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Mediation growing in popularity as means to resolving legal disputes

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by Gwynn Bradley

Those looking for a quicker and cheaper way to settle disputes and stay out of court are turning to mediation.

The process joins the two parties in conflict with a mediator, who acts as a referee to help them reach a compromise and formulate a written agreement.

"It's not decision making," says Sheree Hoffman, chairman of the Alternative Dispute Resolution Committee of the Memphis Bar Association and founder of Hoffman Law & Mediation.

The goal, she says, is to "facilitate communication."

With benefits like avoiding court costs or waiting for the case to come before a judge, officials in Memphis and the state are trying to increase public awareness of mediation. Shelby County Mayor AC Wharton even proclaimed Oct. 19 as "Mediation Day."

The process begins in an informal setting, like a conference room, with a joint session of both parties and the mediator. The mediator then usually divides the parties and uses "shuttle diplomacy," going back and forth between the rooms, says Max Williams, mediator at Settlement Solutions LLC.

Since the mediators aren't acting as lawyers, they don't advocate for a position. Instead, they guide the dialogue and aim to "make other parties see each other's issues," Williams says.

At the end of the meeting, the mediators write a resolution that functions as a contract.

But, until it's signed by all parties, nothing is legally binding. In fact, parties in mediation can leave the table at any time.

That ability to maintain control is increasing the popularity of mediation as well, says Hayden Lait, chairman of the Alternative Dispute Resolution Commission of Tennessee.

"It's not a judge or 12 strangers making the decision for you," he says.

Advocates are also emphasizing the expediency that mediation affords.

Hoffman once mediated a divorce where all matters were settled in eight hours, she says. The parties had not even hired attorneys.

Having already worked out a plan, they will only have to hire lawyers to draw up and sign the agreements.

While many trial lawyers and judges become mediators, a law degree is not required to mediate. And unless the mediation was court-ordered, there are no requirements to mediate a dispute.

But in cases where a judge has made mediation mandatory, mediators must have completed training in Rule 31, a federal resolution containing the guidelines for being a mediator or arbitrator. To be certified by Rule 31, mediators have to undergo training in their state.

Since Rule 31 was implemented, the business of mediation has been growing. There are now more than 900 certified mediators in Tennessee and each quarter, 40-50 more are certified, according to Lait.

And virtually any type of case can be mediated to find a resolution: employer-employee conflicts, insurance settlements, medical treatment disputes and custody battles. Mediation brings success most of the time. According to Lait, 80% of cases in Tennessee that are referred to mediation are resolved.

As the process becomes more popular, it's also gaining prominence in criminal cases. Hoffman and other mediators in Memphis are moving for the Juvenile Court to implement a large-scale mediation program.

Under the proposed guidelines, "a perpetrator can work out a resolution other than incarceration," Hoffman says.

For instance, in a case of vandalism, an agreement for reimbursement could be worked out and a criminal record could be avoided.

"The process has been used for centuries," Williams says. "Everything from organizations, churches and Indian tribes."

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