

Guide to Selecting a Mediator



Wisconsin Association of Mediators
Task Force of the
Public Education Committee

PREAMBLE

A task force of the Public Education Committee of WAM adapted the following guide from one prepared by the Alaska Judicial Council to aid you in making an informed choice when selecting a mediator. This guide is designed to integrate with WAM's **Ethical Guidelines for the Practice of Mediation** and the **Model for Basic Mediator Training**. It can be used by persons seeking to hire mediators, including lawyers and other professionals advising their clients; court systems; mediation programs that provide information to consumers; judges who refer litigants to mediation; mediators; and the general public.

There is no universal answer to the question, "What makes a competent mediator?" Mediators are a varied group of professionals with many different backgrounds and styles. This guide will help you gather and evaluate the necessary information to determine the type of mediator you need to help you through your dispute.

The task force:

Cheryl Stinski, Facilitator
Jody Renaud
Carolyn Peckham
Kristy Bradish, Editor

Why Choose Mediation?

Mediation is a voluntary dispute resolution process in which conflicting parties work together with an impartial person or persons (mediator) to resolve the conflict in a mutually beneficial way.

Mediation is fair and neutral. Parties have an equal say in the process and decision-making power is in the hands of the parties, not the mediator. Mediation provides the opportunity for people to clarify for everyone, including themselves, their needs and issues. People can communicate clearly, directly, and sincerely with one another. Mediation humanizes a dispute in a way that an adversarial process such as litigation cannot. Because mediation fosters an environment of respect and trust, participants are able to maintain dignity throughout the entire process. No one faces "losing" to the other party. Since many disputes occur in the context of relationships that will continue over future years, a mediated settlement that addresses all parties' interests can often preserve a working relationship.

Mediation saves time and money. Unresolved conflict drains parties' time, energy and resources. The costs of litigating a dispute are spiraling, and the judicial system is overloaded causing many cases to take more than a year to get to trial. Mediations can be scheduled more quickly and many mediated settlements are completed in just a few sessions. Moreover, parties are generally more satisfied with solutions that have been mutually agreed upon and are generally more likely to follow through and comply with the terms of an agreement reached in mediation.

Mediation is confidential. In Wisconsin, as in many states, mediation discussions, as well as all materials developed for mediation, are not admissible in any subsequent court or other contested proceeding (Wis. Stat. 904.085).

Mediation and The Role of the Mediator

Mediation is a conflict resolution process in which an impartial third party or parties, the mediator, assists those in conflict to explore a mutually beneficial resolution of their dispute. The role of the mediator includes reducing the obstacles to communication, assisting the parties to identify and explore alternatives, and addressing the needs, interests, and concerns of the parties and others affected. Decision-making power stays with the parties. A mediator helps bring the parties together by establishing a framework for the negotiation within which all parties agree to participate and helps those involved hold constructive discussions. The WAM Ethical Guidelines for the Practice of Mediation instructs mediators to approach the mediation process in an impartial manner, avoid the appearance of any conflict of interest, and, in the interest of self-determination of the parties, endeavor to facilitate a process of voluntary, uncoerced agreement.

Steps to Choosing a Qualified Mediator

WAM recommends that you approach hiring a mediator just like you would any other professional (such as a lawyer, accountant or physician). While some states require mediator certification, there is currently no legislation in many states, including Wisconsin, governing the practice and procedure of mediation. These steps will help you gather and evaluate the information you need to make an informed choice of a mediator.

1. Decide What You Want from Mediation.

Think about your goals for the process. Do you want a mediator who suggests options in order to move the parties toward agreement? Or do you want a mediator whose strength is drawing creative options out of the parties? What are your choices if mediation does not reach a settlement?

Think about the dispute and the context in which you must resolve it. What is the time frame? What is your relationship with the other parties and what are your relationship needs for the future? What is the nature of the dispute and the parties - is this a commercial dispute between experienced insurance company representatives, or is it a divorce involving emotional child custody decisions?

Think about your abilities. What are your strengths and weaknesses as a negotiator? What are the other party's strengths and weaknesses? What is your emotional state surrounding the dispute? Is there a power imbalance between you and the other party that will impact your ability to negotiate? Sharing your answers to these questions with potential mediators will provide them with information to assist you in determining what services will be best for your dispute.

2. Compile a List of Names.

You can get a list of mediators from several sources.

Word of Mouth. Ask a friend, colleague, neighbor, attorney, therapist or other professional. Describe your case to a mediator and ask, "Other than yourself, who are the most skilled mediators for this kind of case?"

