

ABOUT TO MEDIATE? DON'T FORGET YOUR ATTORNEY!

If you're about to start mediation, you are probably hoping to save lots of money on attorneys' fees and court costs. And you WILL save on these expenses. BUT...

Throughout your mediation, there are a number of times when it is very important for you to consider having your lawyer nearby to advise you.

Before the mediation begins, you will need to sign an "Agreement to Mediate." While this document doesn't commit you to solving your issues through mediation (mediation is after all voluntary), it does commit you to a process and certain legal obligations throughout the process and afterwards. Depending on the complexity of the matter and the hostility of the parties, you might want your lawyer to review this agreement with you.

During the mediation, many topics may be raised about which you are very uncomfortable, particularly if you are unsure how your legal rights may be affected. Consider checking in with your lawyer throughout the mediation. Indeed, you may wish to have your lawyer joining you for some or all of the mediation. You're invited to bring your lawyer; in fact, you're encouraged to.

If your lawyer accompanies you to the mediation, there is an important dynamic that a lawyer adds into the mediation. Discuss with your lawyer ahead of time his or her role. Will your lawyer speak on your behalf? Will your lawyer interrupt the mediation if he feels that your rights are in jeopardy? You may wish to remind your lawyer that you're entering into mediation to avoid some of the pitfalls of an adversarial process, and you need your lawyer to respect that goal. Sometimes, an experienced mediator will meet with the lawyers separately to set up some "ground rules" on the representation and advocacy.

And regardless of whether your lawyer is present during the mediation, your lawyer may have lots of creative suggestions on how you might achieve your goals through the mediation in ways that are productive in preserving the relationship with the "other side." Take advantage of that creativity. The more minds you have working on your concerns, the more likely you are to come to productive conclusions.

After the mediation discussions are complete, a Memorandum of Understanding will often be drafted. Sometimes the mediator will act as scribe for the parties. When lawyers are involved, the mediator may make a list of "Points of Agreement" which will then be provided to the lawyers who will draft an agreement. If your lawyer is not actively involved in the drafting, have your lawyer review with you the draft Memorandum. He or she will certainly give you points to consider (and perhaps have redrafted) before signing the agreement.

Remember, even if everything said during mediation is confidential, the resulting agreement may not be confidential and will affect your legal rights. Your counsel has a very important responsibility to help you understand and protect your rights.