

Legal Strategy Services, LLC

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Preparing for Mediation

Preparation is one of the keys to a successful mediation. It is not only important for the parties to be substantively prepared but also mentally prepared for the process of negotiation.

Preparation of Paperwork and Materials: A party should bring to mediation any documentation relevant to the discussion which will support one's claim. This could include:

- receipts for expenses paid
- statements of bank accounts, credit card balances, retirement accounts
- copy of a contract if the terms are in dispute
- pay check stubs (at least the last three months), or W-2 forms for last two years, when income needs to be verified
- photographs that may be helpful
- cancelled checks
- memos or emails containing substantive information or verification of issues in dispute
- copy of insurance coverage and terms of contract
- appraisals on real estate or similar evaluation
- any other material to support one party's argument

If a fact or figure is in dispute, a more efficient resolution will be facilitated if all documentation, which supports the claimed fact or figure is presented and available during the mediation session. Even if the information is not known to be in dispute, any written material to verify the accuracy of a party's claim is helpful, in case an issue should arise at mediation. Being able to answer questions immediately with objective supportive documentation can allow the mediation to progress without the need to continue the session or place contingencies on any resolution that may be reached.

Mental Preparation: One of the biggest obstacles to successfully resolving a conflict is a party's unwillingness to change the direction of his "plan" or failure to actually envision closure. It is very important that the parties understand that the matter may be resolved at the time of mediation and be willing to consider alternative viewpoints and remedies. The parties should think of mediation as a negotiation, allowing for each party to present his/her views and anticipate some shift in his/her viewpoint. The goal is resolution. The mental state of a "negotiator" is very different from the mental state of an "advocate." The goal is not to overpower the other party but to find an acceptable resolution to which both parties can agree. A party's "best" outcome in court is usually not necessary to find an "acceptable" solution now, saving the time, money and anguish involved in litigation.

Preparation by Counsel: Lawyers can be instrumental in successfully preparing the parties for mediation and in being prepared themselves for presenting their arguments. Mediation should be approached as if the lawyer is planning to argue his case to the court and needs the supporting documentation to go along with it. If all questions can be answered during the mediation session, there may be no need to proceed to court. Missing information, or unavailable reports only serve to delay the process.

It is also imperative that the lawyer prepare the client as to what she can expect to occur at mediation. This includes issues that may come up and some ideas as to possible options in seeking remedies. The parties can anticipate in advance what is to be discussed and have prepared responses to the issues. When something is brought up that is very adverse to a party's understanding, it can be very difficult for that party to mentally make the adjustment to this new information or change in direction within the time period of the mediation session. If the possibilities have been discussed beforehand, the party is much better prepared to move beyond the issue to work on a resolution, which she finds acceptable. This is particularly true when discussing financial issues. Sticker shock as to an unanticipated counter-offer by the other party, or a

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surprise result from the child support calculations can cause a party to become hardened in her position and make a resolution more difficult. Preparation is the key and lawyers play a very big part in this.

Pre-Mediation Summary

Lawyers or unrepresented parties may provide the mediator with a Summary of their case prior to the mediation session. This is helpful for the mediator to prepare for the issues that might arise and become familiar with who is involved in the dispute. Pre-mediation summaries are optional and can be mailed or faxed to the office at least 48 hours before the scheduled session.

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