decide the degree of the attorneys' participation.

WHAT IF A PARTY DOESN'T LIVE UP TO THE TERMS OF THE AGREEMENT?

If the one party doesn't live up to the terms of the agreement, the other may contact the court about what to do next.

WHAT HAPPENS IN MEDIATION?

Mediators begin by describing to the parties how mediation works. Next, the mediator will ask the participants to follow certain rules. One of the most important rules of mediation is that almost everything that goes on in mediation is confidential. That is, what is said in mediation cannot be discussed outside of mediation unless the parties agree. Usually, the mediator next will ask the parties to describe the issues in dispute from their own viewpoints. After that, the mediator will help the parties to explore areas of possible compromise and to develop a solution that serves everybody's interests.

Sometimes the mediator may meet with the parties separately for a private discussion that might help the parties agree. If an agreement is reached, the mediator will prepare a document that explains the details. When all the parties sign the agreement, the court will be asked to dismiss the case.

WHAT IF THE CASE ISN'T RESOLVED IN MEDIATION?

Sometimes the parties are unable to reach an agreement. In that event, the case can be returned to the court and then the dispute will be heard before a judge.

The purpose of this booklet is to briefly describe the mediation process and programs available in the municipal court system. If you have any questions about anything discussed in this booklet, please call (609) 292-9633 and ask for the legal department of the Municipal Court Services Division.

HOW DOES A DISPUTE GET TO THE MUNICIPAL COURT?

Under New Jersey law, a private citizen is permitted to bring a case against another citizen claiming that the second person has violated some law. The person who starts the case is called the "complaining witness" and the person the complaint is about is called the "defendant." A dispute gets to the municipal court when a complaining witness files a written complaint against a named defendant. Both the complaining witness and the defendant are called "parties," which is the court's way of referring to people who are directly involved in the case.

WHAT IS MEDIATION?

Municipal court mediation is a no-cost way to end disputes without going to court and without using a judge to decide the case. In mediation, the mediator encourages discussions between the parties to help them reach an agreement they can both accept. The mediator will not favor one party over the other. What makes mediation unique is that a mediator

does not decide the outcome of the case. The parties work together to solve the problems between them.

WHAT KINDS OF CASES COULD BENEFIT FROM MEDIATION?

Some cases are better suited for mediation, such as neighborhood disputes, noise violations and harassment complaints, just to name a few. Mediation has been used successfully in the following kinds of cases:

- the parties may know one another or have a continuing relationship;
- there are communication problems between parties;
- the principal barriers to settlement may be personal or emotional;
- the parties want to create a solution to meet specific needs or interests;
- the parties want to settle because they want to avoid a long trial and the expense of going before a judge;
- the parties want to keep control over the outcome of the case; or
- the parties seek a more private way to resolve their dispute.

CAN ALL CASES BE MEDIATED?

Mediation is limited to municipal court cases involving private citizen complaints. There is no mediation of the complaint if it: (1) involves serious injury, (2) involves repeated acts of violence between the parties, (3) involves clearly demonstrated psychological or emotional disability of a party, (4) involves incidents involving the same persons who are already parties to a Superior Court action between them, (5) involves matters arising under the Prevention of Domestic Violence Act, or (6) involves a violation of the New Jersey Motor Vehicle Code.

HOW DOES A CASE GET INTO MEDIATION?

Municipal court judges and court staff can refer appropriate cases to mediation. The parties themselves may also request that their dispute be referred to mediation. The earlier that a case can be referred to mediation, the greater the chance that the parties can resolve their dispute effectively and efficiently.

WHO ARE MEDIATORS?

Mediators are individuals who must meet the qualifications and training requirements in *Court Rule 1:40-12*. In addition, they must be approved by the court. Usually, mediators are unpaid volunteers.