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## Mediation FAQ

### GENERAL QUESTIONS ABOUT MFR and MEDIATION

#### What does Mediation For Results do?

MFR is a program of Just -A- Start, a nonprofit community development and service corporation based in Cambridge, MA. MFR provides a range of Dispute Resolution and Educational Services including: mediation, facilitation and training. We provide a safe, neutral way for people to work together to resolve their conflicts.

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#### Who can use MFR Services?

Anyone can use our services and most of our services are free of charge. Our main service area includes the Metropolitan Boston area, Cambridge, or Metro North Communities (Somerville, Malden, Everett and surrounding communities). When you call MFR, our mediators can talk with you to see whether we can be of assistance in your particular situation. If we can't help, we can usually refer you to someone who can.

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#### What is mediation?

Mediation is a formal but flexible process where people in a conflict voluntarily participate to try, together, to reach a resolution to their dispute. A neutral third party, the mediator, facilitates and guides the communication between the parties and helps them explore possible ideas for resolution that will work for all the parties. The parties, themselves, decide together the outcome of the dispute. With the help of the mediator, a written agreement is usually produced.

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#### Why is mediation so 'successful'?

When parties participate in an effective mediation they usually understand their underlying needs or interests in the particular conflict and work on a solution that reasonably satisfies these needs. With the help of the mediator, any solution that is proposed is given a thorough 'reality test' before it is finalized to ensure everyone can 'live' with the outcome.

The mediator will also help parties to anticipate any possible glitches in the future and create a plan that deals with such eventualities - without undoing the hard work of the mediation. When people have created and tested their own

agreement, that reasonably meets their needs, they are far more likely to stick to it than any agreement or decision handed to or forced upon them by another person.

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How likely is it that my situation can be resolved through mediation? What is the 'success rate' in mediation?

Mediation works in the vast majority of cases, but will it work in your case? In general, the figure of 80 – 85% is quoted when discussing the overall 'success' or, more accurately, the 'agreement rate' of mediation in the US. At MFR, our mediation 'agreement rates' are at or above this range. Mediation works for many reasons - visit our Mediation Services page for a list of benefits. However, it is also important to understand when mediation may not be a suitable option for you. If you have questions about your particular situation, please contact us or see below: When is mediation not suitable?

We work with parties throughout the process, to ensure that mediation is serving each party and their needs. We remind parties that mediation is a voluntary choice, and they have the option of ending the mediation if they want.

'Success' in mediation is not so easy to define. Reaching agreement is often what people consider 'successful'. However, experience has shown us that even in mediations where parties don't reach a specific agreement, they often say they're glad they mediated and have gained from the process. We hear things like; 'Now I understand why we couldn't resolve this ...' or 'Now I have a much clearer idea of what the real issues are ...' or 'I know where they're coming from ..' I am so glad I got to say my piece at long last and now I can move on &hellip;

In mediation you get to define 'success'.

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What types of situations are appropriate for mediation?

The mediation process can be used to help in many dispute situations including: workplace conflicts, family and divorce, landlord/tenant, neighbor-neighbor, land use, public disputes and others. If you're not sure if your situation is suitable for mediation just ask us. If it isn't suitable or is outside our area of expertise, we can help you access other mediation services.

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When is mediation not suitable?

Although mediation can be an excellent way to resolve a dispute, it certainly is not the only way. In some situations mediation is not the right 'tool' for the job. For example, in certain cases one party may want a point of law decided by the courts (e.g. the landmark decision made in *Brown v. Board of Education* that was used to set the stage for equality in education). In other cases, a party may not want to keep the issues private, instead seeking publicity in court or in the press.

In some situations, mediation will simply not work because of certain factors and it should not be used as a way to resolve a problem. For example, mediation is usually not appropriate in disputes involving domestic violence or other abuse situations where one party has or is perceived to have much more power than the other party. Also in cases where one or both parties is not capable, for various reasons, to participate fully in the mediation process. Finally, it is not appropriate or ethical to use mediation for a purpose for which it is not designed, e.g. to gather information as a form of discovery for a legal case, or to delay resolution for whatever reason.

If you are not sure whether mediation would be appropriate, we can help you understand which dispute resolution

process might be best for you.  
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What is the range of dispute resolution methods that may be available to me?

Mediation is only one form of Alternative (Appropriate) Dispute Resolution or ADR that can be used to resolve disputes. Some of the main methods can be presented on a spectrum, with the parties having less control of the outcome as they move to the processes on the right.  
Private Negotiation - Conciliation - Mediation - Arbitration - Adjudication

To learn more about these methods and to see which might work for you, visit [Tips and Resources](#) and select A.C.R.

