

Divorce Mediation FAQ

12/17/18

Even after selecting a mediator, those divorcing may yet have questions following a consultation or mediation session. Making a list of questions prior to your first session and/or consultation should help, but if not, maybe the questions and answers below will give you some insight:

1. **Do the parties require an attorney to schedule and attend mediation?** No. There is no requirement that the parties retain counsel to schedule or attend mediation. The mediator's goal is to assist the parties in reaching their own settlement agreement and the mediator will not represent either party in court.*
2. **How much does mediation cost?** Mediators usually charge by their hourly rate and the fees are generally shared by the couple or advanced from a marital asset. The mediator will provide the parties with a retainer agreement prior to or at the conclusion of the initial mediation session.
3. **Do the parties have to sit in the same room together at mediation?** No. This is not a requirement but is typically handled pursuant to the discretion and style of the mediator. If the parties absolutely refuse to sit together or it becomes counterproductive to the mediation process, an effective tool is for the mediator to "caucus". This is a common term for meeting separately with the parties in different rooms.
4. **What should be brought to the first mediation session?** Depending on your mediator, this could be nothing. The first session is most likely a basic information gathering session and you will be given instructions as to what to bring for your next session. However, it would not be a bad idea to bring your credit card statements, retirement account information, last year tax returns, prenuptial agreement (if applicable) and recent pay stubs. This way, you can leave copies for the mediator for the next session, and, if you ask the mediator and have time, they may be able to run through child support guidelines to give you an idea of what you can expect to receive and/or pay for child support, if relevant, and possibly determine what alimony obligation exists.
5. **What happens when the parties reach a settlement?** At the conclusion of a successful mediation, the mediator will generally draft a Memorandum of Understanding ("MOU") or Term Sheet outlining the issues in dispute and purported agreement as to each issue. Both parties will then be advised by the mediator of his or her own right to consult with independent counsel to review the tentative agreement. Neither party, however, is bound to retain independent counsel and may voluntarily waive his or her right to counsel.*

*Although counsel is not required, Wilentz strongly recommends the retention of counsel at all stages of a matter, given the consequences involved.

If you have a question or wish to discuss this topic with one of our family lawyers, please give Joe a call at **(732) 352-9871**.

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