



## **Resolving Issues with Your Boss (Part 9):** *Non-Attorney Mediators*

By

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### **Summary of Part 8**

Part 8 discussed the dispute management methods of litigation, arbitration, negotiation, and mediation. Each serves different purposes and involves the hiring of attorneys in varied ways. Litigation follows formal court procedures, while arbitration is more private and flexible, with decisions typically binding. Negotiation focuses on direct discussions, and mediation employs a neutral facilitator. Attorneys are central in all processes, providing legal strategy and advice. However, attorneys may not always be trained in mediation techniques, which can create bias and lead to prolonged negotiations and higher costs. Their fees can also limit their continued involvement. By understanding each approach, individuals can make informed decisions for resolving conflicts while maintaining relationships and achieving fair outcomes.

### **Non-Attorney Mediators**

Law society discussions are outside the scope of this series; however, it's important to recognize that the potential coercive authority of the state underpins the power of the law. Once an attorney enters the picture, that legal power is at play, and if things go poorly, legal consequences may arise. Within a workplace context, if a dispute escalates to the Human Resources (HR) Department, you've entered the realm of the law and, by extension, the domain of lawyers.

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Mediation, however, offers a voluntary, confidential, and informal way to resolve conflicts without resorting to litigation. At the heart of mediation is the mediator, a neutral third party who facilitates communication and negotiation between the disputing parties to help them reach a mutually agreeable solution. While many mediators are attorneys, non-attorney mediators are also widely employed and offer unique skills and perspectives.

There are instances when hiring an attorney may be counterproductive, as it can escalate tensions and the stakes in a dispute. This typically occurs when the nature of the conflict or the relationship between the parties would benefit more from collaboration and trust than formal legal advocacy. Family or interpersonal conflicts, for instance, are examples where non-attorney mediation is more appropriate. Many states also have small claims courts that allow individuals to resolve civil cases without legal representation, keeping the process informal and cost-effective.

Non-attorney mediators can also benefit collaborative settings such as business partnerships, long-term contracts, and community or neighborhood disputes. These mediators can help preserve relationships and maintain harmony. Workplace disputes, for example, are often best addressed through internal resolution processes, avoiding the need for legal representation. Escalating a workplace dispute could damage professional relationships or reputations.

### **Workplace and Employment Mediation**

In the United States, non-attorney mediators are employed in various legal and non-legal contexts. While attorneys often serve as mediators due to their legal training, non-attorney mediators bring valuable expertise in specialized fields, offering a neutral, non-legal perspective. Non-attorney mediators are commonly used in court-annexed mediation programs, family mediation, community disputes, and workplace disputes.

Focusing on workplace disputes, non-attorney mediators regularly engage in issues like discrimination, harassment, wrongful termination, and wage disputes. Many employers, particularly large corporations, have established Alternative Dispute Resolution (ADR) programs, which include mediation to resolve internal conflicts without litigation. Non-attorney mediators specializing in employment law, industrial relations, or human resources can effectively address these issues by helping both employees and employers find solutions that promote workplace harmony while minimizing the risk of costly legal battles.

Though they may not have formal legal training, many non-attorney mediators in the workplace have backgrounds in human resources, organizational development, or conflict resolution. This specialized expertise helps them navigate the nuances of employer-employee relationships.

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Such mediators are trained to understand human behavior and organizational dynamics, which are crucial for resolving workplace conflicts effectively.

The role of non-attorney mediators in workplace disputes is similar in many countries outside the U.S. For example:

- In the United Kingdom, non-attorney mediators, often with backgrounds in human resources or industrial relations, are utilized to resolve employee-employer conflicts. The UK places more emphasis on ensuring that mediators have the necessary skills to understand the issues at hand rather than focusing on legal training.
- In Australia, workplace disputes are frequently mediated by professionals specializing in industrial relations or human resource management. Mediation in Australia is a common method for resolving conflicts before they escalate to formal litigation or industrial action.
- In many European Union countries, non-attorney mediators, often with backgrounds in business, industrial relations, or organizational psychology, mediate workplace and commercial disputes. ADR is strongly promoted across the EU, and the role of non-attorney mediators continues to grow as mediation becomes more widely adopted.

