

Unauthorized Practice of Law and Ethics of Mediation

Mediators

May not engage in activities that are commonly understood to be provided by attorneys

May give legal information but not legal advice

Must encourage clients to seek legal advice, especially before signing any documents

May ask reality testing questions that raise legal issues

May inform disputing parties of previous experiences with similar cases

May not provide services that will affect the clients legal rights

Attorneys

Attorney-Client relationship exists when one receives compensation for giving legal advice

Attorneys acting as mediators would be violating mediator ethics if they give legal advice

Give legal advice, defined as applying legal principles to facts, predicting a specific resolution of a legal issue

May apply legal principles to the specific facts of a case

Represents client's interest

Outcome will affect client's legal rights

Comparison of Therapy and Mediation

Therapy

Focus on past

Goals are general

Focus on internal conflicts

Look at why/how

Legal issues are not as relevant

Provider seen as expert

Mediation

Focus on present/future

Goals are specific

Focus on external conflicts

Look at who/when/how/where

Legal issues are relevant

Provider seen as neutral