

Effectively Preparing for Mediation

July 13, 2012

Nearly all contested divorces go to mediation. Sometimes the parties volunteer to attend mediation very early in the process. Other times they do not attend mediation until a judge orders them to do so. Either way, one can safely assume that a contested divorce or domestic matter will involve mediation at one point or another. This is a good thing. Mediation is a very successful process as 70% to 80% of cases that go to mediation settle.

Mediation is a very informal process. It gives a lot of flexibility to everyone involved and, unlike court hearings, are not bound by complex rules of procedure. However, because mediation is so informal, many parties and sometimes even attorneys do not prepare for mediation as well as they should. While one should not prepare for mediation as thoroughly as one prepares for trial, taking a handful of basic actions can make the difference in whether a case settles. With that in mind, below are some tips on how to effectively prepare for your mediation session.

- Have all documentation ready. Too often mediation stops because one side wants to review documentation relevant to some issue of contention and the other side did not bring the documents with them. This often arises in child support disputes, allocation of marital debts, or dividing family owned businesses. If you think child support should be increased or decreased because you pay for day-care, then bring documentation that shows how much day-care costs. As a general rule, when in doubt, bring it with you and bring an extra copy.
- Have the mediator's payment ready. Most mediators charge per hour and most require that payment is made at the conclusion of the session. Good mediators put a lot of effort into their cases and the fair thing to do is compensate them for their time. Also, most if not all mediation contracts specify that payment is due at the end of the session. Failure to pay could get you in trouble with the judge.
- Allot plenty of time to mediate. Most mediations take three to six hours. A few can be completed within one hour, and on occasion some mediations can last all day. It is important to allot plenty of time out of your schedule for mediation. You do not want to miss an opportunity to resolve your case because of a time constraint. If you are bound by a time constraint that you cannot avoid, inform the mediator and the other side prior to or at the beginning of the session so that accommodations can be made.
- Discuss the mediation process with your attorney. Unfortunately, many attorneys do not prepare their clients for mediation very well. Informing a client that mediation "is a process where we try to settle the case" is accurate, but insufficient to really prepare the client. As the client, it may be necessary to use detailed questions to prod your attorney for more information. Find out your attorney's experience with mediation. What is his or her general attitude towards mediation? How does he or she prefer to approach mediation? Will the attorney speak for you or are you expected to do the bulk of the speaking yourself? Has he or she worked with this mediator before? If so, how did those cases go?

- Know what you can and cannot agree to. In positive, forward moving mediations the parties want to reach a resolution. They want the case settled. How they get there is the problem and that is where a good mediator can make all of the difference. However, no matter how much you would really like your case to settle, it is extremely important that you know and understand what you can and cannot agree to. You need to know what will and will not work. For example, agreeing to pay \$1,500 per month for alimony will not work if you only earn \$1,300 per month. Also, agreeing to refinance the house will not work if you know you cannot get approved for a refinance. Agreeing to things you cannot comply with is the quickest way to ensure that you are back in court fighting about things again. So when preparing for mediation, take some time and learn what you are and are not capable of agreeing to.
- Evaluate your alternatives. As successful as mediation can be, not all cases settle. What is your plan if mediation does not result in a settlement? What will the rest of the contested divorce process look like? What will the costs be? What will a judge likely decide in your case? In our article “How to Negotiate Better in Three Steps” we called this developing your BATNA, or Best Alternative to a Negotiated Agreement. Developing your BATNA will serve two big functions. First, it will help you stay grounded during the mediation. It gives you an alternative to compare and contrast with the proposed settlement and help you decide whether the proposed settlement is good for you. Second, it will keep you from feeling locked into mediation. Mediation is a voluntary process. For it to stay voluntary it is important for you to know that you have alternatives if mediation is not working for you.
- Leave blame at home. Divorce is a hard experience. People have said and done things they should not have done, emotions are running high, and feelings are hurt. This comes out at mediation and that is ok. However, it is important that the “bad blood” does not derail the mediation process. Leave as much of the blame at home as you can and try to take a problem solving approach rather than a fighting approach to your case. This is hard thing to do during a divorce. However, it is essential if you want to get the most out of mediation. Stay focused on what you want out of the process – a negotiated resolution. Fighting and blaming is not what will get you there.

I hope these tips will help you prepare to get the most out of your mediation. If you have any questions or would like to know more about mediation, please do not hesitate to contact our office.

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