

MEDIATION SERVICES

For dialogue and dispute resolution

Contact: Sedona City Manager's Office, 928-204-7127

Sedona Mediation Services (SMS) is a non-profit program sponsored by the city to help Sedona operate as a cooperative, collaborative community. Because residents will inevitably disagree about many things, we offer ways to address those disputes respectfully and to resolve practical matters fairly.

We help people who are not communicating, or have reached a communication impasse, to discuss their disagreements and work creatively on conflict resolution, in a safe and comfortable environment, instead of fighting each other and making those problems worse.

Mediation is an informal, confidential meeting with the disputing parties, at which a neutral, trained third-party (a mediator) guides them through the process of discussing their situation and exploring ways to negotiate a mutually acceptable solution. It is a non-adversarial, private, and efficient way of resolving conflict. The mediator remains impartial regarding the issues, while facilitating constructive conversation between the parties.

Mediation is an alternative to the adversarial court process - disputing parties avoid the expense and inconvenience of going to court and having a judge dictate a decision that they may not like.

The mediator empowers them to create a win-win resolution collaboratively.

Given an opportunity, most disputants successfully resolve their argument. The primary requirement is that they be willing to sit down and talk together about solutions. The mediator is responsible for the process; the parties are responsible for the outcome.

Frequently asked questions

1. How do I arrange for mediation?

Call the city Manager's Office at 928-204-7127 Monday through Thursday, 7 a.m. – 6 p.m. You may also leave a voicemail at other hours and your call will be returned.

2. How is a mediation set up?

When you call SMS, you will reach a member of the city Manager's staff, who will take some basic information from you. That person will refer you to the SMS coordinator, who will talk with you about your specific concerns and help you decide if mediation is a good fit.

If it is, the other party in the dispute must be contacted and asked to participate in the mediation. We encourage you to make that request. You might ask that party to read the material on this web site to better understand the mediation process, or, if they don't have access to a computer, the city Manager's Office will be glad to send that party a copy of the material. If you wish, the SMS will contact the person to explain mediation and invite him or her to participate.

If the other party agrees to meet, we will schedule a mediation session at a mutually convenient time and place.

If you wish a dialogue or dispute resolution service other than mediation, the SMS coordinator will discuss this possibility with you.

3. Why should I try mediation instead of calling the police or suing?

When a dispute is discussed in mediation without blame and hostility, both parties are more likely to understand and respond in a positive way. Mediation avoids the embarrassment, cost, and time of the court system, and you can work out your own agreement rather than having a decision handed down by a

judge or jury. If no agreement is reached, you can proceed with legal action if you choose. Here are some other reasons:

- *Quick Help.* Mediation sessions usually are held within days of when they are requested.
- *Informal.* Our process does not result in court or police records.
- *Convenient.* Mediation sessions may be scheduled during the day or evening and are located in Sedona.
- *Creative problem-solving:* Mediation provides a chance to develop new ways of thinking about the problem. A mediator can break a large problem into smaller parts that are easier to handle, restate the issues so both sides can see them in a new way, assist them in taking a realistic look at their dispute, and help them recognize what is really at issue. The final agreement can be virtually anything the parties involved agree to, so long as it is not at odds with the law. For example, a complaint about noise levels might involve sharing information about work patterns, understanding the times of day when it is most important for a neighbor to have some peace and quiet, and then making an agreement that takes this into account. In court, a judgment one way or another is made.
- *Flexibility:* Any issue the parties bring to the table (i.e., individual needs, interpersonal issues, etc.) can be discussed. The source of conflict can be identified and resolved, especially in cases of inaccurate or incomplete information, inappropriate or incompatible goals, ineffective or unacceptable methods for resolving disagreement, and/or antagonistic or other negative feelings. In court, only issues pertaining to legal matters are part of the discussion.
- *Control of the outcome:* In the mediation process, the people involved in the situation create an agreement that works for them. In arbitration or in court, an agreement is imposed by an arbitrator or judge.
- *Forward-looking:* Mediation focuses on what the issues are now, how they can be resolved, and what can be done to avoid similar problems in the future. In court or in arbitration, the focus is on the past, i.e., who is at fault for the current situation.
- *Restoring relationships:* Mediation can heal damaged relationships. The disputants build a framework for their future interaction based upon mutual interests rather than adversarial positions. Mediation seeks "win/win" rather than "win/lose" solutions, so both parties can leave satisfied with the outcome. In court, someone wins, someone loses.
- *Confidentiality:* In mediation, the parties speak openly and directly to each other and to the issues, without the proceedings being a matter of public record. All communications and documents, including work notes made or used during a mediation session are confidential. A mediator cannot be required to testify about what was said or written in mediation, if the issue ends up in court.
- *Economical and efficient:* Attorney fees, time off from work, and other costs of going to court can mount up. Mediation is a free or inexpensive alternative to court and can be set for times that fit the parties' work schedules. Disputes usually are resolved in much less time through mediation than litigation, with no court or exhibit preparation cost.
- *Retaining legal rights:* If mediation does not resolve the issue, or if the issue is not appropriate for mediation, the parties are still free to pursue all of their legal remedies, such as suing in court.
- *Resolving the dispute:* In a majority of disputes taken to mediation, parties reach an agreement which makes further legal action unnecessary. Because the parties are directly responsible for developing the terms of an agreement, they are more likely to keep the agreement. Participants in mediation reach agreements about 80% of the time, and keep those agreements about 90% of the time. Even if a written agreement is not reached, mediation may lay the groundwork for future agreements by opening lines of constructive communication.

