

WILLIAMS FIDULEX

LUXURY FIDUCIARY & LEGAL SERVICES

MEDIATION: THE FINE ART OF DISPUTE RESOLUTION



Litigation rarely produces a winner. It is an expensive often lengthy process by which a third party adjudges how the spoils are to be shared. By that stage, often a victory is only pyrrhic.

Arbitration is not much different and to add insult to the process, often arbitral decisions must be given authority by further court process in order to be binding.

Mediation, on the other hand, is party-driven, with or without the presence of lawyers, where parties speak to each other directly in the presence of a neutral facilitator. The process usually is completed within a few hours at minimal cost. The process is increasingly popular method of alternative dispute resolution as parties appreciate the benefits of settlement versus adjudication. The purpose of mediation is to bring disputing parties together in a safe, neutral environment anywhere in the world where they both feel comfortable. Lawyers are completely unnecessary as the disputes are not resolved by points of law but instead by agreement between the parties. The Mediator is not a Judge and can render no decision. In fact, the mediator must voice no opinion, and their role is to get opposing parties to talk and listen to each other, then to arrive at a negotiated agreement which is acceptable to both parties. Once formalized by writing, agreed terms become contractually binding on the parties to the resolution.

In the event that mediation may not succeed, the parties may move to a different forum of arbitration, or litigation. However little, if anything, would have been lost by going through the exercise of mediation given its cost-efficiency and the brevity of the process.

Mediation is a private forum where confidentiality is required of all parties. Unlike court processes, mediation is completely informal. Basic rules of respect and fairness constitute the only real structure in a very flexible, party-driven process.

Mediation is intended to be conducted with all parties in physical proximity where they can see and hear each other clearly. That being the case, what's to prevent mediation by *skype* or other electronic means provided the communication channels are clear?

