



AAA Mediation Services FAQ

GENERAL FILING INFORMATION

What are the advantages of mediation?

There are many advantages to mediation. Among them, the mediation process allows parties to gain a better understanding of each other's underlying interests and concerns. The process can also help clarify your own understanding of the matter. The civil nature of the process fosters continued productive relationships between the parties to the dispute. Furthermore, mediation opens the door for sustainable and creative party driven resolutions.

What is the difference between mediation and arbitration?

Mediation is a non-binding process where a neutral third-party (the mediator) works with the parties to reach a mutually agreeable settlement. If a settlement is not reached, the mediator has no authority to impose one. In arbitration, the arbitrator hears evidence and receives testimony, much like a judge and makes a decision that is binding on the parties.

Can I force the other side to participate in mediation?

Generally, mediation is a voluntary process. However, if you and the other party have a contract that contains a mediation clause, all parties may be contractually obligated to participate in a mediation. Disputes about the enforceability of the mediation clause may be resolved by a court or an arbitrator. However, neither the AAA nor the mediator has the authority to make someone attend and participate in a mediation conference.

How do I file an AAA mediation?

You may file mediations using the *Request for Mediation* form which is available on the AAA mediation website www.aaamediation.com by clicking the "File A Case" link. However, this form is **not** required in order for the AAA to initiate a mediation. In order to initiate a mediation, the initiating party or parties need to provide the AAA with the following information (which may be provided via email, fax or telephone):

- Name, Address, Phone & Fax Numbers, Email address (for all parties and their representatives expected in mediation).
- A copy of the contract (or section) that specifies agreement to mediate through the AAA, if applicable, or a [Stipulation Agreement](#) between the parties to mediate through the AAA. If no such agreement exists, please contact the AAA about how we can assist the parties in coming to an agreement to mediate.
- The name of a particular mediator the parties have agreed to, if applicable.
- The locale requested or agreed to.
- Urgency and expectation for setting a date for the mediation conference.

Any other pertinent information that the parties feel is important.

The AAA will confirm in writing with all parties that the mediation has been initiated.

Do I need a lawyer to represent me in mediation?

No. You are not required to have a lawyer represent you in a mediation. However, most parties are represented by lawyers since the mediation process frequently involves disputes about the legal rights of the parties. Whether or not you choose to retain an attorney to represent you in mediation is entirely your decision.

How long will it take?

The speed of mediation is largely party-driven. However, most mediation conferences involving two parties are scheduled for one or two days. Mediation conferences involving multiple parties sometimes require several days. The AAA can schedule a mediation conference within a few days if both parties are ready and willing to do so. Sufficient time, however, is needed to allow time for selecting a mediator and ensuring that the appropriate documentation has been exchanged and confirming that all necessary participants will be available.

How many mediations settle?

It is widely acknowledged that the majority of disputes submitted to mediation result in a settlement agreement. However, there is no one specific answer to this question because of the diversity of issues submitted to mediation and the various fields in which mediation is practiced, e.g. family, community, commercial, employment, international, etc.

MEDIATION COSTS

How much does AAA mediation cost?

There is no filing fee to initiate an AAA mediation. The cost of mediation is based on the hourly or daily mediation rate published on the mediator's AAA profile. This rate covers both mediator compensation and an allocated portion for the AAA's services. There is a four-hour or one half day minimum charge for a mediation conference. Typically the fees are split equally, although the parties may agree otherwise. Additionally if you hold your mediation at an AAA facility or hotel conference room there may be additional charges.

What exactly does the hourly or daily rate cover?

The hourly or daily rate includes all time spent by the mediator reading the parties' documents and working with the parties both on the phone and in person whether prior to or during the mediation conference sessions. It also encompasses all of the AAA's administrative services.

MEDIATOR SELECTION

How do I find a mediator?

Prior to filing, you may search the AAA's Panel of Mediators by location and area of expertise by clicking the "Find A Mediator" link at www.aaamediation.com. If you would

rather choose a mediator from a list tailored to your case, the AAA will provide one upon request or filing.

Do I need to select a mediator from AAA's Panel of Mediators or can we agree on someone who is not on AAA's Panel?

The AAA has many experienced mediators in a wide variety of disciplines; however, the AAA can administer the case even if you choose to use a mediator outside of the AAA's Panel of Mediators.

I need a mediator who understands my business. Does the AAA's Panel of Mediators include mediators with specific subject matter expertise?

Yes. As noted above, the AAA's mediators come from a wide variety of disciplines. However, most disputes mediated by the AAA involve commercial matters, and the AAA's Panel of Mediators consists of many individuals with substantial expertise resolving even the most complex commercial disputes. The AAA has also provided parties with mediators who have diverse expertise such as pilots, classic car collectors, and experienced yachtsmen. Additionally, the AAA can communicate with mediators on a case-by-case basis to ask about expertise that is needed for a particular case but that may not appear on the mediators' AAA Mediator Profiles. The AAA is making continuous efforts to diversify the AAA's Panel of Mediators in regards to gender and race.

What qualifications must mediators have to be considered for the AAA's Panel of Mediators?

- ▶ The AAA's Panel of Mediators is composed of individuals who far exceed the following minimum qualifications and, combined, have mediated over 300,000 disputes and conflicts.

Minimum Qualification Criteria:

- ▶ A minimum of 10 years of *senior-level* experience in law, business, industry or another profession.
- ▶ An educational degree(s) and/or professional license(s) appropriate to applicant's field of expertise.
- ▶ Have completed at least 24 total hours of training in mediation process skills encompassing the following topics: conflict theory, negotiation, dynamics of the mediation process, issues identification, generating options, caucusing, managing party interaction, ethics, impasse strategies, philosophies of mediation and mediator styles, role of the mediator and simulated mediation role-plays providing performance-based evaluation.
- ▶ Have prior mediation experience.

Are all AAA mediators lawyers or former judges?

No, although approximately 80% of AAA mediators are lawyers or former judges.

CONDUCTING THE MEDIATION

What do I need to bring to the mediation?

You should be prepared with any key documents or contracts you feel support your position and any documents that support your request for monetary or other type of relief. Documentation will be extremely helpful to the mediator even though there is no formal presentation of evidence or taking of testimony in mediation. Also, be sure to have someone attend the mediation conference that has the authority to enter into a settlement agreement.

Can I talk to the mediator outside the sessions?

Yes. Unilateral communication with the mediator in the absence of the other party is generally permitted outside of the actual mediation conference sessions. Some mediators prefer to hold at least one joint meeting before any unilateral, private communications take place; others prefer to conduct pre-mediation phone calls or meetings separately with each party. You can discuss your expectations and your mediator's preference with your case manager.

What about confidentiality? Is the mediation process confidential?

Under the AAA's Mediation Procedures, and subject to applicable law, the mediator and the parties shall treat as confidential any information disclosed to the mediator by the parties or by other participants in the mediation such as witnesses. Except in rare circumstances, mediators shall not be compelled to testify should the matter go to court or any other judicial forum, and parties shall not rely on, or introduce evidence of what occurred during the mediation in any arbitral, judicial or other proceeding.

Is money the only type of relief I can get in mediation?

No. One of the benefits of mediation is that it enables parties to be more creative in resolving a dispute. For example, settlements could include issuing an apology, a letter of recommendation, or the promise of future or remedial work.

How are settlements enforced?

Since mediated settlements are achieved through the joint efforts and mutual agreement of all parties involved, the rate of voluntary compliance is generally very high. Neither the AAA nor the mediator has the authority to enforce a settlement. Mediated settlements are enforced in the same manner as any other contract either in arbitration (if such a clause was part of your settlement agreement) or in court.