4. What does mediation cost?

A typical mediation session takes up to two hours, and those first two hours are provided **free** to Sedona residents. For longer mediations, and other dialogue and dispute resolution services, a moderate fee will be charged, using a sliding fee schedule.

5. What sort of disputes can benefit from mediation?

Conflict in many different situations can be resolved through communication and mediation. A neutral third party can help solve problems between neighbors, landlords and tenants, consumers and merchants, organizations, businesses, co-workers, housemates, church members, and others. We offer mediation on issues such as pets, noise, lifestyle, rental agreements, money and more. *We are available to address any dispute that could conceivably be resolved through dialogue, as long as both parties are genuinely interested in finding a resolution to the problem and can make decisions for themselves.*

Examples include disagreements between:

- Business partners or co-workers
- Clergy/Board and congregants
- Employers and employees
- Friends, housemates
- Galleries and artists
- HOAs and homeowners
- Hotels and guests
- Landlords and tenants
- Merchants and customers
- Neighbors
- Parents and teens
- Professionals and clients
- Sedona city staff and residents
- Schools and parents or students
- Separating, divorced parents
- Social agencies and clients
- Victims and offenders

6. What types of disputes are inappropriate?

Community mediation is unlikely to be suitable if the dispute:

- involves physical violence or serious threats of violence
- requires legal assistance, i.e. filing lawsuits, criminal defenses, divorces, wills, etc.
- involves violation of racial or sexual harassment laws
- needs a court ruling on a point of law
- needs a court to enforce the final outcome
- involves a party who refuses to participate willingly.

7. What is the mediator's role?

Our mediators are local, successful professionals trained in communication and conflict resolution. They have a wide variety of career backgrounds and interests, and they share a commitment to serve their community. They volunteer to serve as impartial third parties because they believe in the power of collaborative negotiation to resolve conflict.

Prior to mediation, the mediators are provided only with a brief summary of the situation to be discussed and the names of the participants. Mediators are not assigned to a case if they know the participants personally or if they have any stake in the outcome of the mediation.

Mediators do not serve as judge or jury, nor do they seek to determine right and wrong or place blame. Mediators do not impose a decision, like a judge or arbitrator, nor do they give legal or professional advice. Rather, they facilitate communication by helping people explain their viewpoint, clarify issues,

identify underlying concerns, explore possible solutions, and, where possible, reach a mutually agreeable agreement.

SMS tries to enlist two mediators for each mediation session. Having co-mediators brings the wisdom of an additional person to the table, which often contributes to achieving a successful outcome.

8. What happens at a mediation?

A mediation begins by welcoming and introducing all participants, followed by an opening statement from the mediator. Initially, each party gets an uninterrupted opportunity to describe the conflict from their perspective while the mediator and other party listen. The mediator asks clarifying questions along the way, which often brings out important information that may not have been known or understood before.

Sometimes, the mediator asks for a private meeting or "caucus" with one disputant at a time in order to allow them to express their thoughts more freely or to explore possible solutions with them. Either party in a mediation also can ask to caucus privately with the mediator at any time.

