



If You Choose Mediation, Will You Still Need a Lawyer?

In most mediations, you won't need to have a lawyer participate directly. But there are some cases in which you may want to turn to a lawyer for advice.

In most mediations, you don't need a lawyer's direct participation. People who are mediating are less likely to need an advocate because they are trying to work together to solve their problem - not trying to convince a judge or arbitrator of their point of view. Because mediation rules are few and straightforward, people can usually handle the process on their own without too much trouble. If your case involves substantial property or legal rights, however, you may want to consult with a lawyer before the mediation to discuss the legal consequences of possible settlement terms. You may also want to make getting a lawyer's approval a condition of any agreement you make in mediation.

If you're considering having a lawyer help you mediate, you should look for an attorney who truly supports the process. Unfortunately, many lawyers enjoy their role as advocates ("hired guns") and find it difficult to change gears to focus on helping people work out a compromise solution.

The type of lawyer you choose also depends on whether you want the lawyer to counsel you throughout the mediation or you are only interested in an initial consultation. The lawyer's personality and attitude towards self-help law doesn't make much difference when it comes to legal advice, but it can mean a world of difference if you are mostly interested in having the lawyer coach you on a continuing basis.

If you do need a law coach, you should make it very clear from the first interview that you want to work with a lawyer who understands and supports mediation. This means a lawyer who accepts that mediation sometimes involves compromise and that what you settle for in mediation can be influenced by, but should not be determined only by, what the lawyer believes a judge or jury might give. For example, you might tell a potential lawyer that you want him (or her) to help you prepare for your mediation, but you don't expect him (or her) to come to the actual sessions. And you might also ask the lawyer to be available to review any written settlement agreement before you sign it.

In an age when many lawyers are underemployed, there is always the risk that a lawyer who wants your business will say that "of course" he or she supports mediation, when in fact the lawyer has a fairly negative attitude. To probe a little deeper, ask the following questions:

Has the lawyer ever worked with clients going through mediation? If so, what did the lawyer think of the process? Was it successful for the client? The way lawyers talk about their prior experiences in mediation often reveals whether they really support and respect the process, or think it's a waste of time. For example, some lawyers who have handled a few mediated cases that did not settle may be negative about the result ("I told my client it wouldn't work, but he wouldn't listen"). Fortunately, many other lawyers come out of mediation with an understanding and respect for the process, regardless of whether a particular case settled.