

How Your Lawyer Can Help With Mediation

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Even if you are involved in a lawsuit and represented by a lawyer, you can still mediate your dispute. In fact, sometimes mediation is the only way to get out of a lawsuit that's become a bitter and hostile affair.

Putting the Brakes on an Out-of-Control Lawsuit

All too often, lawsuits come to resemble the dilemma of the sorcerer's apprentice. In that tale, a magician's assistant overheard and repeated his master's magic words to set buckets and mops in motion to do the apprentice's job of cleaning the sorcerer's laboratory. However, the apprentice did not know the words to stop the brooms and buckets, and soon the laboratory was not merely cleaned but completely flooded.

Lawsuits sometimes follow a similar path. After months of litigation, a party often finds that, instead of moving the dispute toward a resolution, the lawsuit has driven the two sides farther apart -- and closer to the poor house -- than they were when the case began. While it may have been easy enough to utter the magic words, "I'll sue you for all you're worth!," finding the right formula to stop the lawsuit can be much more difficult. That's where mediation can help.

What role can lawyers play in mediation? As long as your lawyer isn't hostile to the idea of mediation, he or she can be a tremendous help. Here are some things your lawyer can do to help make mediation a success:

- **Propose mediation to the other side.** Even if you want to try mediation, you might not be ready to swallow your pride and ask the other side to come to the bargaining table -- especially if your lawsuit has gotten nasty. This is where your lawyer can help out by proposing mediation to your opponent's lawyer.
- **Help find a mediator.** These days, many lawyers routinely try to resolve at least some of their cases through mediation. Because of mediation's growing popularity, chances are good that your lawyer has worked with several different mediators and can propose one who will do an excellent job for you.
- **Explain and complete mediation paperwork.** Some mediators ask participants, especially if they are represented by lawyers, to submit a written statement describing the dispute and explaining how they would like to resolve it. Your lawyer can write this statement, with your help. Your lawyer can also explain any other mediation documents that come your way, such as a confidentiality agreement.

- **Prepare you for the mediation.** Because your lawyer has probably participated in other mediations, he or she can help you get ready to put your best foot forward. Your lawyer can explain how the process works, help you organize your thoughts into a coherent story for the mediator and make suggestions of things you might want to tell your opponent -- and things you might want to keep to yourself.
- **Evaluate settlement options.** Ultimately, you are the only one who can decide whether to settle your lawsuit, and on what terms. But your lawyer can help you evaluate whether a settlement is a good one, based on your chances of succeeding in court, the value of your claims and the legal arguments for and against your position. Your lawyer can also alert you to potential problems with a proposed settlement.
- **Write a binding agreement.** If you and your opponent reach an agreement in mediation, your lawyer can help put it in writing. Your lawyer can make sure that the written agreement reflects the settlement you reached during the mediation and make sure that the agreement can be enforced if your opponent doesn't honor its terms.