

Five Steps to Choosing a Qualified Mediator

by Alaska Judicial Council

The information on this page has been excerpted from the Consumer's Guide to Mediation published by the Alaska Judicial Council, with funding from the State Justice Institute.

www.ajc.state.ak.us/Reports/mediatorframe.htm

August 1998

Because no easy formula can predict mediator competence, the consumer must do some groundwork before selecting a mediator. First, you must understand the mediation process. After you understand the basics, you can use the following process to choose a mediator:

Five Steps to Choosing a Mediator
1. <u>Decide what you want from mediation</u>
2. <u>Get a list of mediators</u>
3. <u>Look over mediator's written qualifications</u>
4. <u>Interview mediators</u>
5. <u>Evaluate information and make decision</u>

These steps are described on the next pages. Remember during your search that a mediator should remain neutral and treat both parties with equal fairness and respect.

1. Decide What You Want from Mediation

Think about your goals for the session. Do you want a mediator who suggests options in order to help move the parties towards agreement? Or, do you want a mediator who resists offering opinions so the parties feel responsible for their agreement? Think about past attempts at negotiation and problems with those attempts. What are your choices if mediation does not work?

Think about your abilities. What are your strengths and weaknesses as a negotiator? What are the other party's strengths and weaknesses? What are your emotional limitations? Do you expect the mediator to help you stand your ground if the other person negotiates better than you or has more "power?" Thinking about these issues is especially important if there is a power imbalance between you and the other party.

Think about the dispute and the context in which you must resolve it. What is the time frame? Is this a commercial dispute between experienced insurance company representatives, or is it a

divorce involving an emotional child custody decision? The approach or model that commercial disputants might prefer may differ greatly from the one preferred by a mother and father.

Consider your budget. How much you can spend might limit your choice of mediator or mediation program.

Many mediators and dispute resolution firms or services can help you understand what services would be best for your dispute. Some will contact the other party to the dispute to introduce the concept of mediation.

2. Compile a List of Names.

You can get a list of mediators from the [Locate A Mediator](#) database.

Word of Mouth. Ask a friend, your attorney, your therapist, or another professional. Describe your case to a mediator and ask, "Other than yourself, who are the most skilled mediators in this kind of case?" Talk to people who have been in a mediation with the mediator (you can ask the mediator for names of clients). What was their case about and what were their impressions of the mediator?

Written Lists. Check local listings in the Yellow Pages. Many local mediation organizations maintain directories of member-mediators.

Referral Services. Many national mediator membership organizations and trade organizations keep lists of practitioner members and offer referral services. Some may charge for the referral services.

3. Evaluate Written Materials.

Call or write several mediators on your list and ask them to send you their promotional materials, resume, references and a sample of their written work. These materials should cover most of the following topics.

Mediation Training. How was the mediator trained? Some mediators receive formal classroom-style training. Some participate in apprenticeships or in mentoring programs. While training alone does not guarantee a competent mediator, most professional mediators have had some type of formal training. How many hours of training has this mediator had? How recent was the training?

Experience. Evaluate the mediator's type and amount of experience (number of years of mediation, number of mediations conducted, types of mediations conducted). How many cases similar to yours has the mediator handled? A mediator's experience is particularly important if he or she has limited formal training.

Written Work. Some mediators will write up notes about agreements or even draft agreements for the parties. Other mediators do not prepare written agreements or contracts. If your mediator

will prepare written work, you may want to review a sample. Samples could include letters, articles or promotional materials. Any sample of the mediator's written work should be clear, well organized, and use neutral language. Agreements or contracts should have detailed information about all items upon which the parties have agreed.

Orientation Session. Some mediators offer an introductory or orientation session after which the parties decide whether they wish to continue. Is it offered at no cost, reduced cost, or otherwise?

Cost. Understand the provider's fee structure. Does the mediator charge by the hour or the day? How much per hour/day?

Other Considerations. Find out whether the mediator carries professional liability insurance which specifically covers mediation. Is the mediator certified, and if so by whom? While certification usually shows the mediator has completed a specific amount of training or education, training and education do not guarantee competence.

Does the mediator belong to a national or local mediation organization, and is the mediator a practicing or general member? Cost may prevent some competent mediators from joining organizations, becoming certified, or carrying liability insurance.

4. Interview the Mediators.

Talk to the mediators in person or by phone. During the interview, observe the mediator's interpersonal and professional skills. Qualities often found in effective mediators include neutrality, emotional stability and maturity, integrity, and sensitivity. Look also for good interviewing skills, verbal and nonverbal communication, ability to listen, ability to define and clarify issues, problem-solving ability, and organization.

During the conversation, you also may want to ask questions about matters covered in the written materials and other topics. Some topics to discuss in the interview include:

Training, Knowledge and Experience.