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What is the difference between mediation and arbitration?

Arbitration is a process involving a professional, neutral party empowered to make decisions for the disputants. Arbitration decisions are based on the facts presented in the case by the parties.

In mediation, the parties decide the outcome for themselves. The mediator is a professional neutral party who assists and guides the parties through a process that makes it possible for them to come to an agreement of their own.

Both mediation and arbitration are effective ways to resolve conflict when used in the appropriate circumstances. MFR does not provide arbitration services but is happy to provide referrals to these services.  
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## QUESTIONS ABOUT MEDIATORS

What does a Mediator do?

Our professional mediators DO

- Help create safe conditions for the parties to be able to speak comfortably and honestly with each other
- Listen and ask questions to help clarify the issues, interests and goals of the parties
- Support the parties to generate creative ideas, invent various options or alternatives and organize them in order to try to

resolve the conflict

- Provide the parties with legal and other information, and referrals in order to help them to best understand their situations and the choices available to them.
- Help to write up an agreement that is realistic and acceptable to everyone

Our professional mediators Do NOT

- advise - 'take sides' - decide who is right or wrong - judge or make decisions for the parties &ndash; tell people what to do &ndash; act as lawyers or other formal experts on the content of the situation

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Who are the mediators and what is their training experience and reputation?

Our mediators are full-time professionals who are highly trained and experienced in working with people in conflict. Our mediators come from a variety of backgrounds including; social service, business, higher education, urban planning. We have a wealth of real-life experience that helps us stay humble, and realistic. We have worked successfully with diverse populations and remain active and well respected within the mediation community.

Like all mediators, we do not take sides or give specific advice. Our role is to help the people in a dispute to identify their interests and then to talk through the dispute with the goal of reaching agreement, if this is what the parties want. MFR mediators have a passion for this work and want to be of help.

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Do mediators have to follow certain rules? What happens if I have a problem with my mediator's work or professionalism?

MFR mediators follow the Association of Conflict Resolution's Standards of Conduct for Mediators.

If you have a problem with the mediator, the first step is to talk to him or her about the issues. In most cases, we're confident, a satisfactory solution can be found.

If this first step doesn't work contact Peter Shapiro, MFR's Program Director: email him ([pshapiro@mediationforresults.org](mailto:pshapiro@mediationforresults.org)), or call him at 617 494-0444 ext 317. If Peter Shapiro is your mediator you can call Joe Youngworth, Housing Programs Manager for JAS, at 617 494-0444 ext. 316.

Each will listen, discuss next steps and help move forward toward resolution. Whatever the problem, we will want to address the situation in a satisfactory manner. See our Standards of Practice and provide us with feedback or complaints.

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TIME, LOCATION AND COST

How long does it take to schedule a mediation?

In contrast to most court actions, mediation can be scheduled within days or weeks at the most. Factors that can slow down the scheduling include time needed for parties to: gather information, decide to participate in the mediation, be willing and able to set enough time aside for the process etc.

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How long does a mediation session take? How many sessions are needed?

Most mediation sessions last from one to three hours. While most mediations take just one session, it is not unusual for a mediation to require more than one session. In complex issues like divorce, four to six sessions is the norm, which includes time between sessions for doing collateral work. At MFR, we also do a lot of work by phone. This can involve a type of "shuttle diplomacy" involving mediation or negotiation that requires multiple calls to the parties with the mediator serving as a go-between. In some cases where scheduling is a challenge or for disputes involving multiple parties, mediations can involve one or a series of half-day or full-day sessions.

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What are your hours for mediation services?

Most mediations are scheduled between 9:00 AM and 5:00 PM on weekdays. We understand that this cannot work for everyone and are happy to discuss your individual needs and schedule accordingly. For example, we schedule early morning or evening sessions, mediations by conference call or we can, if necessary, travel to different locations to facilitate scheduling.

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Where do MFR mediation sessions take place?

Mediation usually takes place at our Cambridge Office Workplace or organizational mediations often occur on-site. Court-related mediations are frequently scheduled at the courthouse on the trial date. For certain situations mediation can be run through a telephone conference call and increasingly we are managing disputes through email. Let us know if you have particular needs related to the location of a mediation and we will be happy to advise.

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How much does mediation cost?

Our goal is to provide quality service that people can afford. MFR does provide free mediation services for most eviction-related housing matters thanks to our funding. MFR also provides free mediation for all court-related summary process, civil and criminal matters. For other types of mediation, MFR charges an hourly fee that is shared equally by the parties unless specific arrangements are made. Our aim is to make these fees affordable. Our fees are typically lower than most professional mediators in the Boston area. When fees present a problem for a client, MFR uses a sliding scale based on individual incomes, or an organization's budget. For details see our Professional Fees page.

