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Understanding Precedes Resolution.

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Publication Information

Article: Mediation Is Not Informal Litigation	HM-Article #013
Originally Published: 7/30/26	

Mediation Is Not Informal Litigation

One of the most consequential features of Maryland mediation is found in Title 17 of the Maryland Rules.

Title 17 does not define a mediator as a junior judge, legal adviser, or settlement authority. It defines mediation as a process in which impartial mediators help participants reach their own voluntary agreement without providing legal advice.

A mediator may help identify issues, explore needs and options, and record points of agreement. But the mediator does not decide the dispute, evaluate who has the stronger case, recommend settlement terms, or pressure the participants toward resolution.

That distinction is not merely procedural. It protects the identity of mediation as a separate discipline.

Litigation asks:

What result does the law authorize?

Mediation can ask:

What do the participants understand, need, and voluntarily choose?

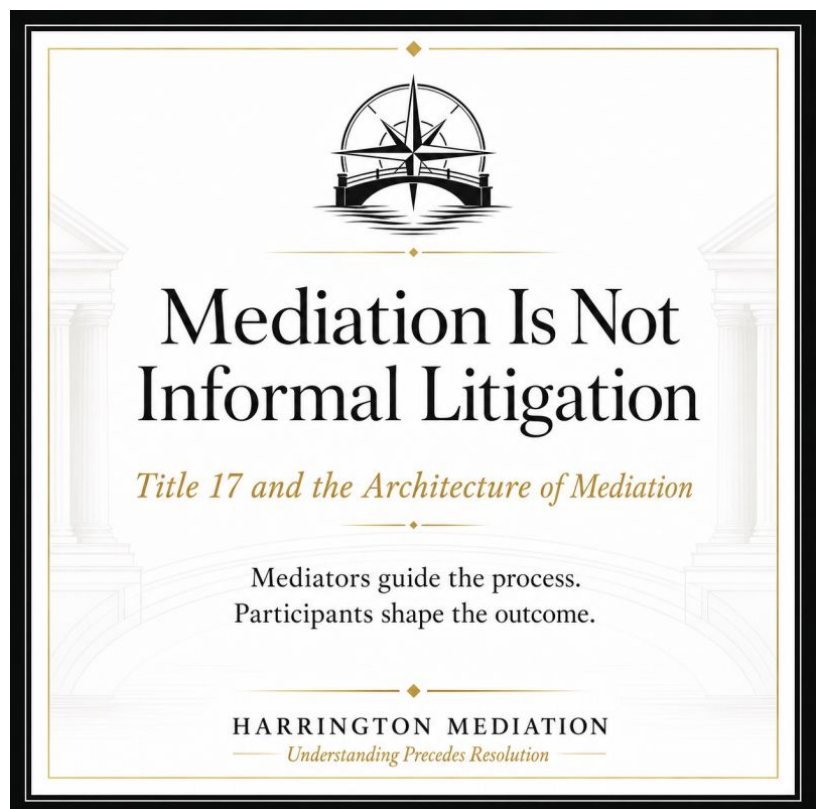
Those questions can overlap, but they are not identical.

Mediation permits people to tolerate ambiguity before forcing certainty. It allows participants to examine the relational, practical, emotional, financial, and human dimensions of conflict—not merely the legal claims attached to it.

Maryland's framework also reflects this distinction in its professional qualifications. Court-approved civil mediators must satisfy training, experience, ethics, continuing-education, and monitoring standards, but general mediator designation is not restricted exclusively to attorneys. By contrast, certain non-mediation ADR functions may require legal experience or equivalent specialized expertise.

This is part of what makes mediation distinctive:

The mediator does not replace the participants' judgment. The mediator protects the process through which their judgment can emerge.



In Practice

Participants often enter mediation expecting an informal version of court, where someone will determine who is right or propose the "best" solution. A mediator can help establish appropriate expectations by explaining that mediation is a participant-centered process, not a decision-making forum. Throughout the session, focus on facilitating productive dialogue, encouraging thoughtful exploration of options, and protecting each participant's ability to make voluntary, informed decisions. When participants understand the purpose of mediation, they are better equipped to engage collaboratively rather than defensively.

Reflection Questions

- How does mediation differ from litigation in both purpose and process?
- Why is it important for participants—not the mediator—to retain responsibility for the decisions they make?
- How might a conversation change when the goal shifts from proving who is right to understanding what is needed?
- What value is created when people are given the opportunity to explore conflict before rushing toward resolution?

Key Takeaway

Mediation is a distinct discipline, not a simplified form of litigation. Rather than determining outcomes or applying legal authority, mediators protect a process that empowers participants to explore their concerns, understand one another, and make voluntary decisions. By preserving self-determination and facilitating meaningful dialogue, mediation offers a pathway to resolution that extends beyond legal positions to address the broader human dimensions of conflict.

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This article is provided for educational purposes only and is intended to encourage thoughtful reflection about communication, conflict, and mediation. It is not legal advice, psychological counseling, or mental health treatment.

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