



RESOLVING CONFLICT WITHOUT COURTS

Mediation: A Business-Like Approach To Resolving Disputes



www.BusinessMediationNetwork.com

Info@BusinessMediationNetwork.com

833-SOLVED1 (833-765-8331)

PRE-LAWSUIT MEDIATION: A COMMON-SENSE APPROACH

Although businesses, organizations, institutions and individuals are involved in millions of lawsuits and spend billions of dollars on contract, employment, supplier, customer, partnership, lender and other similar disputes each year, nearly all such cases eventually settle and are dismissed without a trial.

Why not try to settle first?

When direct negotiations fail to resolve a conflict, disputing parties should turn first to mediation. Mediation is a private settlement negotiation facilitated by a neutral mediator where the parties seek a voluntary resolution of a dispute. Committing to attend a mediation conference before filing a lawsuit or arbitration offers parties to disputes the best alternative to the cost, delay and disruption of getting a judge or arbitrator to decide who wins and loses. It can also help unclog the courts where over 60% of the civil lawsuits filed are between parties with a prior business, contractual or financial relationship.

Business Mediation Network offers an online selection of mediators with substantial business backgrounds including current and former CEOs, COOs, VPs, HR Managers, CPAs and corporate counsel who are familiar with the business approach to problem solving and who bring a wealth of personal experience with business issues. Mediators who have spent their careers in the business world help the parties focus on their underlying financial interests and look for a solution that best protects those interests. Mediation can occur before or during litigation.

MEDIATION BENEFITS

- ***It Works*** - About 80% of disputes submitted to mediation settle. Because a mediator does not decide the issues, there is no restriction on meeting separately with the authorized decision makers of each party. This allows the mediator the leeway to float ideas and examine underlying issues and concerns without the posturing that often causes direct negotiations to fail.
- ***Fast & Cost Effective*** – While litigation lasts an average of about three years, a mediation conference usually takes one day and can be scheduled quickly with a BMN mediator for a fixed daily rate that is far lower than the cost of just the initial preparations to file or defend a lawsuit.
- ***Voluntary*** – Whether to settle and on what terms are decisions made by the parties, not by the mediator. If there is not a voluntary settlement, each party is free to pursue litigation or arbitration where a judge or an arbitrator picks a winner and loser.
- ***Confidential*** – Statements made during mediation are protected against use in any later litigation. There are no public filings, depositions or court

reporters. The settlement agreement can provide for ongoing confidentiality.

- **Focused** – The point of mediation is to find a way to settle the dispute. Any documents or other exchange of information prior to the conference is agreed to by the parties and is limited to what is needed for settlement discussions.
- **Direct** – Unlike the complex rules of litigation and arbitration, the parties control mediation and can agree to modify the process to suit their needs. The parties are encouraged to speak directly to the mediator and to one another. Party representation by attorneys can be helpful but is not required.
- **Preserve Relationships** – Mediating disputes before litigation or arbitration can limit the disruption of valuable relationships with partners, customers, suppliers, employees, investors or lenders before they become opposing parties and communications occur only through lawyers.

BUSINESS MEDIATORS – ADVANTAGES OF DEAL MAKERS

Transactions in the business world are voluntary and are based upon mutual benefit. The settlement of a contract dispute is no different. Business Mediation Network mediators are experienced business dealmakers who help find solutions based upon the parties' broader financial interests. This is in contrast to other private mediation services that feature retired judges who can evaluate legal positions but who usually have little actual experience in the business world.

Business Mediation Network recommends that parties choose a mediator with practical experience with the issues involved in the dispute. When making a deal, select a business dealmaker rather than someone who predicts the outcome of a trial that will rarely occur.

INCLUDE *MEDIATE1ST*[®] CLAUSE IN AGREEMENTS

Some conflict is inevitable. From time-to-time, disputes are bound to arise among businesses, property owners, customers, suppliers, employees, competitors, lenders, partners and shareholders. While these parties make careful plans to avoid losses and disruption caused by data breaches, computer crashes, the loss of key executives, etc, too few have a plan on how to manage future disputes.

Including Business Mediation Network's *Mediate1st*[®] contract clause in all agreements is an important part of a conflict management plan. Available online at www.Mediate1st.com, the *Mediate1st*[®] clause provides that the parties agree to attend one mediation conference before filing a lawsuit or arbitration absent the need for an emergency court order or other legal requirement. The clause adopts BMN's straightforward mediation rules (such as equally dividing the mediator fees) and gives the parties access to online mediator profiles to assist in the selection of a mediator whose background fits the issues in dispute.

Agree to talk . . . While you are still talking – At the beginning of a contract, companies, contractors, partners, customers, suppliers, employees etc. naturally focus on positives. No one wants to ruin the feelings of optimism by discussing how to handle future conflict. Unfortunately, when disputes arise, they frequently are accompanied by disappointment, distrust and, on occasion, outright anger. Under those circumstances, it is very difficult for the parties to agree on anything including the appointment of a neutral mediator to facilitate settlement negotiations. Without the *Mediate1st*[®] clause, an emotional party may want their “day in court” or the parties may be reluctant to even suggest mediation for fear of appearing weak.

