What Happens During Mediation in a Texas Personal Injury Case?

A Neutral Mediator Helps Both Sides Negotiate, but You Decide Whether to Settle

A mediation notice can be unsettling when your Texas personal injury lawsuit has already dragged on for months. You may still be dealing with pain, medical bills, and time away from work. Now a court order says you must sit down with the other side and someone called a mediator. Many injured people wonder whether this one meeting will decide what their case is worth and other important details about their lawsuit.

Mediation deserves careful preparation, since most injury lawsuits end with a settlement instead of a trial verdict. In many Texas courts, mediation is a required step before trial, and it's often where those settlements come together. What happens in that room can shape how much you recover and how long you wait for the money.

For more than 30 years, Smith & Hassler has represented injured people and their families in Houston personal injury cases. We prepare clients for mediation long before the session begins. That work includes gathering medical records, bills, and proof of lost wages. It also means explaining the insurance company's likely arguments so nothing catches you off guard.

Mediation at a Glance

- **A Judge Can Order It** – A Texas court can refer a pending lawsuit to mediation on its own or at either side's request.
- **You Can Object** – A party can file a written objection within 10 days of the court's notice, and the judge decides whether it has a reasonable basis.
- **The Mediator Doesn't Decide** – A mediator can't impose a decision or pressure anyone into a settlement.
- **What You Say Stays Private** – Communications made during mediation are generally confidential and can't be used as evidence against you.
- **A Signed Deal Is Binding** – A written settlement agreement can be enforced like any other contract.

What Is Mediation in a Texas Personal Injury Case?

Mediation is a private meeting involving both sides of a lawsuit led by a neutral person called a mediator. Texas law describes the mediator's role as helping the parties communicate. The goal is to reach a settlement and resolve your lawsuit for a set amount of money without going to trial. The mediator doesn't work for you or for the insurance company.

A mediator isn't a judge and can't decide your case. The same statute bars the mediator from imposing a decision. Many mediators are experienced lawyers or retired judges. Court-appointed mediators generally need 40 hours of training.

Mediation usually takes place after a lawsuit is filed and both sides have exchanged evidence. That exchange is called discovery (the formal process of sharing documents and sworn testimony). By then, both sides usually understand the injuries and costs better. In some cases, both sides agree to mediate before a lawsuit is filed, but a judge can't order it at that stage. A detailed demand letter often sets the starting point for those talks.

Can a Texas Judge Order You to Go to Mediation?

Yes, a Texas judge can send your lawsuit to mediation. A court may make that referral on its own. Either side can also ask the court to make that referral. The judge must talk with the parties about which process fits the case best. In many Texas courts, mediation is a routine step before trial.

You do have a chance to object. The court must first notify the parties, and any party may then file a written objection within 10 days. If the judge finds a reasonable basis for the objection, the court may not make the referral. Many injured people still welcome mediation as a real chance to settle.

Houston courts take mediation seriously. A mediation referral order form from the Harris County District Clerk calls mediation a mandatory, non-binding settlement conference. Non-binding means no one has to accept a deal. The form also requires mediation to be finished before the trial date. Judges can use their own orders, so your lawyer will review the exact terms that apply in your case.

Do You Have to Attend Mediation in Person?

In most cases, you should plan to attend the entire mediation session. The Harris County District Clerk's referral order form requires named parties to be present during the whole mediation. As the person who filed the lawsuit, you're a named party. The order in your case will spell out who must attend and where the session takes place.

The other side must also send someone who can make decisions. The Harris County form requires each corporate party to send a person with authority to negotiate a settlement. In many injury cases, the real decision-maker is the insurance company. Its representative is often an adjuster (an insurance company employee who handles claims). The adjuster may attend in person or join by phone or video.

Some mediations take place by video when the court and the parties agree. Even then, your participation matters. You'll hear the insurance company's arguments directly and can weigh offers as they arrive. We explain each move and help you decide how to respond. Skipping a court-ordered mediation can also lead to penalties (sanctions) from the judge.

What Happens on the Day of Mediation?

Most personal injury mediations follow a similar pattern, though each mediator has a personal style. Many sessions last several hours, and some run into the evening. Here's how a typical day can unfold:

- **Opening Session** – The mediator may meet with everyone together to explain the ground rules. Some mediators skip this joint meeting in injury cases to keep tensions low.
- **Private Caucuses** – Each side usually moves to a separate room. A caucus (a private meeting between the mediator and one side) lets you speak freely with your lawyer and the mediator.
- **Back-and-forth Offers** – The mediator carries offers and counteroffers between the rooms. Early numbers are often far apart, and movement can be slow.
- **Reality Checks** – The mediator may point out weak spots in each side's case. These talks help both sides think about the risks of going to trial.
- **Putting a Deal in Writing** – If the sides reach an agreement, the lawyers often write and sign the key terms before anyone leaves.

Patience matters on mediation day. The first offer from an insurance company is often low by design. We help you read each move and decide when to hold firm. It also helps to arrive rested and to bring a clear sense of your priorities. Those steps can help you stay focused through a long day of negotiations that may not move quickly.

Is What You Say During Mediation Kept Confidential?

