

# Benefits of mediation

## How to resolve business conflicts without costly litigation

INTERVIEWED BY LESLIE STEVENS-HUFFMAN

Abraham Lincoln may have been the first lawyer to recognize the pitfalls of litigation but certainly not the last. He noted that: “The nominal winner is often a real loser — in fees, expenses and waste of time.”

Fortunately, today’s executives have an alternative way to resolve disputes that doesn’t put your fate in the hands of a judge or jury.

“Not only is mediation less expensive than litigation, the parties are in control of the outcome and they can be completely creative in finding a solution,” says Jennifer E. Acheson, partner and insurance and bad faith expert at Ropers Majeski Kohn & Bentley PC.

*Smart Business* spoke with Acheson about the benefits of mediation.

### What is mediation and how is it different from arbitration and litigation?

Mediation is a type of alternative dispute resolution, where a neutral or trained mediator helps conflicting parties resolve issues, ideally before a lawsuit is filed. Mediation differs from arbitration and litigation in that it’s not a sworn evidentiary hearing or trial, and the mediator doesn’t rule on the merits of the case or take sides. The parties still have the opportunity to air their grievances during caucuses with the mediator and there’s more leeway in offering testimony.

### What are some common business situations where a mediator might be used?

Mediation can be used to settle a variety of disputes including:

- Employee disputes with other employees.

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- Employee disputes/grievances with management.
- Sexual harassment complaints.
- Hostile workplace issues.
- Discrimination complaints.
- Americans with Disabilities Act compliance issues.
- Business partner disputes.
- Contract disputes.

### How do you select an appropriate mediator, who pays for mediation and how much do mediators charge?

The actual cost of mediation varies with the complexity of the case; however, the parties split the charges and avoid the cost of pre-trial maneuvering, court reporter fees or similar expenses. Mediation is a bargain when you consider that lawsuits cost small businesses \$105.4 billion in 2008, according to the U.S. Chamber of Commerce. Since the process of being heard is often the overture to resolution, look for a mediator who is a close and patient listener.

### Is mediation confidential?

Yes, anything said during the course of mediation is inadmissible in court, and the communication among participants is confidential. In fact, the mediator needs permission to disclose information revealed during individual caucuses with

the other party. This protection even extends to the settlement agreement, unless the parties agree to waive confidentiality. In contrast, trials are normally open to the public.

### What happens if the parties can’t agree?

Unlike arbitration or trials, which have a mandatory and possibly binding decision, the mediator doesn’t have the power to force the parties to reach an agreement. The process is voluntary and either party can withdraw at any time. If the parties can’t resolve their issues in one session, with the parties’ permission, the mediator can continue the process until the dispute is resolved.

### Is an agreement made at mediation enforceable?

A mediation agreement is enforceable as long as the authorized parties agree on a deal and sign the memorandum. If a party refuses to comply, the parties can appoint the mediator as an arbitrator for the sole purpose of rendering an award that complies with the agreement, as long as the dispute hasn’t gone to litigation. If the matter is already in litigation, a motion for enforcement can be brought under the civil code. This makes mediation an enforceable and cost-effective alternative to litigation. ●