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## CONFIDENTIALITY AND PRIVACY

Is mediation confidential?

Anything stated during mediation cannot be used in any legal proceedings and the mediator will not discuss the details of your case with anyone. When mediators meet privately with a party they will not share any information from this conversation unless the party gives permission. When you are in a mediation session you will have control over any information you disclose. You need to balance this, however, with the fact that mediation tends not to work when parties omit things, or otherwise mislead one another about important, material issues to the dispute.

MFR mediators and many others in the profession have a few important exceptions to keeping confidentiality, which include issues of: child abuse, elder abuse, threats of physical violence or plans to commit a crime.  
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Can anyone reveal information in court that they learned in mediation? Can any party be made to reveal information by a judge?

Participants in mediation are usually asked to sign an "Agreement to Mediate" showing that they understand the process, including confidentiality. The agreement states that the mediator cannot be subpoenaed to testify. In addition there are certain laws that protect mediator confidentiality in Massachusetts and other states. Most judges will not allow parties to share information discovered in mediation. Ask about any special rules concerning this issue if you are involved in a court case.  
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What is the reason for this confidentiality?

Mediation works more effectively when people can have a full and open discussion of all the important issues, without worrying about their words being 'used' against them later. Additionally, a confidential meeting allows people to look at a variety of ideas, including creative ones, to resolve the dispute without having to worry about what others will think. Most importantly, confidentiality protects mediators and mediation so that people can trust the process, knowing that the mediation communication is legally protected.  
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## AGREEMENTS IN MEDIATION

What happens if we come to an agreement? Do we put it in writing?

When agreements are reached during mediation sessions, the mediator can prepare a written agreement that is usually

referred to as an 'agreement' or 'memorandum of understanding'. When more than one mediation session is expected, mediators will often suggest a written summary that records the important issues, tentative agreements and/or next steps before subsequent sessions. The summary is helpful to parties to keep on top of things and help prepare for the next mediation session, but it is not a formal agreement.

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I have an agreement already but the other person is not following it. Why should an agreement through mediation be any different?

Mediated agreements tend to 'stick' or work largely because people have created the agreement themselves. Agreements also tend to stick when the mediator has helped people to consider, realistically, how likely it is that it will be carried out. To reach agreements that last, the mediator may also ask parties how they want to manage situations where the agreement is not being met. In order to prevent future problems, a back up plan may be developed and written into the agreement, to handle glitches in the future.

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Is an agreement reached in mediation legally binding?

Mediation works most effectively when people have a chance to discuss issues openly and explore options without making decisions too soon. To help this happen, any tentative agreements or ideas discussed in mediation are not considered binding during the session. If a partial or complete agreement is reached, however, the mediator will typically write it up and have the parties sign it. To the extent possible, agreement language will reflect the parties' own words rather than legal language. If an agreement is reached, and neither party has fully involved the courts, this agreement becomes a contract, obligating both parties to comply with it.

When parties, who have already initiated court proceedings, reach agreements before a trial occurs, these agreements typically, but not always, are entered into the court record and become enforceable as if the judge made the decision. Enforceability means, for example, that a party can go back to court to seek a remedy if a payment isn't made according to the agreement. To help people work out agreements involving issues of the law and enforceability, it is advisable that an attorney, at a minimum, review the agreement before you sign it.

It is important to understand that the strength of mediated agreements is usually not based on legalities or rights but on the fact that people have forged a workable agreement that they want to stick to. Even when an agreement or judgment is legally binding and court-enforceable, it can be very difficult to make people do what they have been ordered to do as opposed to what they have chosen to do.

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What happens if we can't reach an agreement in mediation?

Sometimes mediation does not result in an agreement. Reasons can be varied reasons and should not be seen as a failure. Even after a mediation does not result in agreement, parties often report that the process clarified their issues and interests. Future negotiations benefit from the work begun in mediation. Regardless, what happened or was discussed in the mediation remains confidential, and the mediator cannot be required to be part of any future legal action. People do not lose legal rights or other options when they mediate.

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## SPECIAL SITUATIONS

“We've tried talking before and it doesn't work.”

People often come to us because they've tried everything else – including talking. In some cases things have gotten worse because they tried talking about it! MFR mediators understand this challenge and have certain skills to facilitate communication to help get people moving again. Sometimes it is too difficult to resolve a situation alone, and the use of an outside person makes a big difference.

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What happens if we start a mediation and later, one of the participants decides the process is not working for them ?

