

# Mediation Q & A

*By Laurel Kaufer*

*If mediator gives his/her opinion in a dispute, doesn't that mean he/she's biased?*

No, absolutely not. Mediators form opinions on many issues for many reasons. One of the things you should look to your mediator to do is to help you to evaluate the pros and cons of your position in a dispute and provide you with the information you need in order to make an educated decision about resolution. Your mediator's opinion is critical to this process and will likely be based on the totality of the information from both sides, not merely that of one party. Although the mediator may not be able to disclose the information to you, having an opinion from an unbiased source, based on such information may be very helpful to you in making choices.

*Why did the mediator stop the mediation without resolving the dispute?*

As valuable as it is for a mediator to know how to move cases to resolution, it is equally important, if not more so, for your mediator to recognize when a dispute isn't prepared for resolution and how to move it in the right direction. With the exception of reaching resolution, this is one of the greatest benefits of mediation.

Some of the most successful mediations are those in which the parties never even get to a discussion of money or resolution in the initial mediation session, but evaluate where the case is, where it needs to be and who needs to be involved, in order to achieve the greatest productivity in mediation. At this initial (and sometimes very short) session, the parties and their counsel, if they have counsel, through the guidance of their mediator, develop a plan with specific "homework" to be completed before reconvening on a date certain. This "homework" may mean spending some time and money on investigation or making a more cooperative effort between the parties in sharing existing information. Regardless, once this is done, the dispute is usually postured for a realistic and informed evaluation. Often, once the "homework" is complete, further mediation becomes unnecessary and these matters are able to resolve through the efforts the parties alone.

*Who should attend the mediation?*

Certainly, all parties involved in the interactions that gave rise to the dispute should be involved in the mediation. This helps the mediator crystallize with the parties exactly what happened. A party may also be more candid with a mediator when they know they may be faced with others who know exactly what happened.

In addition, for parties to a dispute, letting go of emotion is often critical to the ability to resolve a dispute. An acknowledgement of damage or expression of remorse from an opposing party or a participant in the interactions that gave rise to the dispute (without any admission of liability, of course) can make the difference. This can't usually be done by anyone but those personally involved in the dispute.

Bringing your witnesses (party, corporate or independent) to a mediation (even if they spend all their time in a separate room), while not always appropriate, can accomplish some important things, particularly when the facts are in dispute or emotions run high. Meeting and speaking with witnesses allows a mediator to provide you with an opinion as to their credibility and the likelihood of their being persuasive with an arbitrator, judge or jury.

Every situation is different and you should talk to your mediator to see what would be appropriate for your mediation!

---

*Laurel G. Kaufer is a retired attorney and full-time professional mediator with Kaufer Mediation Services in Calabasas. She is a member of a number of professional mediation panels, including that of the Southland Regional Association of Realtors. For more information on mediation, see [www.kaufermediation.com](http://www.kaufermediation.com) or call (818) 888-4840.*

*Broker Agent Magazine, San Fernando/Santa Clarita Edition, Issue 2, (2004) p. 9.*