

Do I Really Need A Mediator?

By Laurel G. Kaufner

Do I have to have a lawyer at a mediation?

Not necessarily. If you have a lawyer already representing your interests in the dispute you would need to discuss that with him/her. If you feel you need legal advice or that you are unqualified or uncomfortable dealing with the issues on your own, then you should consult a lawyer and perhaps hire someone on an hourly basis solely for the purpose of representing you at the mediation. If, on the other hand, you are involved in a dispute that you feel comfortable resolving without legal counsel, keeping in mind that your mediator will not give you legal advice or advocate on your behalf, by all means, make an attempt to resolve it on your own first.

Mediation is a voluntary process that centers on discussions and decision-making, rather than judgment. It is focused on resolving disputes based on the factual circumstances, the needs of the parties and practicality, and not solely on the legal rights of the parties (sometimes, despite those rights). Often, the mere presence of an attorney creates an antagonistic and adversarial atmosphere that impedes resolution rather than assisting it.

What am I actually getting for my money when I hire a mediator?

When you hire a mediator, you are buying the opportunity, through a neutral third party, to evaluate with someone who is an objective "sounding board," your real needs (personal, economic, spiritual, etc.) and to evaluate which dispute resolution process will best help you meet those needs. You are buying the opinions of your mediator and impressions of "your first juror," as to existing information/evidence and that which is non-existent. You are buying an opportunity to become more informed of the risks and benefits involved in resolving or litigating a dispute. You are buying an opportunity to address and resolve differences of opinion or expectation between you and your client, you and other professionals or between several clients (husband and wife, business partners, etc.). In addition, you are buying many things that can't be quantified, unique to your particular dispute, which come with the intervention of an experienced neutral.

Mediators are usually hired because of their perceived ability to resolve a dispute. Mediators don't settle cases, parties do! What you are really buying are choices. The value of a mediator is in his/her expertise in guiding all of the parties involved in a dispute to a point where there are new, real and often difficult choices created. It is up to you to evaluate those choices, in light of the insights you gain through the mediation process, and choose that one which will end the dispute in the manner that brings you the most complete resolution. In getting to that point, whether that choice is to accept a proposed settlement or continue on the path to litigation, you have gotten "your money's worth".

How long should mediation take?

In these days of microwaves, high-speed Internet access, cell phones and cellular fax capability, we have grown used to life happening instantaneously. What we forget is that despite all the fast and furious technology, we remain human beings. We may be more sophisticated overall, but are otherwise no different than we were hundreds of years ago. Our thought processes and decision-making ability have not evolved along with technology and to expect otherwise is to set ourselves up for disappointment, if not failure.

Many people approach mediation as a finite process, allowing only two or three hours, with the expectation that the dispute will either be resolved or it won't, but the process will be complete. In some situations they are correct, but in most cases, this is a mistake that dooms the process to failure. Regardless of the dispute involved, mediation is a personal process that needs to occur in human time. Without exception, at least one of the participants in each mediation will have some very personal issues to confront and assess in making the decisions asked of them. Because the point of mediation is "resolution" rather than merely "settlement", it is unfair and often impossible to rush this.

Although there's usually no need for you to commit in advance to a lengthy mediation session, it is always best to have an open-ended amount of time available when scheduling a mediation, in order to allow for the possibility of prolonged discussions. If you are unable, for whatever reason, to give the process this time in a single session, let your mediator know at the outset, and allow for the possibility of further discussions in the future. Allowing people the ability to process information in their own time, whether at the mediation session or after suspension of the discussions, will lead to greater contentment in resolution and a greater likelihood of finality to the dispute involved.

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