Ask the mediator, "How has your education and experience prepared you to help us work out this specific dispute?" If the mediator had formal training, did it include role play and observations of skilled mediators? While training and education do not guarantee competence, training is most effective when it includes practice-oriented segments such as role play and observation.

Ask "Do you participate in continuing education, on-going supervision, or consultation?" Many professional mediation organizations encourage or require their members to participate in ongoing education or other professional development.

People often ask whether a mediator should be an expert in the subject of the dispute. For example, should the mediator in a commercial mediation be an expert on industry standards and practices? The answer depends on the type of dispute, the mediation program (for example, court-referred or administrative agency), and the parties' expectations and needs. Ask the

mediator if he or she thinks subject-matter expertise is necessary for this dispute, and why or why not.

In some cases, the parties may prefer a mediator with no special knowledge of the subject. Benefits of this approach include avoiding a mediator's preconceived notions of what a settlement should look like and letting the parties come up with unique or creative alternatives.

In other cases, for example where the subject of the dispute is highly technical or complex, a mediator who comes to the table with some substantive knowledge could help the parties focus on the key issues in the dispute. Or, parties may want someone who understands a cultural issue or other context of the dispute.

Style.

Ask "What values and goals do you emphasize in your practice?" For example, does the mediator encourage the parties to communicate directly with each other, or does he or she control the interchanges? The mediator should be able to describe his or her style of mediation and his or her role in the mediation process. Remember that different mediators may practice their craft in different ways, although some mediators can change their style to suit the parties' specific needs.

Another stylistic difference is the use of caucus. A caucus is a meeting between one of the parties and the mediator without the other party present. Some mediators caucus frequently during the mediation, while others seldom or never use this procedure. Ask the mediator whether he or she uses caucuses, and if so, when.

If the mediator works for or is associated with a mediation program or organization, ask what values and goals the program emphasizes. For example, the style or requirements of a mediator who practices in a court program designed to reduce court caseloads may differ from the style of someone whose practice does not involve the same time pressure.

Ethics.

Ask "Which ethical standards will you follow?" (You may ask for a copy of the standards). All mediators should be able to show or explain their ethical standards (sometimes called a code of conduct) to you. If the mediator is a lawyer or other professional, ask what parts of the professional code of ethics will apply to the mediator's services. Ask the mediator, "Do you have a prior relationship with any of the parties or their attorneys?" The mediator should reveal any prior relationship or personal bias which would affect his or her performance, and any financial interest that may affect the case.

Confidentiality.

The mediator should explain the degree of confidentiality of the process. The mediator may have a written confidentiality agreement for you and the other party to read and sign. If the mediation has been ordered by the court, ask the mediator whether he or she will report back to the court at

the conclusion of the mediation. How much will the mediator say about what happened during mediation? How much of what you say will the mediator report to the other disputants? Does the confidentiality agreement affect what the disputants can reveal about what was said? If the parties' attorneys are not present during the mediation, will the mediator report back to them, and if so, what will the mediator say? The mediator should be able to explain these things to you.

Logistics.

Who will arrange meeting times and locations, prepare agendas, etc.? Will the mediator prepare a written agreement or memorandum if the parties reach a resolution? What role do the parties' lawyers or therapists play in the mediation? Does the mediator work in teams or alone?

Cost.

Ask "How would you estimate costs for this case?; How can we keep costs down?" Are there any other charges associated with the mediation? Does the mediator perform any pro bono (free) services or work on a sliding fee scale? If more than one mediator attends the session, must the parties pay for both? Does the mediator charge separately for mediation preparation time and the actual mediation?

5. Evaluate Information and Make Decision.

During the interviews, you probably observed the mediators' skills and abilities at several important tasks. These tasks, which mediators perform in almost all mediations, include:

- gathering background information,
- communicating with the parties and helping the parties communicate,
- referring the parties to other people or programs where appropriate,
- analyzing information,
- helping the parties agree,
- managing cases, and
- documenting information.

Ask yourself which of the mediators best demonstrated these skills. Did the mediator understand your problem? Understand your questions and answer them clearly? If the other party was present, did the mediator constructively manage any expressions of anger or tension? Did the mediator convey respect and neutrality? Did you trust the mediator? Did the mediator refer you to other helpful sources of information? Understand what was important to you? Pick up on an aspect of the conflict that you were not completely aware of yourself? Did the mediator ask questions to find out whether mediation is preferable or appropriate? Understand the scope and intensity of the case? Of course, not every orientation interview permits the mediator to demonstrate all these skills, and every mediator has relative strengths and weaknesses. But you should be satisfied that the mediator can perform these tasks for you before beginning.

Review the other questions on this checklist. Make sure that the mediator's cost and availability coincide with your resources and timeframe. The other parties to the mediation must agree to

work with this person, too. You may want to suggest two or three acceptable mediators so that all parties can agree on at least one.

Finally, consider evaluations of others who have used this mediator or your own previous experience with this mediator. If applicable, consider the goals and procedures of any organization with which the mediator is associated.