













# LITIGATION VS MEDIATION



LITIGATION / COURTROOM	IT'S YOUR CHOICE	MEDIATION
A judge who doesn't know you or the other party, or share your values, enters a judgment based on the limited amount of information he hears during a brief trial.	Judge's Role (Decision Maker) 	Mediation is generally conducted with a single mediator who does not judge the case but simply helps to facilitate discussion and eventual resolution of the dispute. The parties choose the mediator.
Positional; adversarial, and hostile.	Atmosphere 	A more relaxed, peaceful environment than litigation.
Hostile, adversarial, & disrespectful. Discovery process discourages candor & transparency.	Level of Conflict 	Parties are encouraged to freely and confidentially present their positions in front of a neutral third party, the mediator.
Unpredictable costs often escalate rapidly. Post-judgment litigation is common & costly. Adversarial expert battles are financially inefficient.	Cost 	Usually much less expensive than litigation.
Judge mandates timetable. Crowded dockets cause delays regularly.	Time 	Typically takes less time than litigation because the parties have more control of the process. However, in complex matters, many mediation sessions may be necessary before a resolution is reached.
Separate experts support your positions (at twice the expense). Non-transparency requires experts to work more.	Experts' Role 	You can jointly retain experts to inform & guide you in developing transparent data into mutually beneficial solutions.
Lawyers fight to win, but someone always loses, often both, in a court-imposed "lose-lose" judgment.	Lawyers' Role 	Lawyers often problem-solve to help you both generate an interests-based "win-win" agreement.
Public & subject to media attention.	Confidentiality 	Matters discussed in mediation remain confidential.
Court process discourages communication between "parties."	Communication 	Mediator often educates & assists both parties to effectively communicate.
Mandatory, if you do not choose another process to reach agreement. Secret & deceptive.	Nature of Process 	Voluntary
Lawyers profit (i.e. make more \$) if you do not agree & continue to litigate.	Conflict of Interest 	Lawyers make less if you mediate successfully because the only work remaining for them is to process a written agreement.
Advocacy and strategy skills.	Skills Required 	Problem-solving & communication skills.