In the final part of the mediation, potential resolutions are discussed. The mediators have no intent or role in influencing the outcome. Their only interest is to help negotiate agreements that are satisfactory to both parties. If the parties agree on steps to take, their decisions are written into an agreement that spells out what will be done. That agreement is signed, and copies are given to all participants.

9. What if the other side does not keep the agreement?

Mediation agreements include only realistic steps that both parties are willing and able to carry out. Our experience is that mediation agreements usually hold up--because the signers developed it themselves.

However, the parties anticipate what the consequences will be if the agreed-upon actions are not taken and include in the agreement future steps that they will take if the agreement is not kept.

If the parties wish, the written agreement may be considered binding in the same way a written contract is binding. To do so, it must contain a clear statement that each disputant: 1) wants the agreement to be binding and 2) understands that the agreement is admissible in court should enforcement become necessary.

SMS mediation agreements do not imply other means of enforcement, such as intervention by police or sheriff's officers. SMS does not monitor or enforce its mediation agreements. If an agreement breaks down at any time, the parties can always return for further help, or seek alternate means for resolving their dispute.

10. How do parties in a mediation communicate?

Respectful communication is necessary for mediation to succeed. To arrive at a workable agreement, a mediation must be psychologically and physically safe for all parties. Therefore, participants agree beforehand to follow certain communication guidelines, which include uninterrupted time for each participant to speak, and no foul or threatening language, gestures, or actions. Mediators assure that these guidelines are followed.

Genuine desire to discuss and resolve the dispute are also key to mediation. Parties must honestly express their viewpoint and listen open-mindedly to what the other says. If someone is focused only on blaming or revenge, the other tends to fight back and stop listening, which lessens the chances of resolving the conflict. Mediators set the tone and model the attitudes and behaviors that enable conflict resolution.

11. Is the mediation confidential?

Yes. For the parties to feel free to discuss the issues openly, everyone present signs a confidentiality agreement before the mediation session begins. Confidentiality means information revealed in the session will be kept private and not shared with others outside the mediation or in any future legal case.

12. How long does a mediation session take?

Mediation sessions are scheduled for two hours. Although many sessions do not take the full two hours, the parties are expected to set aside that amount of time.

Occasionally, a second mediation session is needed, which can be scheduled at the end of the session, if both parties agree. Please bring your calendar with you to check your availability should another session need to be arranged.

13. Who may attend the mediation?

SMS prefers that only the parties directly involved in the dispute participate in the mediation session. In general, the fewer people at the mediation the better. Those present must have the power to reach an agreement that will settle the dispute.

If you wish a friend or family member to join you, please tell us about that person when the date and location of the mediation are being arranged. Both parties should know in advance and agree on who will attend the mediation. Please do not bring people not previously agreed upon by the other party in the dispute.

We find that consultation with attorneys or other advisors *before* a mediation is sufficient to ensure that parties are aware of their legal rights and responsibilities. We encourage you to consult with an attorney prior to signing a settlement agreement if you have any questions about the agreement's legal consequences.

If you do wish to bring a lawyer to the mediation, please inform us beforehand so we may obtain the consent of the other party and determine if they would also like to have a lawyer present. Even if you bring a lawyer, you will be asked to speak for yourself in the mediation. Your lawyer will not be allowed to speak in the mediation. However, breaks in the session may be arranged so you can confer with your lawyer. In addition, your lawyer must agree to sign the confidentiality agreement.

Note: Sometimes, mediation *trainees* are present to observe a mediation session. Our volunteers must observe several mediations before they can serve as a SMS mediator. Please notify us before your mediation session if you do not want an observer to be present.

14. Where will the mediation be held?

It is important that a mediation be held at a neutral site. We usually arrange to do mediation sessions at the city offices on Roadrunner Drive or at a church or community center nearby. If another neutral location is more convenient for the parties, we can arrange to hold the session there.

15. How should I prepare for mediation?

Mediation is not like going to court or to an administrative hearing. In both settings you prepare to present your view of what has occurred as clearly and fully as possible. But in mediation you should also think ahead about possible solutions for your situation, rather than convincing the mediator that your position is "right." To prepare for a mediation, consider:

- The issues you want discussed.
- The reasons underlying your position on those issues and their relative importance.
- The other party's probable reasoning.
- What you want from the other person(s) to settle the dispute.
- Your flexibility regarding your current position, and what you're willing to accept and do to settle the dispute

- Others with whom you should consult before negotiating an agreement.
- State laws, court rules, or local ordinances that may govern your situation. It is your responsibility to inform yourself about applicable laws, not the mediator's.