### **Training of Non-Attorney Mediators**

The training of non-attorney mediators is a critical aspect of the mediation process. Although non-attorney mediators do not need legal training, they must possess specific skills and knowledge to manage the mediation process and facilitate conflict resolution effectively.

Key skills for non-attorney mediators include active listening, conflict management, negotiation, and emotional intelligence. They must be adept at facilitating communication, managing high-stress situations, and maintaining neutrality. These skills are typically honed through specialized training programs, which may involve coursework, role-playing exercises, and hands-on practice.

Non-attorney mediators are also trained to be impartial, avoiding taking sides and fostering a collaborative problem-solving approach. They must understand the emotional and psychological factors that influence a dispute and guide the parties toward mutually beneficial solutions.

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Workplace mediators, for example, might undergo training in labor laws, employee rights, and organizational behavior. Training in community mediation may focus on local social dynamics, community organizing, and restorative justice principles.

Although non-attorney mediators are not expected to offer legal advice or representation, they are generally required to have a basic understanding of relevant laws and regulations in the area in which they mediate. In family law, for example, mediators should be familiar with child custody laws; in workplace disputes, they should have a basic understanding of employment rights and labor laws. This knowledge ensures that the solutions reached are legally viable, even though the mediator is not providing legal counsel.

In many jurisdictions, non-attorney mediators must undergo formal certification or accreditation processes. These programs may involve educational courses, training workshops, and a specific number of supervised mediation hours. Accreditation ensures that mediators meet professional standards and are capable of handling complex disputes effectively. Certification bodies like the American Arbitration Association (AAA) and the Association for Conflict Resolution (ACR) offer credentials for mediators, and similar organizations exist globally.

### **Considerations to Keep in Mind**

You have the legal right to choose not to retain an attorney to mediate your dispute, as long as mediation is voluntary and not required by a court order or specific contractual agreement. However, depending on the dispute's complexity and stage, several factors should be considered:

- If the dispute has not escalated to formal litigation or arbitration, you can engage a mediator directly without an attorney. This is often a cost-effective and informal route, particularly for small claims, personal issues, or neighborhood disputes where involving an attorney might escalate tensions and harm relationships.
- In some jurisdictions, courts may require mediation as part of the litigation process. While you are not legally obligated to have an attorney, having legal representation can help protect your rights and interests, especially in complex cases.
- If your contract requires mediation before pursuing litigation or arbitration, you're typically not required to involve an attorney unless specified in the contract. However, consulting an attorney beforehand to understand your legal position may be beneficial.

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- In disputes involving specialized knowledge, such as intellectual property or business contracts, consulting an attorney can be wise, even if it's not legally required.
- For more complex disputes, seeking legal counsel is generally advisable.

If the dispute involves binding agreements, like a union contract, or if the other party is represented by an attorney, hiring your lawyer can level the playing field. Ultimately, while you can legally mediate without an attorney, the decision should be based on the complexity and stakes of the dispute.

## Conclusion

Non-attorney mediators play a vital role in resolving a wide range of disputes in the United States and internationally. From family law to workplace conflicts, non-attorney mediators help alleviate court burdens and foster collaborative solutions. While they do not require legal training, non-attorney mediators must possess specific skills, including conflict resolution expertise and a basic understanding of the relevant legal framework. Through targeted training and certification, non-attorney mediators are well-equipped to navigate complex disputes and facilitate productive resolutions.

\* Note: A pdf copy of this article can be found at:

[https://www.mcl-associates.com/downloads/resolving\\_issues\\_with\\_your\\_boss\\_part9.pdf](https://www.mcl-associates.com/downloads/resolving_issues_with_your_boss_part9.pdf)

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