Even though people enter into mediation voluntarily, it is not unusual for them to be skeptical about its effectiveness at some point during the process. Mediators understand this and are experienced in working with the parties to clarify - often in private - what is preventing mediation from working. Sometimes the mediator is able to help the participants find a way to continue. When this is not possible or wise, the mediator will help to close the session in such a manner that allows for future discussion to happen if the parties choose. To help parties decide how well mediation is working, it is always appropriate to ask to meet with the mediator in private. One of the reasons mediation works is because it is a voluntary process. Throughout the mediation process, individual parties' freedom to choose mediation is vital.

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“I'm willing to try mediation but I don't think the other person will be interested.”

Sometimes, it can be very difficult for a person to agree to try a process like mediation. They may not understand it well enough, and think they need to go to court. Sharing what the issues are and asking for help, can feel embarrassing. Many people are also concerned about how well they will manage their own behavior, or respond, spontaneously, to other parties. Mediators deal with this regularly and have many ways to make it easier for parties to decide to participate. For example, the mediator may “coach” one party on ways to invite the other person into the process. The mediator may contact the other person directly to help address his or her concerns and explore how he or she might participate. Although mediation is always voluntary, there are ways to help people overcome their fears, concerns and objections to try it out.

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Who else can be present or accompany me to the mediation?

Provided both parties and the mediator know who will be present, and agree to it, you can bring an advisor, a lawyer, a friend or other supporter. Sometimes, people arrange it so that experts or advisors like accountants, doctors, engineers and others can be available for a phone consultation if needed during the mediation session.

Regardless of who participates in the mediation session, they are bound by confidentiality in the 'agreement to mediate' form they sign at the start of the session.

At MFR, we are experienced in working with parties and their lawyers as well as other people who accompany the parties. In most cases these people can play an important role in terms of providing immediate advice or support. In mediation, a lawyer or other friends and advisors play a supporting or consultative role. They do not manage the mediation and are not a formal “party” to the mediation. The mediator manages the process, the parties discuss and decide, and others who are present provide support and advice.

Children : In most cases it does not work when children accompany a party to mediation, so always check with the mediator beforehand. Similarly if you are involved in a court proceeding or mediation at court, it is wiser to make arrangements for childcare before-hand.

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## LEGAL ISSUES and ATTORNEYS

Can I use mediation even if legal proceedings have already begun?

Yes. Right up to the moment before a trial is scheduled, the parties may use mediation. During the trial procedure itself, the parties may ask for mediation. In some courts the judge has the option to suggest parties try mediation prior to a hearing or trial.

After a trial has occurred and a court order issues, mediation can also take place. For example, mediation can help people create a specific plan of action, payments etc. As part of any mediation process, the parties should recognize that knowledge of their legal rights and responsibilities is a critical component to reaching successful resolution and that even when encouraged to mediate by a judge the process itself is always voluntary. At the same time many people who agree to try mediation reluctantly are often satisfied with the process at the conclusion.

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How does mediation affect my legal rights?

When you decide to mediate, you do not waive or lose any legal rights, and you may use your rights within the mediation process. When parties try mediation, many find that they have little to lose, and they often reach agreements that are more satisfying and better than could be reached by a judicial decision.

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Will I need an attorney if I choose mediation or who else can help me prepare?

No, it is not mandatory to have an attorney when you mediate but sometimes it is a good idea. Mediation is more effective when you can make fully informed decisions. It is a good idea to consult with an attorney, paralegal, or other legally informed professional particularly if legal decisions are involved.

When you are trying to resolve a dispute, it is generally very helpful to get advice and support from various people including professionals. In addition to lawyers, people might want to talk to a financial adviser, friend, family member, spiritual advisor, therapist, or colleague. Whether to understand your issues more clearly or to get the emotional support you need, taking advantage of all resources available can make a big difference in how effective you are in the mediation process.

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Who else can be present at the mediation?

Provided both parties and the mediator know who will be there and agree to it you can include others in a mediation. Sometimes, people arrange it so that experts or advisors like accountants, doctors, engineers and others can be available for a phone consultation if needed during the mediation session.

Regardless of who participates in the mediation session, they are bound by confidentiality in the agreement to mediate form they sign at the start of the session.

At MFR, we are experienced in working with parties and their lawyers. In most cases lawyers can play an important role particularly in cases involving complex legal issues. Lawyers can provide immediate advice on the legalities of possible solutions, advise on the consequences of not agreeing in mediation and provide moral support. In mediation, a lawyer or other advisors play a supporting or consultative role. They do not manage the mediation and are not a 'party' in the mediation. The mediator manages the process, the parties discuss and decide, and others who are present provide support and advice.

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