Also, since our mediators volunteer their time to help you resolve your dispute, it is extremely important that you attend the mediation session scheduled for you, cancel only in case of an emergency, and notify us well in advance when you do.

16. What are some examples of mediation cases?

Case #1: Two neighbors, who had lived side-by-side for seven years, grew angry with one another. She was mad because he didn't keep his yard up, and he was mad because she let her cat use his yard as a litter box. He called Animal Control and she was incensed. They agreed to try mediation. At the session, the mediator helped them air their gripes and understand the other's viewpoint. Apologies were exchanged; each agreed to make some reasonable accommodations and to keep the communication lines open. Their long-term friendship was renewed.

Case #2: A hotel employee called because her employer had withheld her paycheck without an explanation or a warning. When the employer was called, he explained that he had overpaid her the previous week, and he withheld her next paycheck to correct the mistake. He offered to talk to her about what had happened. After their discussion, the employee was satisfied with the explanation and said that what upset her most was not knowing what was going on. With the mediator's conciliation efforts, they were able to discuss the matter and resolve it between the two of them.

Case #3: The owner of a social club has a dispute with a patron who refuses to obey club rules. The owner says the patron refused to leave club premises; the patron says the owner improperly placed his hands on her while asking her to leave. When the case comes to Court the presiding judge asks the parties to try to work their dispute out and directs them to mediation. The parties talked and listened to each other. The owner apologized, and the patron was satisfied with the apology.

Case #4: A homeowners association asked for help in resolving a dispute over barking dogs. The mediator called a meeting of all the residents with dogs. About 12 people showed up. She began by asking everyone to introduce themselves and tell the group about their dog. Next, she helped them to generate a list of what was acceptable behavior for dogs in their neighborhood. They started off with different ideas, but soon arrived at a consensus "dog code of behavior" for their community. Next, they discussed what should be done about dogs who violate those guidelines. The group listed about a dozen options, including restricting time outdoors, installing a dog door, doggie valium, and doggie day care. They ranked the options in low to high-cost order and agreed to try them in that sequence. Because the whole group openly participated in addressing the issue, they were able to determine jointly a procedure for solving the problem, and positive neighborhood relationships were restored.

Case #5: The family was in a state of high tension, threatening to come apart. Teenagers were feeling that both their contributions and their requests were being ignored. Dad was trying to handle his responsibilities, but was having trouble balancing time, chores, and responding to requests. Mom, the major wage earner, felt stressed and under-appreciated. Doors had been slammed hard enough to break glass. Although there was no violence toward any person, the police had been called once when things got very hot. They were referred to mediation and agreed for fear the next blowup could involve greater emotional hurt, making healing that much more difficult. The mediation began with each person describing the situation from their point of view, with their needs, feelings, and requests. The mediator asked clarifying questions and summarized what was heard to assure clarity. Members of the family were able to hear and appreciate the others' perspective and frustrations. Agreements were reached, written out, and signed. A month later they met again, worked out a few more details of the agreements, and the family stated that they felt comfortable with it and were confident it would work for them.

Case #6: Joan lived next door to a vacant home. That property's owner, Larry, did not live on the premises nor did he wish to sell it. Joan did not like the idea of an empty house and the potential for

vandalism and break-ins, and the front yard got weedy before a contractor would come to maintain it. Over the years, city inspectors demanded that certain repairs be made to the property. Although Larry complied each time to the city's satisfaction, Joan was unhappy that the a broken downspout or overgrown bushes lingered for months before the city would inspect, and several more weeks before the work would be completed. On occasion Joan would contact Larry to report a concern about the property but there was never a conversation, only a brief opportunity to make her concern known.

Eventually the roots of a tree on the property line began to cause damage to Joan's driveway. Joan was certain the tree belonged to the adjoining property. Larry would not return her calls about this latest concern. Joan contacted the local community mediation center. Larry declined their invitation to mediation, denying any responsibility for the tree. Information on mediation was mailed to both parties.

