

Lawyers Guide to Mediation

The role of the attorney in mediation differs greatly from that of the attorney in litigation. In a mediation session, the attorney plays the role of counselor for his or her client. Instead of presenting an argument, the attorney is asked to allow the client to speak for him/herself and to be present to support and advise the client through the process. The mediation process is geared towards reaching a workable agreement for both parties.

- The attorney should encourage his/her client to enter the mediation with the idea of working with rather than against the opposing side.
- The attorney is encouraged to help the clients review the mediated agreement before signing the contract. The mediator assists the parties in drafting the mediated agreement. Additionally, the attorney should review any and all agreements before allowing the clients to sign such documents.
- Attorneys are encouraged to attend mediations, unless requested by the client to withdraw. If an attorney is unable to attend a session he/she should arrange a method of communication with the client, as his/her advice may be needed during the sessions.
- Rule 31 makes mediation mandatory in parenting cases. A good attorney will assist his/her client in mediation by treating the process not as a burden, but as a fair, positive form of dispute resolution.
- The attorney should inform the mediator of any special needs his/her client may require at the beginning of the first session.

The mediator functions as a neutral facilitator, and will not make decisions, will not give legal advice, or lead either party in anyone direction. The mediator helps the clients to communicate with each other, so that they may hear each other's concerns. The mediator aids the clients in identifying common issues and developing possible solutions to these issues. The mediator then helps the clients work through the solutions to find those which are workable for both parties. Each mediator has individual rules for taking breaks, holding

separate sessions with clients, etc. The mediator will explain exactly how he/she conducts mediation sessions.

Mediation is private and confidential. What is said in mediation stays in mediation. Any offers of settlements or negotiation will be inadmissible to prove liability in court.