



PREPARING FOR MEDIATION

What Are the Advantages to Mediation?

You get to decide: The responsibility and authority for coming to an agreement remain with the people who have the conflict. Your mediator and the attorneys are there to assist you in reaching an agreement, but will not force you to accept any decision.

The focus is on needs and interests: Mediation uses “interest based negotiation.” In mediation, we can examine the underlying causes of the problem and explore at what solutions best suit your family’s unique needs and interests.

For a continuing relationship: Divorcing parents and family members have to continue to deal with each other cooperatively. Trials can divide people and increase hostility. Mediation looks to the future. It helps end the problem, not the relationship.

Mediation deals with feelings: Each person is encouraged to tell his own story in his or her own way. Acknowledging emotions promotes movement towards settlement. Discussing both legal and personal issues can help you develop a new understanding of yourself and the other person.

Higher satisfaction: Participants in mediation report higher satisfaction rates than people who go to court. Because of their active involvement, they have a higher commitment to upholding the settlement than people who have a judge decide for them. Mediations end in agreement 70 to 80% of the time and have high rates of compliance.

Informality: Mediation can be a less intimidating process than going to court. Since there are no strict rules of procedure, this flexibility allows the people involved to find the best path to agreement. Mediation can deal with multiple parties and a variety of issues at one time.

Faster than going to court: Years may pass before a case comes to trial, while a mediated agreement may be obtained in a couple of hours or in sessions over a few weeks.

Lower cost: The court process is expensive, and costs can exceed benefits. Mediation services are available at lower cost for some types of cases. If you can’t agree, other legal options are still possible. Even a partial settlement can lessen later litigation fees.

Privacy: Unlike most court cases, which are matters of public record, most mediations are confidential.

THINK ABOUT YOUR BATNA

Remember, mediation is an interest-based negotiation. BATNA is an acronym for Best Alternative To a Negotiated Agreement. A bottom line or “walk away” would be the worst possible outcome that a negotiator might accept. Although “bottom lines” definitely serve a purpose, they also foster inflexibility, stifle creativity and innovation, and lessen the incentive to seek tailor-made solutions that resolve differences.

In contrast to a bottom line, a BATNA is not interested in the objectives of a negotiation, but rather to determine the course of action if an agreement is not reached within a certain time frame. When we think about a BATNA, we think about what would be an “acceptable” outcome within our timeframe?

Framing a BATNA permits far greater flexibility and allows much more room for innovation than a pre-determined “bottom line.” When we have a strong BATNA, we have more power because we have identifies an attractive alternative that they could resort to if an acceptable agreement is not achieved.

RULES FOR MEDIATION

1. Be right, but Be flexible
2. Build a deal – work toward a “win-win” solution
3. Treat the other party with respect.
4. Be persuasive, not demanding.
5. Focus on interests.
6. Be a problem solver.
7. Work past the anger.
8. Be patient.

“The problem with communication is the illusion that is has occurred.”

- G.B. Shaw

“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”

- Sandra Day O’Connor