

PAUL CROWLEY MEDIATION

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FREQUENTLY ASKED QUESTIONS

What's the difference between mediation and arbitration?

A mediator does not make decisions. The mediator assists the parties in reaching an agreement. In arbitration, the parties empower the arbitrator to decide the case much like a judge.

What's the first step in one of your mediations?

We start off with a conference call between myself and the lawyers. At that time, we discuss generally what the case is about; determine whether there are any conflicts of interest; set a date and place for the mediation; and set a timeline for the pre-mediation written submissions and the payment of the retainer.

Are you willing to travel?

Absolutely. I have a long history as a true Circuit rider, regularly presiding over courts in a district stretching from Hood River to Fossil. I truly enjoy getting around the state and have appeared in over one-half of Oregon's counties as a judge or as a mediator.

Do the parties need to send you anything before the mediation?

Yes. At least one week before the mediation, the parties are required to submit a short (preferably no more than five pages) confidential memorandum that includes the following: a general statement of the case; the party's view of the strengths and weaknesses of their case; any prior settlement offers; and an indication of the party's view of what would be a reasonable resolution in light of the cost and risk of litigation.

The submission may be made electronically or by regular mail. Other documents a party deems appropriate, such as appraisals, may be included.

In retained cases, the retainer is also due at least one week in advance of the mediation.

When asset and liability statements are included the parties are strongly encouraged to use a common format to save time and money. That means that the assets and liabilities are listed in the same order, using the same names. This avoids time and money being wasted during the mediation trying to determine accurately what the assets and liabilities are.

How do your mediations work?

It's important to realize that no one size fits all. The end goal is resolution, and flexibility is key. The exact approach taken to get there depends upon the parties, their needs, their styles and the preference of the attorneys. I arrive prepared to listen and pay very close attention in order to identify areas of possible agreement. Often parties don't realize how many important issues are not really in dispute.

Most commonly, an evaluative process is used, meaning that the strengths and weaknesses of the parties' cases will be probed. Generally, a shuttle mediation approach is taken. I meet with the parties separately and then bring them together at appropriate times, with the consent of their lawyers.

My training as an accountant is often vital to the process. I have the ability to simplify complicated financial matters, allowing the parties to more easily sort through those issues.

In all cases, when a resolution is reached the parties are brought together to assure that there truly is a meeting of the minds. The agreement is put in writing at that time or a recording is made of the agreement. The attorneys are responsible for the writing or the recording.

Will mediations be conducted with people who do not have lawyers?

With the exception of public interest cases, no. That is to avoid the risk of someone looking to the mediator for legal advice. A mediator's job is to help the parties reach an agreement, not to give legal advice. I am very careful about this.

In public interest cases, mediations may be conducted without counsel. For example, as a judge I mediated a rate formula dispute between four counties that share a regional jail. The counties' attorneys did not participate directly in the mediation.

What is your fee schedule?

The retained hourly rate is \$250. There is no charge for administrative matters such as initial conference calls, scheduling and billing.

There is no charge for travel time or expenses between Hood River and The Dalles. For travel north, south or west of Hood River and east of The Dalles time is billed at \$100 per hour and expenses at the federal mileage rate.

A retainer sufficient to cover anticipated fees and expenses is due no later than seven days before the mediation.

Public interest cases are handled on a *pro bono* basis. Public interest cases generally involve governing bodies or public interest organizations, and pertain to issues that impact the general public. My past public interest mediations have included such parties as the governing bodies of counties and cities; resource districts; and nonprofit organizations.