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Subject : What is a binding mediation agreement?

I don't know if this is useful to us but this morning I got curious about the bankruptcy Judges "Oxymoron" comment and on the just answer website I asked;

What is wrong with an alternative dispute resolution that is going to take place titled "Binding Mediation" or "Binding Mediation Agreement" and not "Med-Arb/Arb-Med Agreement" or "Med-Arb/Arb-Med Contract." and no offers/counteroffers take place but rather an award is issued?

This is the response I got from an attorney who said they specialize in handling alternative dispute resolutions;

First, a "Binding Mediation Agreement" is typically offered immediately after a successful mediation process and not before.

If an alternative dispute resolution process is titled "Binding Mediation" instead of "Med-Arb/Arb-Med Agreement" or "Med-Arb/Arb-Med Contract," and involves the issuance of an award without any offers or counteroffers taking place, several issues arise:

- 1 Lack of Clarity: The use of the term "Binding Mediation" without clear delineation can lead to confusion about the actual process being employed. Without explicit reference to mediation followed by binding decision-making, participants may have different expectations and misunderstandings about the nature and outcomes of the process.
- 2 Inconsistency with Traditional Mediation: Traditional mediation involves a neutral mediator facilitating negotiations and assisting parties in reaching a voluntary agreement. The absence of offers and counteroffers in a "Binding Mediation" process deviates from this established practice and may not provide the parties with sufficient opportunity to engage in active negotiation and find mutually agreeable solutions.

3 Limited Party Autonomy: In a successful mediation process, the parties have control over the outcome and actively participate in decision-making. However, if a binding decision or award is issued without the parties' input through offers and counteroffers, their ability to shape the resolution is significantly diminished. This can lead to dissatisfaction and a sense of loss of control over the final outcome.

4 Potential for Imbalance: The absence of offers and counteroffers can create an imbalance between the parties, as it may prevent them from fully advocating for their interests and exploring various options. This can be particularly problematic if one party holds more power or has more resources, as they may exert undue influence in the process.

5 Limited Opportunity for Creative Solutions: Offers and counteroffers are crucial elements of negotiation, allowing parties to present alternatives and explore creative solutions. By bypassing this stage and moving directly to an award, the potential for finding unique and tailored resolutions to the dispute is reduced.

6 Potential for Unfair Outcomes: The lack of offers and counteroffers and the issuance of an award without comprehensive negotiation may result in outcomes that do not adequately address the parties' underlying interests or concerns. It may fail to consider alternative perspectives, compromise, or consensus-building.

7 Limited Documentation and Transparency: Traditional mediation processes typically encourage open communication and the creation of a comprehensive settlement agreement that reflects the parties' intentions. However, if a binding decision or award is issued without offers and counteroffers, there may be limited documentation or transparency regarding the reasoning and basis for the decision, potentially compromising the integrity and understanding of the final resolution.

In summary, an alternative dispute resolution process titled "Binding Mediation" that skips offers and counteroffers and directly issues an award deviates from the established practices of mediation. It raises concerns regarding clarity, party autonomy, negotiation opportunities, fairness, and transparency.