

WHY WOULD WE WANT AN ATTORNEY WHEN WE HAVE A MEDIATOR?

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When you make decisions about dividing property, selling assets, etc., you could be affecting your legal rights or obligations in ways you did not anticipate.

You desperately want to stay out of court and work on finding a reasonable, even creative, solution to your conflict. Lawyers intimidate you. And you don't want to line their pockets with your hard-earned savings. So you've selected a mediator who, you are confident, can help you sit down and accomplish what at first had seemed a daunting, if not impossible, task.

But now your mediator is suggesting that each of you should confer with an attorney during the mediation process. You're confused. Why are you mediating? Isn't this going to cost a great deal of money? What if the other party's lawyer tells him or her that there's a good chance of winning if the case goes to court?

A mediator shall not give legal advice.

There is a very good reason why your mediator encourages you to consult with a lawyer: Mediators have an ethical duty to be impartial. If your mediator provides legal advice or offers a legal opinion, she will be influencing the outcome of the parties' negotiation in favor of one or the other.

Legal advisors or consultants make good mediation companions.

A lawyer, on the other hand, can act as your advisor and help you become more effective and efficient in the mediation process without pushing you toward the courthouse steps.

If consulted in the initial stages of mediation, a legal advisor can:

- Explain the law to you as it defines your rights and obligations and describe possible outcomes if you were to go to court.
- Identify the legal issues, help you formulate alternative solutions, and reality test if you are too firm in your bargaining position.

During the mediation process, your legal advisor can:

- Help you select experts during the mediation process in the areas of business valuation, financial planning, actuarial analysis, and property appraisals, in the event consultation with such experts becomes necessary. *Such consultations can ultimately save you thousands of dollars!*
- Explain the legal and financial implications of your decisions as interim agreements are reached, and propose alternative solutions.
- Review the Memorandum of Understanding drafted by your mediator to ensure that all the relevant legal issues have been addressed, that the agreement reflects your understanding, and that there will be no unintended consequences (e.g., tax liabilities) arising from the arrangements agreed to.
- Prepare the legal papers necessary for filing with the court.

How to find a lawyer to assist in the mediation process

In order to find a lawyer who is willing to provide advisory or consulting services throughout your mediation, you will need to look for lawyers who provide “unbundled services.” This term simply means that the lawyer offers discrete services (e.g., document review; drafting, etc.) – as opposed to, or in addition to, full representation. One way to find a lawyer who provides unbundled services is by referral from a friend, associate, or family member. Another way is to contact your local bar association. Many family lawyers who are also mediators will act in an advisory capacity. Your mediator may also recommend several consulting lawyers.

Your legal advisor should meet these qualifications:

*Specializes in family law or, more specifically, in the area of law affecting your interests (e.g., divorce, elder law, estates, family business).

*Licensed to practice law in your state.

*Has had experience working with parties in mediation.

*Familiar with facilitative mediation – as distinguished from caucus style (shuttle) mediation, settlement conferences, and evaluative mediation.

*Understands and supports his or her client's goals in achieving a mutually satisfying resolution, even if he or she believes that the client would fare better in court.

Related Articles & Pamphlets

The Northwest Women's Law Center memo, "Working With A Lawyer" (<http://www.nwwlc.org/selfhelp/publications/docs/WorkingWithLawyerTemplate/pdf>), which includes tips for finding and working with an attorney.

Mediators Forrest Mosten and Lee Borden have authored another useful article, "Unbundled Services" (<http://www.zorza.net/resources/Ethics/mosten-borden.htm>).

Washington Bar Association consumer pamphlets:

- Consulting a Lawyer
(<http://www.wsba.org/media/publications/pamphlets/lawyers.htm>)
- Legal Fees (<http://www.wsba.org/media/publications/pamphlets/legalfees.htm>)
- Communicating with Your Lawyer
(<http://www.wsba.org/media/publications/pamphlets/communicatingwithyourlawyer.pdf>)