

How To Have A Successful Mediation



TRIANGLE SMART DIVORCE®



The most successful meditations we have been a part of have been the ones in which the clients and attorneys were the most prepared. In a lot of the cases that are unable to be resolved in mediation, clients appear to not have been prepared for the process of mediation and/or the finality of settlement. Sometimes the attorneys appear not to have an adequate handle on the facts and applicable law in the case. No matter how many times you have been involved in mediation, please remember that the parties, the issues, opposing counsel, and even the mediator vary from case to case.

Unlike in Court where a Judge makes binding decisions, mediation allows each party to have some control over the resolution of the dispute. By being prepared for mediation, you can help direct the resolution of your matter. The next page is a sampling of some tactics we have employed over the years when representing clients in mediation and when discussing the mediation process with clients. You should tailor these to your individual case.

Preparation Tips for Clients

- Understand that mediation is an opportunity to reach an agreement and to avoid the costs, frustration, and delays of Court. With that in mind, consider in advance what your most realistic outcomes are in Court and what some suitable alternatives are to reach an agreement.
- Know the risks of proceeding to Court. Evaluate your comfort level with those risks.
- Ponder what you and the opposing party both need to feel good about the results of mediation.
- Determine what have been the impediments to settlement in the past.
- Contemplate what is in your children's best interests and acknowledge that their best interest may not be the same as your desires or needs.
- Provide your attorney (well in advance) with all necessary documents to evaluate your support, property, and custody claims and to dispute different contentions from the opposing party.
- If your proposal involves refinancing a debt, know whether or not you can qualify to do so prior to the mediation.
- If your settlement may involve you owing a sum of money, figure out how you can pay that sum of money before mediation.
- Understand that you cannot change people, places, or things, but you can control how you react to those items. Don't expect the mediator, your attorney, or even the Judge to be able to change the opposing party's mind or their actions.

Preparation Tips for Attorneys

- Encourage your client to have an open-mind about settlement possibilities.
- Inform your client that the mediation process may take all day, or longer, and not to schedule other matters for that day. Schedule a two-day mediation if necessary.
- Prepare your client to make difficult choices, and remind them that there is always a choice.
- Let the mediator know what you believe they can do to help resolve this matter, including educating the mediator about prior impediments to settlement.
- Have settlement documents prepared in advance or begin preparing them at the beginning of the day.
- Be willing to make the first offer. Better yet, have a conversation with the opposing party or counsel, if represented, about who will make the first offer.
- Come to mediation with both parties' financial affidavits and listings of marital property, along with values (as well as documents to support your client's contentions). Reschedule the mediation if you do not have adequate documents to proceed.
- Compose a parenting plan/custody schedule in advance and discuss possible compromises with your client.
- Understand the retirement plans involved in the case, and know how, and if, they can be divided.
- Learn the cost and availability of life insurance in advance if you plan on asking for a policy to secure future obligations.
- Examine health insurance options for the client and any children.

In cases where the client or the attorney is not prepared for mediation, much time and expense is spent learning the answers to some of the above issues rather than in settlement negotiations. As you can imagine, the parties grow frustrated and weary in the mediation process, often leaving with no resolution. **Help the mediator help you by being prepared.**