



MEDIATIONSOPHILEX

MEDIATION

When should you opt for mediation?

Given the many advantages of mediation, a conflict should be analyzed to determine if and when it should be taken to mediation. This analysis is conducted by the clients and their attorneys, to determine the reasons for this approach and the most opportune time for engaging in this process. To this end, they must analyze their true interests and not only the validity of their position in the dispute, in the abstract.

In some cases, it is best for the process to take place before judicial procedures. If timeframes, stress, costs or disadvantages related to the dispute are likely to result in an ineffective or less satisfactory legal resolution, opting for mediation as quickly as possible can lead to a settlement before the conflict gets bogged down in acrimony. For example, if an executive does not agree on a clause in a contract with a supplier, but would like to retain this supplier, it would be to his advantage to settle the dispute through mediation rather than risk legal procedures that could cause relations to deteriorate.

In other instances, it may be that the parties and their attorneys would prefer to secure their legal position before resorting to mediation. As a result, it is important for the parties to obtain useful information for defending their rights (motions, examinations, expertise, legal research), in which case they must do whatever is best suited to their interests. In these cases, mediation will become an appropriate solution once these initial needs have been met.

What is important to bear in mind, is that mediations can be carried out just as easily before trial and once the legal file has been constituted as before the institution of the proceedings. The opportunity to opt for mediation can change as the case or the needs of the parties evolve. The lawyer and his client must analyze them on a regular basis, in order to benefit from this approach to settlement at the most opportune moment.