

St. Louis Mediation Center LLC

What is Going to Happen at the Mediation

Mediation is a day long process that allows parties to a lawsuit to settle their differences without court intervention. The mediation process is different from the court process because in mediation the parties work together to come to an agreement through compromise. In a court proceeding the parties compete before a judge or jury for a determination of a dispute, i.e., a statement from the court that one party is right and the other is wrong.

When you arrive

At the St. Louis Mediation Center when the parties arrive, they are immediately escorted to their own conference room where they will be based for the day. In each conference room snacks, drinks, telephones and wireless internet are provided for the use of the party and attorney. Prior to commencement of the mediation the parties will have the opportunity to confer with their attorney and the mediator. Mediator fees will be collected.

The Joint Session

Once everyone has arrived and the parties have had the opportunity to talk things over with their lawyers the joint session will begin. All of the parties and their attorneys will meet together in one conference room and discuss the issues that are the subject of the lawsuit. The mediator will begin by introducing all of the participants and explaining the rules of the mediation. The parties and their attorneys will be told about the confidential nature of the proceedings and each person will be asked to confirm that he or she is willing to use his or her best efforts to compromise the lawsuit and that there are no time constraints that might impact upon the process. The mediator will also verify that the persons present have the authority to bind the parties to the lawsuit.

The Opening Statements

The joint session begins with a statement by the plaintiff's attorney describing why the lawsuit has been brought against the defendant(s). There is no particular form to this statement but it should be in sufficient detail to tell everyone in the room what the plaintiff expects to prove at trial. This statement should be directed to the defendant(s) and their attorney(s). There are no rules of evidence in a mediation, any information that the plaintiff feels should be shared with the defendant should be made at this time. When the attorney has concluded his statement, the party, if they wish may make their own statement. The defendant's attorney will then be given as much time as necessary to respond to the plaintiff. At the conclusion of the defendant attorney's statement, the party defendant may make a statement. These statements should be made directly to the opposing party because it is probably the best time that all of the parties and

attorneys will have to address each other outside a formal courtroom setting. During this session, the mediator may interrupt and ask questions of either side. The parties are free to answer these questions at the session or defer an answer to a private session with the mediator.

Private Meetings

At the conclusion of the joint session each side will go back to its conference room and the mediator will meet with each of the sides privately. There is no particular rhyme or reason as to which party the mediator meets with first. During this first private session, the mediator will ask for more detail about the claims and defenses and will ask the parties to discuss the strong and weak parts of their respective cases. At the end of each private session the mediator will then ask each party whether there is anything that was discussed during the private session that can be communicated to the opposition. The mediator may ask for an initial offer of compromise to take to the other party. The process is then repeated with the opposing party. During these private sessions the mediator and the attorneys will discuss the risks of trial, the probable outcomes at trial, the law governing the case, and the facts in controversy. The parties should use this opportunity to talk with the mediator about any issue relevant to the lawsuit including the long and short term goals each party might have in regard to the lawsuit. During these private sessions the amounts, proof, and elements of damages will be discussed as well as issues such as the ability of the defendant to pay damages, the need to structure a settlement, or the possibility of settlement by means other than the payment of money.

The process of private meetings is repeated until a settlement is reached or the mediator declares an impasse, i.e., that no settlement is possible.

During the mediation a working lunch is served and snacks are provided. While the mediator is meeting with a party the other party is free to use the telephones, take bathroom breaks, smoke (outside only) and work on possible solutions to the lawsuit.

Finalizing the agreement

Once a settlement is reached, the parties will put their agreement in writing and sign it. It is strongly suggested that the parties not adjourn the mediation until a written agreement is signed. Copies of the signed agreement are provided by the mediator to each party but the original is kept in the mediator's file. Copies of [sample agreements](#) are available on this website but parties are free to use their own settlement forms.

Concluding the process

Finally, when the mediation is over, the mediator will send a letter to the presiding judge (if required) that states that the parties met and that the case settled or did not settle. If court rules dictate another form of communication the proper form will be used. No other information is given to the judge. The judge is not told the nature of the settlement or that the case did not settle for any particular reason.