

# MEDIATION

Since 1995, the Commission has offered a **free**, voluntary and confidential mediation program as a method of alternative dispute resolution. The program utilizes a combination of both Commission and volunteer mediators which help facilitate communication and negotiations, in an effort of reaching a mutually agreeable resolution.

## Core Principals

### ***Willingness***

Participation in the Commission's Mediation Program is voluntary at all stages of the process. Either party can decline to participate in the program. Similarly, either party may withdraw from the process at any time during the mediation, up until a memorandum of understanding or settlement agreement is signed.

### ***Neutrality***

Mediators, whether Commission staff or external mediators, are impartial, having no stake in the outcome of the mediation process. Mediators work to facilitate a resolution of the dispute by the parties themselves.

### ***Confidentiality***

The Commission maintains strict confidentiality in its Mediation Program. All participants are required to sign a "Confidentiality Agreement" in which they agree that they will keep everything revealed during the mediation, confidential, except what is otherwise discoverable or required to be reported by law. Confidentiality is necessary to encourage participants to be as forthcoming as possible. The Confidentiality Agreement specifically requires the parties refrain from testifying about any information disclosed during the mediation session in any subsequently proceeding, including the Commission's investigative process. The parties also agree not to attempt to compel the testimony of the mediator.

The mediation session is not transcribed or recorded. Any notes taken during the mediation by the mediator and any records or other documents offered by either party to the mediator during the mediation, including pre-mediation statements, will be destroyed by the mediator after the conclusion of the mediation. Participants and their representatives are permitted to keep their notes under the terms of the confidentiality agreement.

The Commission maintains a "firewall" between the mediation program and the investigative process. This means that the mediation program is structured so it is separated operationally from the investigative staff. Information and documents from the mediation are maintained separate from the investigative file. Similarly, all communication between the Mediation Coordinator and a mediator, and/or the parties to a charge is kept confidential. No mediation information is shared with investigative staff.

### ***Enforcement***

Any agreement resolving the charge during a mediation is enforceable in court. It cannot be enforced by the Commission.

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The following will provide a general outline of the mediation process. As a reminder, at any time during the mediation, up until a Memorandum of Understanding (“MOU”) or settlement is signed, either party may withdraw from the process. The participation and/or withdrawal from mediation will have no negative impact on your case.

## **PROCESS**

### ***Joint Opening Session***

At the commencement of mediation, the mediator will meet with all participants to outline the ground rules for mediation and explain his/her role as mediator. As a reminder, the mediator is a neutral, third-party, and does not represent any participant in the mediation. The mediator’s goal is to work with the parties to structure a resolution.

The mediator will designate an allotted time for each party to provide an uninterrupted opening statement. Each party will have the opportunity to summarize their position and identify the specific issues to be addressed in order to resolve the matter.

**(IF** both parties agree, the joint opening session may be waived, at the discretion of the mediator).

### ***Caucuses***

After the opening session, the parties are separated into private meeting areas and the mediator works with each party individually in an attempt to facilitate a resolution. The mediator will speak to each party privately, discuss the relative importance of the issues raised in the charge and defense(s) raised by Respondent. In addition, the mediator encourages the parties to identify creative terms of resolution and shares the pros and cons of various options for both parties, should resolution not be successful. The mediator will continue to go back and forth between the parties until a settlement is reached, or until one or more participants elect to end negotiations.

### ***Final Joint Session***

**IF** the parties reach an agreement, the mediator will conduct a final joint session for the parties to sign a MOU. A MOU is an informal, yet enforceable, record of the terms of settlement. The MOU serves as a placeholder for final settlement language to be drafted and reviewed by both parties.

## **What Happens Next?**

*If your case settles at mediation*, the Mediation Coordinator will send you a withdrawal form. Please complete and return the form after the settlement has been fully executed.

*If your case did not settle*, the case will be returned to your assigned investigator, or if not yet assigned, will be assigned in the order it was received. As a reminder, no information shared during the mediation is disclosed to investigative staff.

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## *Preparing for Mediation*

**Prepare to listen to the other person's perspective.** Think about why the dispute exists, as this is the first step toward resolution of the conflict. Try to also consider why the other party believes the dispute exists.

**Prepare a short opening.** Think about what is important for you to tell the mediator and the other party. Concentrate on explaining your perspective about what happened and your concerns. You do not need to make legal arguments or detailed demands.

**Stay open to hearing everyone's interests and concerns.** Think about and list your interests and concerns that need to be discussed and addressed in order to have a satisfactory resolution and prioritize their degree of importance. Try to imagine and list the interests and concerns of the other party. Consider reasons why both you and the other party might want to settle the case.

**Options for resolution.** Write down as many different settlement options as you can, even if an option seems far-fetched or only resolves part of a dispute. Your list of potential settlement options, when added to those of the other party, will be the framework for the settlement discussions. Stay open to options developed during the mediation and don't get stuck on a particular option.

**Future contact.** Try to consider your expectation of future contact with the other party after the mediation. If you will be working together every day, the focus of your negotiations may be different from if you anticipate no significant future contact.

**Alternatives to settlement.** Consider your alternatives to settlement. Educate yourself on going forward with the NHCHR process should the case not settle, as well as the possibility of continuing beyond the agency in court.

**Get organized.** Prepare notes or outline your thoughts to make the mediation process as productive as possible.

HAVE QUESTIONS?



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