

# MEDIATION – An Alternative to Court

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*[Text and Hawaii State Judiciary logo.]*

The Judiciary  
State of Hawaii

*[A frightened male with his back up against a wall. Sound of a dog growling. A little girl scolding and pointing her finger at the male. A stuffed dog toy is sitting next to her.]*

**Narrator:** *[Voice over.]*

Have you ever felt like your back was against a wall, and the only way out of this mess would be in court?

*[Three people sitting around a table and talking, the male, a female, and the little girl.]*

**Narrator:** *[Voice over.]*

Before going to court, you should consider an alternative, mediation. Sometimes talking over your differences in front of a neutral person can bring about a positive result.

*[The male, little girl and a couple of stuffed toys having a play tea party.]*

**Narrator:** *[Voice over.]*

Today, you are going to see how problems can be settled without going through a lawsuit.

**Male:**

It's really good – did you make it yourself?

*[Title screen. Text appears over a blurred picture of four people sitting around a table. Music plays in the background.]*

Mediation:  
An Alternative to Court

*[Narrator speaking directly to viewers. Text appears.]*

Erika Engle

**Narrator:**

Aloha. I'm Erika Engle, and I'm a volunteer mediator. Mediation is one way of resolving differences. A lot of conflicts between neighbors, employers and employees, landlords and tenants, and families can be resolved through mediation. But it does take work and commitment to reach a satisfactory agreement.

**Narrator:** *[Voice over. Text appears.]*

The mediation process uses the help of a neutral person called the mediator who makes sure that everyone understands each other. Mediators help participants talk about their problems, explore alternatives, and arrive at their own solutions. Some advantages of mediation are: it's private, it allows participants to come up with creative solutions, and it may save you time and money. Another important point is that participants, and not the mediator, make all the decisions.

*[Narrator.]*

**Narrator:** What you are about to see are four types of problems that can be helped through mediation.

*[Four part, split screen. The upper, left screen pops out. Exterior of front door and entry to a house. Text appears on the screen.]*

The Divorce

**Female:** *[Voice over.]* I want you out of this house now! Do you hear me, outta this house now!

**Husband:** *[Voice over.]* I'm leaving! I'm leaving!

**Daughter:** *[Voice over.]* Daddy, daddy, please don't go!

*[Sound of a door slamming and a car engine starting.]*

*[Four part, split screen. The upper, right screen pops out. Two males wearing company t-shirts talking while they work on a loading dock. Text appears on the screen.]*

The Supervisor

**John:** Hey, Dave, how was your weekend?

**Dave:** Great – Sean's team got into the semifinals. How was your daughter's hula competition?

**John:** Oh terrific - she's really good at it!

**Dave:** Must take after your wife – cause we all know you got no talent! *[laughs]*

*[Dave and a co-worker wearing company t-shirts talking while they work on the loading dock. Dave bursts into laughter just as John, who is now a supervisor, walks up behind Dave and starts yelling at him.]*

**John:** Stop fooling around and get to work! And see me when you get back from your deliveries. *[Dave scowls and shakes his head as John stomps away.]*

*[Four part, split screen. The lower, right screen pops out. Two teenage girls arguing at school. Text appears on the screen.]*

The Rumor

**Sara:** What's the matta, you cannot get your own boyfriend, you gotta try steal mine?

**Lani:** What you talkin about? I not even look at him!

**Sara:** Oh yeah, well Cindy wen tell me you was checkin him out in yestaday's assembly!

**Lani:** Aw, you so full of it. You so desperate, you accusing me! No wonda he like dump you.

*[Four part, split screen. The lower, left screen pops out. Male marches up to his neighbor's front porch and bangs on the front door. Text appears on the screen.]*

The Fence

**Don:** Oh hi, Brad.

**Brad:** Look, Don, I worked really hard putting up this nice fence that both of us can enjoy, and can't you even have you tree trimmed to have the branches from falling and wrecking it!?

