

MEDIATION DIVISION

GUIDELINES

(last revised on 28 August 2009)

Overall Structure of the Mediation Division

1. The Mediation Division was created pursuant to General Assembly resolution A/RES/62/228 and is regarded as a critical element in the efforts of the General Assembly to strengthen the UN's internal justice system. The Mediation Division handles cases referred to it by parties in dispute, the Ombudsman's Office, the Management Evaluation Unit (MEU) and the United Nations Dispute Tribunal (UNDT). The Mediation Division is located in New York and functions under the authority of the United Nations Ombudsman. As approved by the General Assembly, the Mediation Division is headed by a Director (D-1) and consists of two Mediators (P-5) and one Administrative Assistant. In addition, the Division maintains a list of on-call international professional mediators/ombudsmen who provide specialized mediation services, as needed, both at Headquarters and in the field.

What is mediation?

2. Mediation is a voluntary, informal and confidential process in which a trained neutral person, known as a mediator, assists parties in working towards a negotiated agreement of a dispute or difference, with the parties themselves remaining in control of the final decision.

Benefits of mediation

3. Mediation can help resolve disputes by assisting the parties to work out a solution to their conflict. The overriding principle is that the best resolution to any dispute is usually one worked out by the people involved.

4. The mediation process can save time, money and reduce the amount of stressful workplace conflict. Parties can usually resolve their disputes more quickly and conveniently through mediation than by going to trial and having a judge decide the matter.

5. Mediation is not a legal process and therefore does not generally require the presence of legal counsel. However, parties may bring a representative or colleague, if after a discussion with the Mediation Division or mediator, it is thought necessary to do so.

6. If staff have lodged a claim in the formal justice system, at the instigation of a judge or by their own initiative, the parties can choose to try mediation to halt a possibly lengthy, stressful and costly court process where the parties are no longer in control of the outcome.

Key elements of mediation

7. Mediation is a voluntary process. Without the consent of the parties concerned, mediation cannot effectively or usually take place.

8. Mediation is an informal process, which allows parties to resolve an issue informally, outside the formal channels, with the assistance of a mediator.

9. Mediation is a strictly confidential process. Anything discussed between the parties or in private with the mediator remains confidential unless the parties themselves otherwise agree.

10. Also, mediation is without prejudice. This means that discussions held during mediation, propositions put forward and documents produced for the purpose of the mediation cannot be used later as evidence in a court or tribunal. In addition, neither the mediator nor the participants can be called upon to testify in court about what happened during the mediation.

11. The Mediation Division will provide an opportunity for a third-party neutral (the mediator) to assist the parties in reaching their own resolution of the dispute. The mediator will facilitate the parties reaching settlement of the dispute. The parties remain completely responsible, however, for designing their own solution. The mediator does not make a binding decision for the parties, but guides them to a mutually agreeable resolution of the grievance.

Mediator's role

12. The mediator is neutral. This means they are independent and do not have any personal interest in a potential outcome. His/her role is to try and create a safe environment, encouraging all parties to contribute equally in a confidential environment, which can create an atmosphere of problem solving.

13. Mediators are not judges. They do not determine the outcome of cases. The mediator uses his or her skill to try to give all parties a chance to be heard, in a respectful, non-judgmental way, and assist them in reaching their own solution.

Who can request mediation?

14. Mediation is open to all United Nations employees and other categories of staff covered under the system of administration of justice.

15. Mediation may be requested by:

- (i) One of the parties to a dispute. In this case, the Mediation Division may contact the other party/parties to confirm their willingness to attend mediation.
- (ii) Parties may jointly agree to request mediation.
- (iii) Requests may also be received from the Management Evaluation Unit and the Ombudsman's Office
- (iv) The UN Dispute Tribunal may recommend to the parties that they attempt mediation and the Mediation Division will then be advised of this recommendation by the Tribunal. The Mediation Division will then contact the parties to provide advice and information.
- (v) The Office of Staff Legal Assistance may also refer cases to the Mediation Division with the consent of the parties.

Disputes Eligibility for Mediation

16. All workplace disputes or differences are eligible for mediation. A workplace dispute or difference is any formal or informal claim or issue in controversy, arising out of an existing, prospective or past employment relationship between the UN and its staff. A workplace dispute could be written or oral.

17. Essentially any type of workplace conflict is suitable for mediation. With the assistance of an experienced mediator and if the parties are willing to engage in the process, most staff issues can be mediated.

Screening of cases

18. All requests for mediation will be screened within one week of submission of the case to ensure that mediation is an appropriate vehicle for resolving the dispute. The screening will be carried out promptly before mediation is unconditionally confirmed to either party. This screening process is only carried out once, if a case is found appropriate for mediation it need not be screened again, even if multiple mediation attempts are made.

