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What Litigators Should Know About the Mediation Process

The word mediation is frequently used by litigators, but it often describes different processes. For example, the Delaware County Court of Common Pleas uses a senior judge to help settle cases and his efforts are commonly referred to as mediation. In a conference that might last 45 minutes, he speaks to attorneys after carefully reviewing their memoranda. He then might speak to each side separately, evaluating the strengths of each case and trying to lower expectations on each side to move them closer to a settlement. The back and forth between the attorneys is about numbers, and the willingness to move on these numbers is based on an evaluation by the parties of potential outcomes in court. The judge's assessment of those outcomes influences the parties to adjust their initial demands and constitutes the force that moves them to agreement. Further, attorneys' respect for this judge increases the value of his opinion and further bolsters his successes. This kind of mediation is usually called evaluative, because the mediator assesses the value of the case.



Judge Stephanie H. Klein
(Ret.)

Compare evaluative mediation to the definition of mediation in the Model Standards of Conduct for Mediators, adopted by the American Bar Association dispute resolution section, the Association for Conflict Association, and the American Bar Association. This kind of mediation is usually called facilitative. Here mediation is defined as a "process in which a third party facilitates communication and negotiation and promotes voluntary decision-making by the parties to the dispute." Further, "mediation serves various purposes, including providing the opportunity to parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible

solutions and reach mutually satisfactory agreements, when desired." [READ MORE](#)

To schedule a mediation or arbitration with [Judge Klein](#) or any of our [neutrals](#), please email mcarney@adroptions.com or click below:

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