**Don:** Listen Brad, I'm sorry it wasn't my fault that the storm caused the branch to tear away from the tree and fall on your fence.

**Brad:** I know the storm caused the damage – I think it's gonna cost at least five hundred dollars to fix! And I think you should pay for the damage! After all, it's YOUR tree!

**Don:** Listen Brad, my wife and I are both on a fixed income. We just don't have five hundred dollars laying around to pay for materials and labor. We just don't have it!

**Brad:** Fine! I'll see you in court! *[Turns and stomps away.]*

**Don:** Fine! *[Turns and slams the door.]*

*[Narrator.]*

**Narrator:** Now that you've seen the four disputes, you're going to follow them through the three stages of mediation:

**Narrator:** *[Voice over, text appears.]*

The opening joint session, the individual sessions, and the closing joint session.

*[Text over blurred leafy background.]*

The Mediators

*[Inside an office, two mediators talking to each other.]*

**Christine:** We have a couple who have filed for divorce, but they want to follow through mediation first.

**Jason:** That's a good sign.

**Christine:** Yes it is. They have three young children and they want to work out custody and visitation issues, as well as the property settlement.

**Jason:** Let's see, they've been married for twelve years and they've been separated for three months now.

**Christine:** They're both here, so let's get started.

*[Text over blurred leafy background.]*

The Divorce  
First Joint Session

*[Inside an office, the two mediators and a couple sitting around a round conference table.]*

**Christine:** Hi, my name is Christine, and this is Jason. May we call you by your first names?

**Wife:** Sure.

**Jason:** First of all, I'd like to tell you that mediation is an informal, and usually effective way to resolve complex issues. It's an opportunity for the two of you to discuss ways of reaching an agreement on issues that are hard to agree upon. Christine and I are here to help you through that process. As mediators we remain neutral. We aren't here to decide who is right or who is wrong. And we aren't here to give you legal advice or counsel, but what we're here to do is to help you work through the issues, then you reach your own agreement. Do you have any questions?

**Husband and Wife:** No.

**Jason:** What we're doing now is called a joint session, because we're all here together. After this joint session, we'll meet separately with each of you, several times if necessary, before we meet again in a joint session.

**Christine:** Before we begin, we all need to agree on a couple of ground rules. Now some of the things being said here, might upset you and you might feel like jumping in to tell your side of the story. It's been our experience; however, that being courteous really helps. Can we get you to agree that you will try not to interrupt each other? If you're disagreeing with what you hear, just write it down, you'll have a chance to talk about it later. Is that agreeable?

**Husband and Wife:** Yes.

**Christine:** Now, Tina, since you called us, could you please explain some of the issues that you feel need to be mediated?

**Tina:** S-sure. But, uh, first I just want to say that I really appreciate you, um, being able to work around our schedule. We have three young children and it's hard to take additional time off work. The main reason that we're here is to work out custody of the children. I have temporary custody, and I want full custody. Also, we still haven't figured out what to do with the house, and ...

**Husband:** She can't even look at me! You'd think after all these years, she'd have the common courtesy to talk to me straight, and not to use mediation to manipulate things to her own advantage!

**Jason:** Okay, let's stop a minute. Now Tina, I know it's difficult to be in the same room at the same time, but we need to get the issues on the table first.

**Christine:** And, Bill, I know this is really hard for you, but right now Tina is speaking. You'll have your chance soon and we'll listen to your concerns. For now it would help if you would agree to wait until after Tina is speaking, all right?

**Bill:** I'll try.

**Christine:** Thank you, Bill.

**Jason:** Now Tina, you were saying that you'd like to reach an agreement on the custody of the children, as well as your house and other assets, is that correct?

**Tina:** That's right.

**Christine:** Are there any other issues you would like to discuss in mediation?

**Tina:** No, not that I can think of.

**Jason:** Thank you. Thanks for waiting, Bill. Now would you please tell us what you would like to work on in mediation?

