

## YOUR MEDIATION

Mediation overview: Perhaps the most important aspect of your case is the mediation process. This is your opportunity to amicably resolve the remaining issues in your case and prevent your case from going to trial. It is always our goal to settle your case amicably out of court. Mediation is often the most effective way to do so. Always remember you and your spouse know what is best for your children, what should be done with any real and personal property, and how best to distribute retirement or other pension funds, amongst other issues. The judge is a stranger to you and your family. Why have a stranger make decisions that will affect you and your family for years to come? Sometimes, if your spouse is unreasonable, there is no other alternative but to seek the courts for relief. If that is the case we are prepared for the fight.

Keep in mind mediation has proved successful in 85% of the cases where it has been used. Mediation is an informal process. Typically the attorneys and clients will be in the same room with the mediator. If this proves to be uncomfortable for you or your spouse we can “caucus”. That means that your spouse and his/her attorney will be in one room and we will be in another. The mediator will then go from room to room with information and/or proposals during the negotiation process.

The mediator is objective he/she is not representing either side. Mediators cannot give legal advice and have no judicial authority. Most likely your mediator will be an attorney or certified court mediator. The mediator is there to help you and your spouse reach a fair and amicable settlement of your case.

We might not be able to settle all of the issues at your mediation. The remaining issues that were not reduced to writing and signed by the parties will then be brought before the court by way of a trial. We could also adjourn the mediation and return to complete it at a later date if the parties feel that they are stuck on a particular issue and want time to think about it. In some instances you might feel it is necessary to discuss a certain issue with an expert (ie: your accountant) prior to agreeing on an issue. The mediation can be adjourned to afford you the time to get those questions resolved. The important thing is that you understand all of the ramifications of your signing the agreement. As your attorney I can counsel you

on the legal aspects of your case but sometimes we may need consult someone who specializes in a particular field to get answers.

It is our goal at mediation to reach a final written and signed settlement of all issues in your case. The agreement will be drafted by the attorneys and the mediator. You will be given ample time to review the agreement prior to signing it.

Getting ready. The following steps will take place in preparation for the mediation.

1. Information gathering. Each side will request information from the other. Neither side can make valid decisions on their case without adequate information. Any information which is relevant to the case will be requested. Be prepared to receive numerous requests for detailed financial information, including requests for tax returns, charge account records, checking account records, etc. Please respond promptly and thoroughly to these requests. The consequence of failure to provide such information may be delay, postponement, sanctions or even cancellation of the mediation.

In addition, appraisals and inventories of personal property will be required.

2. Position Development. We will meet with you prior to the mediation. We will develop a financial statement for you and will be asking for asset and liability documentation. We will develop a “Mediation Notebook” which will contain reference materials for use by us and the mediator. We will develop spreadsheets to track the negotiations. Finally, we will prepare a proposal agreement.

We believe it is essential to the success of the mediation that both sides provide each other with information before we get to the mediation. Your cooperation will assist us in setting the stage for a successful mediation.

Your mediation is approaching. We want you to understand this process so it can be used successfully. Listed below are some warnings, suggestions and information:

1. Eighty-five percent of cases are successfully mediated, so remain optimistic. Those are good odds.
2. If you have been the victim of physical abuse, you may not be a good candidate for mediation. Discuss this with us.
3. Mediation can be arduous. Prepare yourself physically, mentally and spiritually.  
If the session continues past 5:00 p.m., which many of them do, fatigue can play a major role. Be prepared for that.
4. Be prepared to relive the difficulties of the marriage. Be prepared to become angry. It will happen. The key is to keep it under control and refuse to become victimized by it. It may be helpful to bring a counselor or relatively detached friend or family member to help you.
5. Remain patient. Threats to leave the mediation are counterproductive.
6. Refrain from attacking the mediator or your own lawyer over the message they deliver to you.
7. Be creative. Be willing to look at ways to satisfy your spouse's needs. Allow your lawyer to "brainstorm" with you over possible solutions.
8. Be attentive. Negotiation can be extremely difficult to track. You must be attentive to the proceedings.
9. Be thorough. Read the final agreement carefully. This is difficult at the end of the day, but you should stay "in the game" to the end.
10. There are long periods of "down time." Bring reading material or work to do during these periods.
11. The mediation could last well into the night. Make arrangements to be involved until 8:00 p.m. or 9:00 p.m.

12. The mediation process creates pressure and fatigue. In one sense, this is good because it can simulate the pressure and fatigue which arise at trial, facilitating settlement. On the other hand, your agreement must be knowingly and intelligently done and of your own free will. Therefore, if you find yourself getting to the point of feeling under unwanted pressure or fatigue, let us know. We will arrange for a break, or nourishment, or an end to the session.