Written Lists. Check the WAM Membership Directory at www.wamediators.org, as well as other mediation organizations such as AFCC (Association of Family and Conciliation Courts) and ACR (the Association for Conflict Resolution). Some organizations utilize a roster of mediators that meet the specific practice and training requirements of that organization, such as the Wisconsin Special Education Mediation System, the Equal Employment Opportunity Commission, the U. S. Postal Service, and the Department of Agriculture. Check out their websites or give them a call for information about their mediator criteria and rosters. Contact community mediation centers for information about their services or a list of mediators who provide private mediation services. Check with the State Bar for members of their Alternative Dispute Resolution (ADR) section who practice mediation. Check local listings in the yellow pages.

Referral Services. Some national mediator membership organizations and trade organizations keep lists of practitioner members and offer referral services. There are also private mediation enterprises that provide referrals by area. Some may charge for the referral services.

3. Evaluate Written Materials.

Call, write or email 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
- Experience
- Written work
- Initial Consultation/Orientation Session
- Cost
- Membership in Mediation and Other Professional Organizations
- Other considerations – professional liability insurance, certifications

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 impartiality, respect for all parties, emotional stability and maturity, integrity, and sensitivity. Look for good interviewing skills, verbal and nonverbal communication, ability to listen, ability to define, clarify and summarize issues, problem solving skills and organization. Did you feel at ease sharing information and did he or she answer your questions clearly and concisely?

Ask questions about the written materials and other topics that will help you make an informed decision. Some questions to ask by topic include:

- **Training, Knowledge and Experience**

Does your training meet the standards set by the WAM Model for Basic Mediator Training? This model recommends that "minimum training should be not less than 40 hours composed of ...10 components with emphasis on:

1. Component 3: Ethics and Standards of Practice
2. Component 4: Mediation Process and Techniques
3. Component 5: Coached Role Play.

And it is strongly recommended that there be an additional 15 hours of practicum." (See www.wamediators.org for complete details.)

How has your education and experience prepared you to help us work out this specific dispute?

Do you participate in continuing education, on-going supervision, or consultation?

Do you think subject matter expertise is necessary for you to help us with this dispute and why or why not?

- **Style**

Describe your style of mediation.

What values and goals do you emphasize in your practice?

Do you encourage parties to communicate directly with each other or do you prefer that parties communicate through the mediator?

How much of the mediation is conducted in joint session and how much in caucus (meeting with each party separately)?

Do you evaluate the merits of the parties' positions?

- **Ethics**

Do you follow the WAM Ethical Guidelines for the Practice of Mediation?

What other professional code of ethics do you follow and what part of that code will apply to your mediation services?

Do you have a prior relationship with any of the parties or their attorneys?

- **Confidentiality**

Do you require signing of a confidentiality agreement or an agreement to mediate that covers confidentiality?

What reports, if any, do you make during or after the mediation and to whom?

- **Logistics**

Who will invite parties to mediate?

Who will arrange meeting times and locations and prepare the agenda?

Will you prepare any summaries and/or assist the parties in drafting a written agreement if a resolution is reached?

What role do the parties' advocates, lawyers, or others play in the mediation?

Do you work alone or will another mediator be involved?

- **Cost**

How would you estimate the costs for this case?

Is there an hourly fee or a per-case fee? Are the fees different for two mediators?

Are there any other charges associated with the mediation for services performed outside of the mediation sessions?

What can we do to keep costs down?

Are any down payments required? Is there a refund if mediation ends before the down payment is used?

5. Evaluate Information and Make Decision

During the interviews you have the opportunity to observe the mediator's skills and get a sense for your ability to work with the mediator. Ask yourself the following questions after each interview.

Did the mediator understand my problem? Understand what was important to me?

Did the mediator understand my questions and answer them clearly?

Did the mediator convey respect and neutrality?

Do I feel I can trust the mediator?

Did the mediator refer me to other helpful sources of information?

Did the mediator ask questions to help me determine if mediation is preferable and appropriate?

Do the mediator's costs and availability coincide with my resources and time frame?

The other parties to the conflict must agree to the choice of mediator – do you think this mediator will be acceptable to the other parties?

Consider evaluations of others who have used this mediator or your own personal experience with this mediator. If the mediator is associated with an organization, take into account the goals and procedures of that organization.

Conclusion

Mediation is an effective dispute resolution process that emphasizes self-determination and informed decision making to reach resolutions that address the legitimate interests of all concerned parties. You can choose a qualified mediator to aid you in this process by using this guide to help you think about your expectations, gather information about available mediators, and evaluate your options.

Adapted from A Consumer Guide to Selecting a Mediator, Alaska Judicial Council

Wisconsin Association of Mediators
Post Office Box 44578
Madison, WI 53744-4578
Tel: (608) 848-1970 Fax: (608) 848-9266
Email: wam@mailbag.com Web Site: www.wamediators.org