**Bill:** I feel like I'm at a real disadvantage, because I've been kicked out of my own home. I can't even see my own kids except for every Wednesday and every other weekend. I don't know why she's doing this to me. She knows how much of a good father I am. She knows how much I love the kids. This is a dirty deal.

**Christine:** I know you're upset Bill, but let's clarify the issues first. It's custody, visitation, and what to do about the home. Is there anything else?

**Bill:** No.

**Jason:** Do either of you have any more questions before we meet separately?

*[Bill and Tina shake their heads, no.]*

**Tina:** No.

*[The two mediators, Christine and Jason, talking to each other.]*

**Christine:** Well, we need to get a better understanding of their interests. We also need a lot more background information about their lives, their children, and why they decided to get divorced.

**Jason:** I think it's also important to learn how they worked out past disagreements.

**Christine:** Okay, ready for the individual sessions?

**Jason:** Ready.

*[Narrator.]*

**Narrator:** Following the opening joint session, each person in the dispute meets separately with the mediator. Depending on the situation, there may be several individual sessions.

*[Text over blurred leafy background.]*

The Supervisor  
Individual Sessions

*[Inside an office, Jason, the mediator, and Dave sitting at a conference table.]*

**Jason:** These separate sessions give you a chance to speak freely. Now's the time to say what's going on from your point of view. At the end of the session, tell me if there's anything you've said that you don't want me to tell John, okay? Right now, let's go over what brought you to this point.

**Dave:** Eight years ago, John and I got hired on the same day. We got jobs as warehouse distribution clerks. Two years later, again, on the same day, we were both promoted to driver salesman. For six years we both received good job reviews – we used to get along great and our wives and kids get along. When John got promoted to distribution manager, I was real happy for him, you know? Then, things changed.

**Jason:** Well, what changed?

**Dave:** John. He started acting funny. Like, he was some kind of big shot. I used to stop by his office to talk story during my break, but he'd always be too busy to see me, his friend. Then, one day, I'm just loading up my van, talking with one other driver, and John!, he comes over, and he goes absolutely ballistic! I mean, he's all over my case! Tells me to stop fooling around, that my horseplay is causing the deliveries to be consistently late, and that the stores are complaining. I used to love coming to work. Now, just mention John's name, and my stomach starts getting upset. Talk about stress.

*[Inside an office, Jason, the mediator, and John sitting at a conference table.]*

**Jason:** John, explain the situation to me as you see it.

**John:** Dave doesn't seem to get it, that I'm no longer his peer, I'm his supervisor. But sure, I wish I had more time to talk story, but these days I have more than just one delivery route to worry about. Dave, he just can't understand that.

**Jason:** John, it seems there's tension now that you're Dave's supervisor. Can you tell me about the incident that brought you to mediation in the first place?

**John:** A couple of weeks ago, I was passing through the loaded dock after being chewed out by the manager of one of our biggest clients. Now he was upset that the deliveries have been late, and that it throws off his entire schedule. I understand, and I don't blame him for being upset. Worse yet, it's Dave's route. So, I suppose when I was going across the loading dock, maybe I was looking for a fight. And when I saw him fooling around as usual, I kind of lost it. I yelled at him in front of everyone, then told him to come to my office after his deliveries for the day.

**Jason:** So as I understand it, you were under a lot of stress that day and when you saw that Dave was fooling around you lost your temper. Is that right?

**John:** Yes, that's right.

**Jason:** I take it you wished that you'd handled the situation differently?

**John:** Definitely. I still think I was right in talking to him about the problem with his deliveries, but I should've done it privately. I wanna be fair and do what's right, I hope mediation will help. I honestly like Dave, our families get along real well, and to tell you the truth, I miss hanging out with him.

*[Text over blurred leafy background.]*

The Fence  
Individual Sessions

*[Inside an office, Christine and Jason, the mediators, and Brad sitting at a conference table.]*

**Brad:** What bothered me most was the way Don reacted when I went to talk him about the fence. I built that fence last summer, put a lot of time, care and heart in it. It's not just some rickety old fence that blows over in a slight breeze. It's made with good, solid lumber. Here's pictures, you can see for yourselves what the rest of the fence looks like. After the storm, I went over and asked Don to pay for the damage. He told me it was caused by nature, and that it wasn't his fault. Then he slams the door in my face! How's that for being a good neighbor?!