Eventually, Larry contacted the center asking them to become involved. In mediation the two parties had the most extensive conversations of their relationship, so that the total process consumed several hours. A variety of concerns were identified and solutions offered. Regarding the tree, Joan received permission to cut it down. She was willing to assume the cost, and was allowed to keep the wood for firewood. In addition, Joan and Larry agreed to procedures for more effective communication in the future.

17. What shouldn't I expect at a mediation?

- **A court hearing.** The setting and interaction will be informal. No decisions will be made for you or imposed on you. Witnesses are not needed, although you may have a friend or advocate present if this is satisfactory to both sides.
- **A process to determine who is guilty or innocent.** Mediation is not for proving someone wrong or right. Both parties are there to listen to each other and discuss solutions, not to blame each other.
- **A substitute for legal advice.** Mediation does not replace the need for legal advice if your "rights" in a situation are a concern.
- **A guaranteed process.** The other party cannot be required to participate. Even if they do, we cannot guarantee that a mediated agreement will be reached, nor can we enforce whatever agreements are made. Instead, we provide guidance for people who wish to discuss and resolve a dispute in a fair, respectful way. And mediation usually *does* achieve that goal.

18. How long has community mediation been offered?

Community mediation grew from peoples' desire to find better ways to resolve conflicts and alternatives to the legal system. Citizens, neighbors, religious leaders, and communities became empowered, realizing that they could resolve many complaints and disputes through mediation on their own in their own community.

Experimental community mediation programs using volunteer mediators began in the early 1970's in several major cities. These proved to be so successful that hundreds of other programs were founded throughout the country in the following three decades. Community mediation programs now flourish throughout the United States. To learn more about these programs, consult the web site of the National Association for Community Mediation at www.nafcm.org. The city of Sedona has been offering community mediation since 1993.

19. What other services does SMS provide?

SMS also wants to help Sedona residents *prevent* disagreements from escalating into disputes. It provides other kinds of services that serve this purpose.

- Conflict resolution **coaching**, if a dispute is developing and the other party is unwilling to engage in mediation. We will discuss the situation with you and together devise steps you can take to handle the disagreement as effectively as possible.

- An “edu-taining” **presentation** to a group about mediation and constructive conflict resolution. A speaker will present the mind-set and communication techniques that allow people to talk through differences of opinion while maintaining a respectful relationship.
- A skill development **workshop**, in which people learn and practice, in an engaging, hands-on way, several valuable communication techniques for handling disagreements effectively.
- An impartial, skilled facilitator to help **lead a meeting** in a way that allows for productive discussion and problem-solving. This service is useful when a group’s or organization’s members disagree about how a situation is being handled, and even feel suspicious or resentful toward the group’s current leaders (or when the leader wishes to participate in the meeting, instead of leading it).
- A special, extended meeting (e.g. a **retreat**) for a group’s or organization’s members to deal with important, challenging issues for a longer time and at a different place than they usually meet. An SMS mediator will design and facilitate a process that helps the group successfully address the issues and grow stronger as a community.

These conflict-management services are provided for a moderate fee, based on a sliding scale, that is arranged with the SMS coordinator.

20. How can I become an SMS mediator or volunteer in other ways?

SMS’s goal is to help people in our community resolve disputes to their own satisfaction. We recruit and select volunteers using criteria based on our core concepts and program needs. Our volunteers are impartial neutrals, committed to mediating a safe, respectful, confidential process. Their job is to give Sedona residents an opportunity to reach agreements on issues that they wish to mediate. Our mediators do not give legal or any other advice. They do not fix clients’ problems--instead they empower them to do it for themselves.

Our mediators must have completed an extended mediation training program offered by a qualified organization. We will be offering such a training program ourselves, but until then these qualifications must have been met elsewhere. They also must have observed local mediations, co-mediated with our experienced mediators, and done solo mediations that were observed and critiqued by an experienced mediator. All volunteer selection decisions are made on the basis of qualifications and program needs without regard to race, religion, color, sex, national origin, disability, or sexual orientation.

Since volunteers are the primary providers of our services, they are expected to comply with our policies, procedures and standards of mediation practice, as well as participate actively in such activities as community education and outreach, volunteer recruitment and selection, training, and program evaluation and development. We welcome your interest in contributing to our services.

For more information on how to become a volunteer, please contact the Sedona City Manager’s Office at (928) 204-7127.