

What's Going to Go On at my Divorce Mediation Session?

How should clients prepare for a divorce/ family law mediation session? As mediator, I have a standard letter I send out to counsel when a mediation is scheduled. I try to keep that letter fairly brief, knowing that people don't want to read a long letter. It basically sets the hours we will meet on the day of mediation; my hourly rate, and how much needs to be paid in advance of the mediation date; and when I'd like each party's "separate mediation memorandum" ahead of the mediation date. I also make it clear that the amount paid to me in advance is not a flat fee; there could be additional fees if we go over the time allotted, and the parties could get a refund if we don't use all the time.

In my opening letter, I don't try to go into the process of the mediation itself, knowing that attorneys prepare their clients for mediation in different ways. But a cheat-sheet of some of my mediation processes might be helpful, so I'm offering this article in case clients or attorneys want to use it in preparing for a mediation day. Please note: Mediators handle different things in different ways, so if your mediation is taking place with someone other than Annette Burns, be sure and ask these specific questions of your mediator.

These are common questions the client wants to know about mediation.

What if the other side doesn't pay his/ her portion of the fees? You will be notified if a person hasn't paid fees by the required date. The other person can pay the total fees to ensure that the mediation will go forward, or the fees can be paid from a community/ joint account, or the mediation may be cancelled. To ensure that mediation goes forward next time, you may need to get a court order specifying who pays what, and when.

Will I be reimbursed by the other side for the mediation fees I paid? Maybe. Those fees might be discussed as an issue to be resolved at mediation, in the same way we talk about attorneys' fees possibly being awarded to one side or the other.

Who can be online with me, or in the room with me, during a Zoom mediation session? Always check with your attorney before bringing any other person to mediation. Most mediators are not opposed to an additional, important person being there with you, but only if you ask ahead of time and notify the other party who you want to bring. Your attorney may want to have your business evaluator, CPA or financial advisor available to sign on to the mediation at some time during the day, to provide information during the meeting, and that's almost always okay. If you want to bring a new significant other, or a parent, that should always be discussed with your attorney and the mediator ahead of time, as the mediator may not want an outsider there with you. The mediation is to settle YOUR divorce or child custody matter, and third parties may or may not be helpful to the process.

Do I have to see the other person online and look at his or her face all day on my screen? Probably not. While we sometimes have a brief joint meeting on Zoom, the most common process is that you will see only your own attorney and the mediator on the screen. As mediator, I set up separate Breakout Rooms, and you are almost never in the same room as the other party. Sometimes, a joint session will help move specific issues forward, like talking about

the specifics of a holiday parenting time schedule. You and the other parent may want to talk about specific times or exchange days, and the attorneys and mediator will not know the specifics of your family as well as you do. You will be asked if you're comfortable with a joint online session before it happens. If you know you don't want a joint session at all, then make sure you've given your attorney specifics about what you want (a holiday schedule, for example) ahead of time, so those specifics can be shared with the other side and discussed.

Remember, most of the time you will be in an online session with your own attorney, with the mediator coming in and out of the session to talk with you.

Will we sign final documents at mediation? Usually, a document will be signed, but it's not all the final documents needed to finalize your case. If your case is so far along that final documents should be signed on the day of mediation (such as when there's a trial date in just a few days), then the proposed final documents **MUST** be exchanged with the other side at least several days before the mediation. The final documents required by the court to finalize a divorce or Parenting Plan are so extensive and detailed that they must be prepared after the mediation session and signed later, with your attorney.

If we don't sign all the final documents that day, then what happens if we reach agreements? The mediator will prepare a written Memorandum of Agreement (MOA). It will have the highlights of your agreements listed, and you'll sign that MOA indicating that you'll be bound to those provisions. There will be a statement in those documents, and discussion about "Rule 69", which is a Rule of family law procedure that permits the parties to reach **BINDING** agreements. The goal of most mediations is to reach binding agreements on most or all issues, and then make sure that neither party tries to back out of the agreement later. If you aren't sure about agreeing to something, then you can always say that at a mediation session, but don't **SIGN** anything unless you intend to be bound by that agreement.

The MOA will then be used by your attorneys to prepare the final documents for the judge to sign. Those final documents usually include a Decree of Dissolution of Marriage, a Property Settlement Agreement, and a Parenting Plan if you have children. The final documents contain more detail about your agreements, and have boilerplate provisions that could be necessary to enforce or define your settlement later.

Will I be under a lot of pressure to agree to things? The goal of mediation is to reach agreements, and agreements are voluntary. The mediator has no authority to force you to accept or sign anything. The mediator and your own attorney may make suggestions about what you should do, or whether something is a good deal, or as good as you might get in court, but those are only suggestions. If your mediation session is taking place very shortly before your trial date, you will feel more pressured than usual, but that's because you will shortly be going to trial. You have a chance in the mediation session to "set your own fate" by reaching agreements instead of having a judge rule, but it's always still your choice whether or not to agree to anything, so you should not feel unduly pressured to agree to something.