*[Inside an office, Christine and Jason, the mediators, and Don sitting at a conference table.]*

**Jason:** Don, please tell us what happened between you and Brad.

**Don:** Well, after the storm, I saw that the big branch from our tree had fallen on his fence and was in his yard. Before I had a chance to remove it, Brad was at our door, demanding that we remove the branch from his yard, and pay for the damage. Or, he said he was gonna sue us, and then he just stormed off.

**Christine:** So, Brad came to your door, and asked you to remove the branch from his yard, and pay for the damage it caused to the fence. Is that correct?

**Don:** That's correct.

**Jason:** Then what happened?

**Don:** Well, I was kind of taken aback by Brad's actions. He never gave me a chance to apologize to him and to tell him that we were gonna remove the branch from his yard. So, after that I, ah, called my son-in-law. He came over and he hauled the branch away. He also told me, he told me that, ah, that we shouldn't have to pay for the fence, not after the way Brad had treated us. He also said that we should have nothing to do with him. But that's difficult, I feel that you should get along with your neighbors.

**Narrator:** *[Voice over.]* Following the individual sessions, the mediators may bring the participants together for another joint session. In many cases, it is a time to hopefully discuss an acceptable solution to their disagreement. In other cases, it may be a time for the parties to assess their progress and next steps.

*[Text over blurred leafy background.]*

The Divorce  
Closing Joint Session

*[Inside an office, Christine and Jason, the two mediators, sitting around a conference table with Bill and Tina.]*

**Christine:** Thank you, Tina and Bill, you've really worked hard and have made a lot of progress on many of the issues. And, you've even resolved the custody issue.

**Jason:** Our job as mediators is to help you go forward, in a manner that works for both of you so that you don't get lost or overwhelmed.

**Christine:** You still have a few more issues to discuss like the home and other belongings.

**Jason:** Would you like to continue to mediate?

**Bill:** I believe it's worth a try. It is the best thing for the children. After all they are the most important part about this whole thing. I also think that it will save on attorney's fees and some time in court.

**Tina:** I agree with Bill. I think we should keep at this.

**Christine:** Great. Let's get to work then.

*[Text over blurred leafy background.]*

The Supervisor  
Closing Joint Session

*[Inside an office. Jason, the mediator, sitting at a conference table with Dave and John.]*

**Jason:** Well, Dave and John, it looks like the two of you have finally come to a resolution.

**Dave:** I realize now that although John's position in the company changed, our friendship didn't have to. I just need to be more akamai about John's new responsibilities.

**John:** Dave, I'm sorry if it seems like I was always brushing you off. Maybe if I had taken the time to talk with you about my work load and the kind of schedule I have, none of this would have happened. I'm sorry. Hey, what are Marcy and you doing this weekend?

**Dave:** Nothing that I know of.

**John:** How about a barbeque?! Saturday, my house.

**Dave:** Sounds great! We'll bring the kids.

*[Text over blurred leafy background.]*

The Rumor  
Closing Joint Session

*[Inside a school classroom. Two student, peer mediators, one male and one female, sitting at a table with Lani and Sara.]*

**Male Peer Mediator:** So, what can we do now to help solve this problem and avoid others in the future? Lani?

**Lani:** I probably shouldn't believe everything I wen hea. My boyfriend got upset with me when I accused him of starting something with Sara.

**Female Peer Mediator:** Sara?

**Sara:** I really don't want to stop being friends. We've known each other ever since we were in kindergarten. Lani was the first friend I ever made on the playground. Remember?