Yes. Confidentiality is one of the main reasons mediation works. Texas law makes communications during mediation generally confidential. They also may not be used as evidence against you in court. That protection applies whether mediation happens before or after a lawsuit is filed. It lets both sides talk openly about strengths, weaknesses, and possible numbers.

The mediator has strict duties too. The mediator may not repeat your private comments without permission. The same rule also shields everyone's conduct during mediation from the judge. Your private strategy stays between you, your lawyer, and the mediator.

This privacy protection has limits. Evidence that exists outside mediation can usually still be used. For example, medical records and crash photos stay usable even if someone discusses them during the session. We help you decide what to share with the mediator and when.

What Arguments Will the Insurance Company Make at Mediation?

Insurance companies come to mediation ready to argue that your claim is worth less than you believe. Knowing these arguments ahead of time can help you stay calm and focused. Common arguments include:

- **Shared Fault** – The insurance company may claim you caused part of the accident. You can't recover if you're more than 50 percent responsible.
- **Reduced Recovery** – Your compensation shrinks by your share of the blame. This rule is part of Texas modified comparative fault, which can reduce or bar compensation based on your degree of fault.
- **Gaps in Medical Care** – Adjusters often argue that a gap in treatment proves your injuries were minor.
- **Pre-existing Conditions** – The insurance company may blame your pain on an old injury or normal aging rather than the accident.
- **Unnecessary Treatment** – The other side may claim your medical bills were too high or your treatment went on too long.

The best answer to these arguments is evidence gathered long before mediation. Medical records, doctor opinions, and wage documents can show the real impact of your injuries. A strong response to each argument can put you in a better position to negotiate. It also helps you judge whether an offer reflects the true value of your claim. Let your lawyer handle every conversation with the insurance company.

Do You Have to Accept a Settlement Offer at Mediation?

No, you don't have to accept any offer made at mediation. A mediator may not force or pressure anyone to agree, and the mediator can't decide the issues for you. The choice to settle or keep fighting belongs to you.

Your lawyer will give you advice, but you make the final call. A smart settlement decision weighs the offer against the likely result at trial. It also considers how long a trial could take and the risk of losing. A guaranteed payment now can sometimes outweigh a larger but uncertain verdict later. In other cases, the offer is too low and trial is the better path.

Future costs deserve special attention before you agree to any number. Once you settle, you generally can't reopen the claim if your injuries get worse. Serious injuries may require a careful look at lifetime medical care and lost earning ability. Taking time to review an offer with your lawyer can protect you from settling for less than your losses.

What Happens If You Sign a Settlement Agreement at Mediation?

A signed mediation agreement carries real legal weight. A written settlement can be enforced like any other legally binding contract. The court may also include the agreement's terms in its final ruling on the case. In most situations, you should treat your signature at mediation as a final decision.

The mediation agreement usually includes a release (a promise to drop further claims in exchange for payment). It may also set deadlines for payment and for dismissing the lawsuit.

Read each term carefully with your lawyer before you sign. Questions about liens, future medical bills, and payment timing should be answered before the session ends.

Part of a settlement may go toward medical liens. A lien is a legal claim on your financial settlement for unpaid medical bills. A hospital may hold this kind of lien in some cases. It generally applies when you were admitted within 72 hours of the accident. That lien can then attach to settlement money. We work to resolve these claims so more of the settlement reaches you.

What Happens If Mediation Does Not End in a Settlement?

Some cases don't settle on mediation day. When both sides can't agree, the mediator may declare an impasse (a point where neither side will move further). The Harris County referral form says the court then learns only whether the case settled. Your case then returns to the court's regular schedule, and the scheduled trial date usually stays in place.

An impasse doesn't close the door on a settlement. Offers often keep moving in the days or weeks after mediation. Some mediators follow up with both sides by phone. Others offer a mediator's proposal (a suggested settlement amount that each side can accept or reject in private). Many cases settle later as the trial date gets closer and the risks become clearer.

If no deal comes together, your case moves forward through the personal injury lawsuit process. The Harris County form states that a case that doesn't settle will go to trial as scheduled. Trial preparation may include expert testimony and depositions (sworn interviews recorded before trial). Strong preparation for mediation can also lay the groundwork for a strong trial.

How Can a Houston Personal Injury Lawyer Help You Prepare for Mediation?

Mediation in a Texas personal injury case can move fast once the session begins. Offers change by the hour, and insurance companies send adjusters and lawyers who negotiate for a living. Courts in Houston often set strict rules about who must attend and when mediation must happen. One wrong move can leave money on the table or lock you into a deal you regret.

Our team builds your case well before mediation day. We gather the medical records, bills, and wage losses that show the full cost of your injuries. We prepare you for the insurance company's arguments before you walk into the room. During the session, we stay by your side and explain every offer. If the case doesn't settle, we keep pushing toward trial.

If your Houston personal injury lawsuit is headed to mediation, contact us for a free consultation. Our case results show what a determined legal team can accomplish for injured Texans. Under our contingency fee arrangement, there are no upfront costs, and we're paid only if you receive compensation. Our legal team is passionate, professional, and prepared to win. Make the right call before you take a seat at the mediation table.