



Going to Probate Court?

What you should
know about mediation
before you take your
probate case to trial.

Mediation. It Works!

What Is Mediation?

Mediation is an alternative method of resolving disputes and has several advantages over the usual judicial process.

- **You Decide.** Once a judge makes a decision in a case, at least one party (and sometimes both parties) leaves unhappy. In mediation, you and the other party, with the help of a mediator, decide the solution. This way, you avoid the risk of “losing” in court or reaching an outcome that is not satisfactory.
- **Customized Solutions.** A mediator can help you develop an agreement that meets the circumstances of your case (including a clear property distribution plan).
- **Cost.** The costs are worked out between the parties and the mediator. The Mediation Center of the Pacific (MCP) is available to assist. There is a nominal charge for the services of MCP’s trained mediators.
- **Timing.** Generally, cases that are mediated are resolved sooner than court cases.
- **A Trial Is Still An Option.** If you are not able to reach an agreement through mediation, you can return to court.



How Does Mediation Work?

Contested probate, trust, and guardianship of property cases may be referred to mediation by the parties or by the court. You must participate if the court refers your case to mediation.


Who Are The Mediators? / Who Selects Them?

Mediators are impartial; they help parties explore solutions.

The parties should select a mediator they feel comfortable with and respect. (“Selecting a Mediator” is available from the Hawai‘i State Judiciary’s Center for Alternative Dispute Resolution.)

Who Attends The Mediation Sessions?

Each case is different, and mediation is flexible so there are no rules that apply to all cases. Sometimes all parties may meet with the mediator at the same time. Sometimes the mediator may meet with just one person at a time. Attorneys may also participate.



Are There Advantages To Mediation?

Yes. Some advantages are:

- **Convenience.** The Probate Court assigns you a date on which your case will be heard at the court, during usual working hours. There is flexibility in picking the time for the mediation session.
- **Time.** Due to the lengthy nature of the litigation process, it may be months, and in some cases years, before your case is finally resolved. Because the courts deal with large numbers of cases, judges may have little time to deal with your case. Mediation allows you to take the time you feel is necessary.
- **Satisfaction.** Mediation allows you to be creative and flexible in resolving your dispute. Probate, trust and guardianship matters usually involve family relationships. Resolving issues through mediation can sometimes help preserve those relationships.
- **Privacy.** Mediation sessions can be private.

How Do I Prepare For Mediation?

Effective mediation requires two-way communication. This means:

- Honestly expressing your needs and interests.
- Listening to what the other party's needs and interests are.

The keys to a successful mediation are:

- Cooperation
- Flexibility

The following suggestions will help you reach a fair agreement:

- Think of the process as problem solving — not a win/lose battle.
- Avoid being fixed on a specific outcome — be open to new ideas or suggestions.
- Avoid laying blame or seeking revenge.
- Focus on the future, not the past.
- Help the other party understand you, and do your best to understand them.





Prepared by:

The Center for Alternative Dispute Resolution

Hawai'i State Judiciary

417 South King Street, Room 207

Honolulu, Hawai'i 96813

Phone: (808) 539-4ADR (4237)

Fax: (808) 539-4416

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