

# Restorative Mediation

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In the past ten years, a number of different mediation styles and techniques have been developed. For example, evaluative mediation occurs when the mediator, usually a retired judge, gives an opinion on how the dispute should be resolved. Facilitative mediation describes a process where the mediator manages process, but does not directly evaluate the parties' perspectives. Transformative mediation measures outcome not by whether the dispute is settled, but by the degree to which there has been party empowerment and recognition. To these processes, I add a style that I call restorative mediation. Restorative mediation is a mediation process that uses restorative justice principles to guide process and measure outcome.

Restorative justice is a way of dealing with disputes and conflicts. A process is said to be restorative when three events occur. First, the parties are able to acknowledge that a dispute exists and are able to share how they experienced the dispute with each other. Second, the parties are able to talk about how to make things as right as possible between themselves. Third, the parties talk about the future to prevent the dispute from occurring again and to rebuild trust.

Restorative mediation injects restorative justice principles into the mediation process. In restorative mediation, the mediator will help the parties acknowledge injustices and wrongs, work to make things right for all sides, and focus on a future without a reoccurrence of the dispute. Rebuilding trust is a paramount objective. Restorative mediation goes beyond just settling a case or resolving a dispute. A successful restorative mediation will reconcile the interests of the parties and will reconcile any underlying injustices.

To see how restorative mediation differs from traditional legal mediation, consider how an auto accident might be handled. In the typical case, the injured party seeks out a lawyer who files a lawsuit. The other party, when served with the complaint, turns the matter over to the insurance company. The insurance company selects an attorney off its list of approved defense counsel and that lawyer defends the case. At some point in the process, the two lawyers decide to mediate the case. In the traditional mediation, they will hire a mediator and a mediation session will be scheduled. At that session, the defendant, the person that caused the accident, will not be present. Instead, the defense attorney will be present with the insurance company representative, usually a claims adjuster. The mediation will focus on the cause of the accident, the damages, the likelihood of success at trial, how current juries are valuing similar cases, and ultimately what the value of the case for settlement should be. In other words, the entire discussion is about money. Not surprisingly, the injured party does not receive much personal satisfaction from the process and may feel re-victimized.

In a restorative mediation, the injured party, the defendant, and the claims adjuster would be present, along with the lawyers. The mediator would, through a controlled restorative justice process, have the injured party and the defendant exchange perspectives on how they each experienced the accident. When everyone was satisfied that the wrong had been acknowledged, the mediator would ask the injured party and his or her lawyer how things could be made right.

The adjuster, with the assistance of defense counsel, would take on the task of negotiating a resolution that makes things as right as possible for all parties. Assuming agreement is reached, which it usually is, the injured party and the defendant talk about the future. What, if anything, can be done to prevent this accident from occurring again?

Superficially, the same result seems to occur: The case is settled. The restorative mediation works a deeper resolution, however. First, the primary parties, the injured party and the defendant share their experiences. I have found that this by itself is a powerful and positive process for both parties. The injured party does not feel like his or her injuries are reducible to dollars, and the defendant has an opportunity to take personal responsibility for the problem. Second, the negotiation is set in the context of making things right, not in the context of a distributive negotiation. If the parties are encouraged to make things right, the bitterness of negotiation over things that cannot be valued is avoided. The result is often a happier injured party and a reduced monetary settlement for the insurance company. Finally, by talking about the future, the parties can address issues such as driver distraction, intoxication, or physical impairments that, if not addressed, might cause a future accident. The insurance company certainly benefits from this discussion.

Restorative mediation can be applied in virtually any dispute that is amenable to mediation. It is a powerful process for restoring relationships and building strong, safe communities.