



HOW TO PREPARE FOR YOUR FIRST DIVORCE MEDIATION SESSION

William Ury, author of "Getting to Yes" and "Getting Past No," says, "The most stable and satisfactory outcomes, even for the stronger party, are usually those achieved by negotiation."

With such important outcomes, why would you leave your negotiations to chance?

Whenever you enter into a negotiation, be prepared for a variety of discussions and outcomes. Negotiations should be focused on problem solving and should be interest-based rather than intimidating, threatening, or power-wielding. Your goal should be to completely resolve the underlying conflict, so decide beforehand how you are going to communicate your wants, needs, and interests.

And have no doubts about it - Divorce Mediation is a negotiation.

WHAT IS MEDIATION?

Mediation is the use of a neutral third party, called a mediator, to help you and your spouse create an agreement, rather than letting the judge decide how to resolve any issues. The mediator is specially trained to help you identify important issues, keep you focused on finding solutions, and encourage you to voice any concerns.

Two formal definitions of mediation are:

1. According to section 44.1011(2), Florida Statutes (2012), mediation is a process whereby a neutral third person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties.

2. According to Florida Rule for Certified and Court-Appointed Mediators 10.210, mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

Mediation frequently is, but does not have to be, in connection with a lawsuit. While mediation may be ordered by the court, it may also be voluntarily initiated by the parties either before or after filing a lawsuit. Further, there are statutes that call for mediation when no lawsuit is pending.

The court may order a part or all of a case to mediation. In that circumstance, the parties must attend the mediation, but they are not required to come to an agreement. If a party fails to appear at a scheduled mediation without first having obtained the court's permission, sanctions may be imposed by an opposing party's motion or on the court's own motion.

Mediation is conducted in accordance with statutes, rules, and procedures.

There are statutory provisions, ethical rules, and procedural rules that apply to court-ordered mediations and to all certified mediators regardless of the setting. Although you are not represented by an attorney, you are expected to familiarize yourselves with these statutes and rules. The mediator can help you understand all of these laws and rules.

Mediation is an informal environment with less conflict. It is intended to find workable solutions and is used to create win-win results for the persons who are in the dispute. Meanwhile, litigation involves legal and factual determinations that establish liability.

WHAT DOES A MEDIATOR DO?

A mediator can help:

- Retract premature judgments
- Discover beyond the "single" answer
- Expand the pie
- Explain the other person's interests and concerns

A mediator can also act as a sounding board. Ask yourself how you would react if the other person made the settlement offer you're asking the mediator to convey.

WHAT ARE THE BENEFITS OF MEDIATION?

Mediation advantages at a glance:

- It is economical
- It is efficient
- It is confidential
- It allows you to determine the results, rather than a judge
- It addresses your interests and concerns, rather than liability
- It eliminates the uncertainty of trial. If the judge decides your case, you have lost control.

Additional benefits include:

- You and your spouse may be unable to put aside bad feelings that are preventing you from focusing on the real issues. As a neutral party who is specially trained, the mediator may be able to help you successfully break through those obstacles.
- Since mediation is confidential, you can freely express your thoughts and feelings without fear that they will be used against you in court.
- Since mediation is completely voluntary, you decide what you are willing to accept.
- You control the time devoted to mediation. If you are flexible, you may resolve all issues quickly. If you don't feel mediation is helping, you can decide to end it. The mediator can't force any decisions upon you.
- Generally, mediation has a high success rate of resolving issues. Therefore, most judges require or encourage the use of mediation prior to trial. Even if you do not resolve all the issues, mediation can limit the issues the judge needs to decide. Mediation may result in less cost and stress than litigation.
- Mediation may result in an agreement within a matter of hours or days, rather than months or years of court proceedings. As a result, mediation can be less costly in money and emotions for clients. Even if only a partial agreement is reached at mediation, court time and fees required to decide the remaining issues may be less.

HOW DO I PREPARE FOR MEDIATION?

Mediation is only as effective as the preparation you do beforehand. If you just show up with no information, no strategy, or no game plan, what are you really hoping to accomplish?

There are three things you should do to prepare for mediation:

1. **Write down the issues** that need to be resolved and your position on these issues. This exercise is for your benefit. However, you should also consider providing this memorandum beforehand to the mediator.
2. **Know your legal rights and obligations** before starting mediation. Consider consulting an attorney or other expert during your preparations.
3. **Prepare your mindset** to minimize conflict and control your anger. Most problems during divorce occur from miscommunication and angry feelings. Maintain a positive attitude. You have a better chance of resolving conflict if you are determined to do so.

Write Down the Issues

Begin your preparation for mediation by creating a complete list of all the issues that need to be discussed. The best way to do this is to categorize them as follows:

- Parenting
- Division of Property
- Alimony
- Child Support

The next step is to decide your wish list — what do you want and what are you willing to accept? Start by imagining you live in a perfect world and you have a magic wand. If you could wave that magic wand, what would the end of your case look like? What would make you 100 percent happy? Then, sit down and have a moment of reality. You don't live in a perfect world, you don't have a magic wand, and you can't just get anything you want. What is the range of what you are willing to accept? What would make you feel like it's still a win? As you're doing the Wish List exercise, keep your goals in perspective. What really are the most important things?

Also, consider the possible outcomes at trial and how that may affect what you would agree to in mediation. The Judge will never really know what's going on in your case and what is best for your family. It is unrealistic to expect that when the Judge is going to have four to eight hours in most cases to understand everything. The Judge's goal is to narrow the legal issues in that short period of time.

Furthermore, only certain evidence is permitted at trial, so you may not be able to present everything you believe is important. The Judge is also not going to validate you as a person or

as a parent. You are also not going to feel vindicated. Court is not like what you see on television or in the movies.

Write out your proposals. Also, consider how you can most appropriately respond to other proposals. The way you communicate and respond can determine whether the discussions end abruptly or continue productively.

Know Your Legal Rights and Obligations

You can attend mediation without hiring a lawyer to represent you from start to finish. During the mediation process and before signing an agreement, you can meet with a lawyer periodically to understand the law and to decide negotiation strategy. This is a very cost-effective practice, and it will minimize your risks. By working with a lawyer, you will not feel uninformed and will be better prepared for your mediation sessions. The best option is to work with a mediation-friendly lawyer, meaning a lawyer who is comfortable advising you about legal rights and negotiation strategy from the sidelines. Those lawyers are usually trained in mediation and Collaborative Divorce.

Prepare Your Mindset

When upset, your perceptions can be distorted. Your emotions hijack the practical and logical part of your brain, and you may start to think in terms of “all or nothing.” As a result, communication suffers, and assumptions are quickly made and acted upon. You need to prepare your strategy for thinking clearly and taking control of your emotions.

Ultimately, you are in control of your own case. A successful mediation is determined by what's good for you, not what is painful for the other person.

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