Uniformly adopting the *Mediate1st*[®] approach can prevent surprise lawsuits and can assist the parties in maintaining control and continuing direct communications. In contrast, a lawsuit subjects parties to the costly and disruptive legal process that also can have unintended consequences including the embarrassment of involving customers and other third parties.

Moreover, pre-litigation mediation should not be considered premature. It should be easier to find a resolution when the parties have not “invested” heavily in a lawsuit and hardened their positions through the adversary process. Also, a neutral mediator can facilitate negotiations while working with the parties and their accountants, financial advisors and others who can provide necessary information.

***Mediate1st*[®] Advantages** – The *Mediate1st*[®] clause can be particularly helpful in providing added flexibility in dealing with disputes where timely resolution is crucial and where proprietary or embarrassing information might be disclosed. For example, the enforcement of non-compete / non-disclosure agreements and executive employment agreements often involve the disclosure of sensitive information or confidential company programs. Partnership disputes can greatly diminish the value of the business that ultimately pays the litigation costs of all parties. Supplier relationship management (SRM) and lean manufacturing and construction programs can incorporate the *Mediate1st*[®] approach in an effort to avoid the cost and distraction that lawsuits cause.

Also, using the *Mediate1st*[®] clause can assist in pursuing claims from unresponsive parties. Surveys have shown that over 40% of contract claims are abandoned because the parties do not wish to incur the costs and delay of going to court. Having the *Mediate1st*[®] clause in all of its agreements can create an opportunity to resolve claims quickly and inexpensively. This can be particularly helpful when attempting to collect monies owed or enforce the terms of an agreement with an uncooperative party.

The *Mediate1st*[®] approach is a policy choice for a more efficient and business like approach to resolving conflict. By using the *Mediate1st*[®] approach, control, communication and decision-making regarding contract disputes remains in the hands of the parties and out of the over-crowded judicial system. In this way, parties not only can save themselves substantial time and money, they can contribute to more efficient operation of the courts.

PARTICIPATE IN THE *BUSINESS CONFLICT FORUM*[®]

In addition to offering mediation programs and educational services for trade associations and for business and professional organizations, BMN's *Business Conflict Forum*[®] program also provides opportunities to individual parties to benefit from and be recognized for their support of the *Mediate1st*[®] approach. The *Business Conflict Forum*[®] benefits for individual parties include:



- Waiver of BMN Submittal Fee*
- Discount on BMN Mediator Fee*
- Expedited Mediation Conference Scheduling
- Consultation on internal conflict management policies and programs
- Access to educational materials, *Mediate1st*[®] strategies and updates

Also, by participating in the *Business Conflict Forum*[®] individual parties can express in advance their general support for resolving contract disputes without the high cost and disruption of lawsuits. Adopting the *Mediate1st*[®] approach as a policy can reduce the concern that offering pretrial mediation indicates weakness.

To participate in the *Business Conflict Forum*[®], individual parties need only state their intention to:

- Adopt the *Mediate1st*[®] clause in agreements wherever feasible
- Encourage other parties to consider mediation before litigation

The *Business Conflict Forum*[®] participation form is appended to this brochure and may be completed and returned. Participants will be recognized for their support of the *Mediate1st*[®] approach by a listing on the *Business Conflict Forum*[®] web pages.

FOR MORE INFORMATION CONTACT:

Paul Simon, CEO
Business Mediation Network

Email: psimon@BusinessMediationNetwork.com
Phone: 833-SOLVED1 (833-765-8331)

The *Mediate1st*[®] sample contract clause and the information contained in this brochure and on www.BusinessMediationNetwork.com and related websites should not be viewed as legal advice or as a substitute for the advice of a lawyer.

* Current fee discounts and waivers are listed at www.BusinessConflictForum.com and are credited equally to all parties in a dispute



***BUSINESS CONFLICT FORUM*[®] PARTICIPATION FORM**

TO: BUSINESS MEDIATION NETWORK
PSimon@BusinessMediationNetwork.com

FROM: _____

PARTY NAME: _____

WEBSITE: _____

CONTACT PERSON: _____

EMAIL: _____

While reserving our right to determine the proper course in any particular circumstance, as a matter of general policy, we support the *Mediate1st*[®] approach of submitting contract-related disputes to mediation before initiating litigation or arbitration. It is our intention to:

- Adopt the *Mediate1st*[®] clause in agreements wherever feasible
- Encourage other parties to consider mediation before litigation

Please show our organization as a participant in the *Business Conflict Forum*[®]. We understand that we, and other parties to a dispute involving us, will be entitled to the fee waivers and discounts and other benefits applicable to *Business Conflict Forum*[®] participants and that we will be listed on *Business Conflict Forum*[®] web pages. We further understand that our participation may be terminated at any time by notifying Business Mediation Network.

By: _____

Its: _____

Date: _____