



Dispute Resolution 101: Mediation & Arbitration

With
Nancy Neal Yeend

Perspective

This presentation is based on a 35-year hands-on career in dispute resolution.

The focus will be on business related disputes.

Questions are welcome during the presentation.

Defining Terms: 1

Mediation: neutral facilitates the negotiations between disputants.

Arbitration: neutral makes a decision based on evidence.

Defining Terms: 2

Non-binding Arbitration: neutral's decision is advisory.

Binding Arbitration: final and cannot over-turn even if **mistake** in **fact** or **law**.

Defining Terms: 3

Binding Mediation: neutral makes decision—same as arbitration (*no such process*).

Med–Arb: neutral starts as mediator and then changes to arbitrator. Many disadvantages.

Comparisons

LITIGATION	ARBITRATION	MEDIATION
<p>Formal Imposed decision Proofs & arguments Takes time & costs \$\$ Stressful Not confidential Win/lose or Lose/lose Binding-subject to appeal</p>	<p>Formal Imposed decision Proofs & arguments Takes time & costs \$ Stressful Private Win/lose Binding with limited review or advisory</p>	<p>Informal Parties make decisions Interests & needs Less time & fewer \$ Less stress Private Win/win Contract resolves No rights are waived</p>

Mediation Process

Step 1: Initiation/Intake (*assignments*)

Step 2: Opening Remarks

Step 3: Problem Solving (*80% of time*)

Step 4: Resolution

Step 5: Closure

Mediator's Role

- ◆ **Educates:** participants about process
- ◆ **Trust:** creates environment of trust
- ◆ **Manages:** impartially manages the process
- ◆ **Sets tone:** constructive problem solving
- ◆ **Facilitates:** communication and negotiations

Decision-Making Criteria

- ◆ Time (today vs next year)
- ◆ Industry custom/standard/tradition
- ◆ Economics/financial factors/tax consequences
- ◆ Law/administrative policy or rules
- ◆ Other: finality, confidentiality, trauma avoidance, save face, prevention, etc.

Benefits for Credit Managers

- ◆ Confidential process.
- ◆ Tailor settlement terms to **unique issues** and participants' **needs**.
- ◆ Retain **control** over the **outcome**.
- ◆ **Finality** (*higher compliance rate*)
- ◆ Waived no rights.

Arbitration Process and Arbitrator's Role

Process: single arbitrator or panel of 3

Role: decision-maker

Non-binding: advisory decision: request a *trial de novo*

Binding: few grounds to overturn (*mistake in fact or law are not reasons*)

Decision-Making Criteria

- ◆ **Law:** Arbitrator may only use the law to make a decision.
- ◆ **Options:** Arbitrator's options are limited to do it/do not do it; or pay it/do not need to pay it. **No participant input.**

Benefits for Credit Managers

- ◆ Confidential process.
- ◆ Decisions based on law.
- ◆ Non-binding get a **hint** of possible litigation outcome.
- ◆ **Finality** with binding decisions.

Selection Checklist

- ◆ Professionally trained
- ◆ Subject matter understanding
- ◆ Experience (*similar cases*)
- ◆ Clarify neutral's role & process
- ◆ Code of ethics (*standards or supervision*)
- ◆ Selection process (*appointed vs selected*)
- ◆ Disclosures (*past, present or anticipated*)
- ◆ Logistics (*when, where, who is coming, etc.*)
- ◆ Cost (*hour/day and who pays what share*)

Questions

*What additional or
remaining **questions** do
you have?*

Thank You!

*If you have any questions
about this presentation,
please contact me.*

Nancy Neal Yeend

nancy@TESresults.com