**Lani:** Oh yeah, I rememba.

**Lani:** Sara, I'm really sorry I when accuse you of trying to steal my boyfriend.

**Sara:** No problem. What? We still friends?

**Lani:** Yeah.

**Sara:** Kay, let's go to the mall!

**Lani:** Okay.

*[Text over blurred leafy background.]*

The Fence  
Closing Joint Session

*[Inside an office, Christine and Jason, the two mediators, sitting around a round conference table with Don and Brad.]*

**Christine:** Here's your copy of the signed agreement.

**Don:** We thank you very much. I appreciate your help. I know how hard Brad has worked putting up that fence. My wife and I just felt sick seeing the damage caused by the storm. Although that we are on a fixed income, I agree that we should at least pay for the supplies.

**Brad:** Mahalo, Don. I have a friend, who works at a home building place; I'm pretty sure he can give me a good price.

**Don:** Well, great! After you finish this, let's really have a party!

**Brad:** That would be nice!

**Jason:** Good job. Congratulations to both of you.

*[Narrator.]*

**Narrator:** What you have just seen were dramatizations of a few types of disputes that can be resolved through mediation. Although not all cases are appropriate for mediation, as a volunteer mediator, I can tell you that mediation works. Of course, it takes a sincere desire by both parties to settle their differences. But don't take my word for it; here are some people who found satisfaction through mediation.

*[Outdoors, adult male. Music plays in the background and text appears on the screen.]*

Robin Bond  
Retired, City and County of Honolulu  
Department of Parks and Recreation

**Robin:** Yes, the City and County Parks Department utilizes mediation when we have individuals, especially juveniles, that get arrested for certain types of crimes in the park such as vandalism and graffiti. Rather than go to court and tie up the courts, it gives us an opportunity to sit down with the individual, explain what they've done wrong, and work out an arrangement where they can come to the parks department and perform some maintenance to work off the cost that the city incurs for having to repair that.

*[At home, adult female. Music plays in the background and text appears on the screen.]*

Lyndie

**Lyndie:** We came out friends. We came out not hating each other. And, we came out feeling good about what we were trying to resolve, and where we stood in it, and where our families stood in it. Till this, we've been pulling our families apart with just not talking.

*[At home, female teenager. Music plays in the background and text appears on the screen.]*

Laurie

**Laurie:** My parents decided to go through mediation after eight or ten years. And, I decided to sit on it because I felt I was a part of it and I needed to be there. I didn't particularly want to be there, because I was expecting this whole explosion. And, I knew it wasn't going to be pretty. But, the outcome was actually very calm and very soothing, strangely. And, it just made me feel very comfortable and I was happy.

*[At office, adult male. Music plays in the background and text appears on the screen.]*

Kim Lum  
Vice President / Hawaii Area Manager  
Charles Pankow Builders

**Kim:** The settlement that we arrived at was very fair and equitable amongst all the parties. Each party contributed in an amount equal to what their fault in the problem was. In the second mediation, I felt that we perhaps contributed more than what our actual responsibility was but in the course of the mediation, it became clear that to fight it farther, the cost of defending ourselves was going to outweigh any settlement we might win. And, therefore it was cheaper to settle the case and get on with our lives.

**Narrator:** *[Voice over. Text over blurred leafy background.]* For more information, contact the Center for Alternative Dispute Resolution, the Judiciary, State of Hawaii, P.O. Box 2560, Honolulu, Hawaii 96804, or call 539-4237. You can also visit the Center on the world wide web. <http://www.state.hi.us/jud/cadr.htm>

*[Music plays and text scrolls over blurred, leafy background.]*

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East Hawaii  
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Little girl, Myana Polderman  
Mediator, Ann Ishida-Ho

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Male Mediator, Christopher Boswell

The Divorce:  
Tina, Megan Evans  
Bill, James Bright

The Supervisor:  
John (supervisor), Troy Apostol  
Dave, Matthew Malliski  
Extra worker, Terrence Qiomsaat

The Rumor:  
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Sara, Uilani Miles  
Peer Mediator, Robert Bidigare  
Peer Mediator, Jamie Seden

The Fence:  
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