

Court of Common Pleas of the State of Delaware

Mediation is informal and confidential, and the parties participate on a voluntary basis.

Mediation is a voluntary process of resolving conflicts with the help of a neutral third party. In mediation, the people involved talk about the conflict and then together decide on the best way to resolve the conflict. The mediator invites each person to talk about the situation from their point of view, and then works with the parties through a process to try to come up with a workable solution. Once parties agree on a resolution, the agreement is placed in writing for all to sign. The mediators will not tell you what to do or decide anything for you.

Mediation is...

- **Non-judgmental:** Mediators are there to listen, ask questions, and clarify so that everyone understands what is being said. They do not give advice, tell you what to do, or decide who is right or wrong.
- **Confidential:** Everything you say in mediation is confidential and cannot be used in court. The mediators do not tell anyone what was said or decided in mediation.
- **Voluntary:** It is always your decision to come to mediation. You can end mediation at any time.

CRIMINAL CASES

Mediation is available through the Court's mediation program for criminal cases. In these cases, criminal misdemeanor charges are filed and are pending in the Court of Common Pleas.

For criminal cases, the Mediation Officer reviews cases from the arraignment calendar to determine eligibility. Cases are also referred to the Mediation Officer by Judges, the Deputy Attorney General on behalf of the Department of Justice, the Assistant Public Defenders, Attorneys, and the parties themselves. Occasionally, cases are referred from trial calendars.

Once a case has met the criteria for mediation, the case is referred to the non-profit agency for scheduling: the Delaware Center for Justice in New Castle County and Kent and Sussex Counties are referred to The Center for Community Justice in Milford.

Victims are contacted first regarding mediation. Only if victim consents to mediation, then the defendant is contacted. If either party refuses mediation, or if we cannot reach one or both parties, the case is removed from mediation. When all parties to a case consent to mediation the session is scheduled.

The case remains on the regularly scheduled event calendar and the parties must attend all scheduled court hearings while mediation is attempted.

If the case is successfully mediated, then a *Nolle Prosequi without Prejudice* is entered and the charge(s) are dropped. In instances where an agreement is reached, but the parties agree on specific conditions that must be met (such as restitution or community service), the NOLP is entered once all conditions are complete. If mediation is not successful, the case will proceed to trial.

DISPUTED RESTITUTION

In addition to pending criminal matters, the program handles cases after a criminal defendant has pled guilty or been found guilty of a crime and restitution has been ordered as part of the

sentence. The Investigative Services Office determines the amount of restitution owed. If either party disputes the amount or nature of the restitution, a mandatory mediation hearing is scheduled.

CIVIL CASES

Court of Common Pleas Civil Rule 16. "Pretrial procedure" states as follows:

(a) Alternative Dispute Resolution. . . ., all matters not exempt from the rule shall be submitted to compulsory Alternative Dispute Resolution (ADR);

(7) *Exemptions.* The compulsory ADR provisions set forth in the Rule shall not apply to the following cases:

- (i) those in which any party is not represented by counsel;
- (ii) appeals de novo from the Justice of the Peace Court filed pursuant to 10 Del.C. Sec. 9570 et seq.;
- (iii) actions solely for consumer debt;
- (v) statutory penalty cases;
- (vi) in forma pauperis cases, (this involves cases where the fees are waived); or
- (vii) any other civil cases which the Court in its discretion deems exempt.

Mediation can either be requested on the Case Management Worksheet, which is sent to the litigants after the last responsive pleading has been filed, at the pre-trial conference, or by simply contacting the Mediation Officer. Provided both parties agree to mediation, the case shall be scheduled for a mediation session. Mediation has been very beneficial for these types of cases because of the time and money saved compared to litigating the matter. Mediation also allows the parties the ability to creatively structure an agreement which is mutually satisfying. Mediation is a process and not all civil cases settle at the initial mediation session. If the parties do not reach a settlement after the initial mediation session, the Mediation Officer will keep the case open for additional settlement discussions up to the trial date.

COMMUNITY CASES

The program also handles Community Cases. These are matters where the parties are having a dispute, but no criminal charges or civil litigation have yet been filed. These cases are often referred to the program by an investigating police officer.

For More information regarding the Court of Common Pleas Mediation Program, please contact:

**Joann I. Personti, Mediation Officer
Leonard L. Williams Justice Center
500 North King Street
Suite 1600
Wilmington, DE 19801
Phone: 302-255-0939
Email: joann.personti@delaware.gov**