



Roles and Responsibilities of Mediators and Attorneys in Mediation

The mediator is responsible for assessment:

1. Is the case appropriate for mediation?
2. Do all parties have the capacity, authority and intention to mediate?
3. Are you as mediator capable of dealing with the case? (level of skill/expertise)

The mediator is responsible for the process:

1. upholding all ethical, moral and legal obligations required by statute and standards of practice including:
 - a. explaining the role of the mediator, the mediation model used, and all relevant ADR processes;
 - b. explaining the legal parameters in mediation:
 1. mediators may not give legal advice
 2. a mediated agreement affects your legal rights
 3. parties are encouraged to seek legal advice
 4. parties should have a draft agreement reviewed by legal counsel
 - c. ensuring self-determination of the parties before and during mediation
 - d. encouraging parties to seek all needed information and advice
 - e. disclosing any conflict of interest and maintaining impartiality regarding the parties
 - f. fully explaining confidentiality and the legal ramifications of the decision to waive or maintain it
2. requiring full disclosure of all relevant information and making sure parties understand the information and the repercussions of their choices;
3. insuring self-determination of the parties regarding all agreements prior to signing;

Role of Attorneys in Mediation¹:

1. assessing with the client whether mediation is appropriate and/or beneficial; giving client reality test of best and worst case scenarios in going to court;
2. advising client of his or her right to use formal discovery in mediation, including asking for a notarized statement that all information has been disclosed;
3. preparing a budget with the client to be used as the basis for financial agreement;
4. creating a plan with the client on how to present his or her concerns in the mediation;
5. creating a vocational plan in order to make a realistic assessment of education goals and employment possibilities in preparation for support agreement;
6. having the client report back as needed;
7. contacting mediator with the permission of the client if there are concerns about the client's ability to represent his or her interests;
8. deciding with the client to request to be present in the mediation session;
9. reviewing the agreement with the client point by point to be sure the client fully understands all points and provide a reality check on issues the client may feel are not acceptable;

¹Leick, Christine, "Guidelines for Mediator/Attorney Cooperation", *Mediation Quarterly*, Vol. 23, (1989):37-52