19. Once screened, eligible enquiries or requests for mediation are accepted for referral to the Mediation Division.

20. In accordance with Article 8 of the Statute of the UN Dispute Tribunal and Staff Rule 11.1 (d), a staff member may not file an application with the UNDT if the dispute arising from a contested decision has already been resolved by an agreement reached through mediation.

Timelines

21. In accordance with Staff Rule 11.1 (b), both the staff member and the Secretary-General may initiate mediation of the issues involved at any time before or after the staff member chooses to pursue the matter formally.

22. In the case of tribunal-referred mediation, at any time prior to or during the proceedings, including at the hearing, the Tribunal may propose to the parties that they seek mediation and if the parties agree, the Tribunal will suspend the proceedings. Parties on their own initiative may also agree to seek mediation, in which case the Mediation Division will inform the Registry of UNDT of their decision [within 48 hours of the case being accepted for mediation].

23. The conduct of mediation may result in the extension of the deadlines applicable to management evaluation and to the filing of an application with the United Nations Dispute Tribunal.

24. The time limit for mediation shall not normally exceed three months. However, in exceptional circumstances, where the Mediation Division considers it appropriate, it will notify the Management Evaluation Unit or Registry of UNDT that the informal mediation will require an additional period.

Enforceability of mediation agreements

25. In accordance with Article 8 of the UNDT, a staff member may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

Mediation Procedure – Step by Step

Step 1 – The Mediation Division receives a request for mediation from parties in dispute, the Ombudsman's Office, the Management Evaluation Unit or the United Nations Dispute Tribunal. One of the parties to a dispute may also request mediation and ask the Mediation Division to contact the other party/parties to seek their agreement to mediate.

Step 2 - The Mediation Case Officer (hereafter MCO) discusses the dispute, appropriate processes and other relevant issues with the party/ies. The Director of the Mediation Division, briefed by the MCO, decides if it is suitable for mediation.

Step 3- The Mediation Division will advise the parties, Management Evaluation Unit or the UNDT whether or not the case has been accepted for referral within one week from the date of submission of the case to the Mediation Division for consideration.

Step 4 – The conduct of mediation will take place within thirty days of the case being accepted for mediation.

Step 5 - When a case is considered suitable for mediation, the MCO will contact the parties to arrange a convenient date and venue for preliminary consultations.

Step 6 – The parties will be given guidelines and advice as to the type **of documents needed** and dates for their submission in advance of the mediation.

Step 7 – The MCO will provide Mediation Consent Forms to be signed by all the parties.

Step 8 – The parties will confirm with the MCO that the persons with relevant authority to settle will be attending the mediation.

Step 9– The list of attendees will be sent to all the parties in advance of the mediation.

Step 10 – The Mediator will contact the parties in advance of the mediation to briefly discuss the upcoming mediation including the relevant procedure.

Step 11 – The parties will prepare, and must submit to the MCO by the required date, a mediation case summary and any relevant papers. These documents will then be forwarded to the Mediator for his/her perusal.

Step 12 – Mediation takes place.

Step 12 (a)- When a case settles, a mediation settlement agreement is signed by the relevant parties.

Step 12 (b) – If mediation is court-referred, and the case is settled, the relevant parties sign a settlement agreement. The Mediation Division sends the UN Dispute Tribunal (UNDT) a Notice of Settlement.

Step 12 (c) – If mediation is court-referred and the case is not settled, UNDT will be advised that the case has not settled within 7 business days of the end of the mediation [no reasons are given to the UNDT as to why the case did not settle.] A case is deemed to have not settled or failed in accordance with the rules of procedure of the Mediation Division which include for example the following scenarios:

- a. The case is settled before the mediation takes place or the parties agree to refer the matter to other dispute resolution processes for resolution
- b. A party decides not to participate in mediation or withdraws from the mediation.
- c. The issues were not resolved and parties reached an impasse ending the mediation or issues were partially resolved and action agreed to be taken on the remaining issues
- d. The Mediator closes the case (The mediator retains the right to close the case in appropriate circumstances. Such reasons may remain confidential.)

NB (Please note that in all the above circumstances the strictest confidentiality will still apply as per the Mediation Consent Form and Mediation Process Guide)

Step 12 – If a dispute is not settled at mediation, the parties are still at liberty to file an application with UNDT with 90 calendar days from the end of mediation, in accordance with Staff Rule 11.4 (c). Parties may then choose to continue the action in court or pursue any other course of action open to them. Parties may seek advice from the Ombudsman’s Office as to any alternatives that may be available to them.

Step 13- The Mediator may conduct follow-up discussions after the mediation if necessary.

26. We hope the information about mediation provided above will assist you when considering how you wish to try and resolve any conflict or disputes you may be experiencing. Please do not hesitate to contact us if you have any questions.

For more information contact:

Danny McFadden, Senior Mediator, United Nations Ombudsman and Mediation Services.
New York Tel: (917) 367 5732; Fax: (917) 367 4211, Email: mcfadden@un.org