



## LAW AND MEDIATION

All mediation operates “in the shadow of the law,” even in the most informal settings. A signed mediation agreement is a legally binding contract. While mediation gives parties the option to make their own decisions, these decisions always reference the law as well as social norms in families and communities. If the outcome of the mediation is bound by existing statutes or regulations, the mediator must inform the parties at the outset.

The best way to participate in mediation is to have advice from an attorney (and other experts) throughout the process. Mediators and attorneys have different roles and responsibilities:

### ROLES AND RESPONSIBILITIES OF MEDIATORS

1. The mediator is responsible for assessment:
  - a. is the case appropriate for mediation?
  - b. are you as mediator capable of dealing with the case?
  - c. do the parties continue to be appropriate for mediation? (assessment continues throughout the duration of the case)
2. The mediator is responsible for the process:
  - a. creating a safe environment
  - b. ensuring confidentiality is explained and understood by the parties
  - c. requiring full disclosure of all relevant information and making sure parties understand the information and its repercussions
  - d. maintaining fairness of the process and the outcome
  - e. recommending parties seek counsel from attorneys and other experts pertaining to the issues in their situation
  - f. upholding all ethical, moral and legal obligations required by statute and standards of practice particularly regarding impartiality and neutrality;

### ROLE OF ATTORNEYS IN MEDIATION<sup>1</sup>:

1. Assessing with the client whether mediation is appropriate and/or beneficial; giving client reality test of best and worst case scenarios in going to court;
2. Advising client of his or her right to use formal discovery in mediation, possibly asking for a notarized statement that all information has been disclosed
3. Preparing a budget with the client to be used as the basis for financial agreement;
4. Creating a plan with the client on how to present his or her concerns in the mediation
5. Creating a vocational plan in order to make a realistic assessment of education goals and employment possibilities for negotiating a spousal support agreement;
6. Contacting mediator with the permission of the client if there are concerns about the client’s ability to represent his or her interests;
7. Deciding with the client to request to be present in the mediation session
8. Reviewing the agreement with the client point by point
9. Recommending re-negotiation of any points in agreement that are not within the guidelines previously agreed upon as fair or acceptable;

<sup>1</sup>Leick, Christine, “Guidelines for Mediator/Attorney Cooperation”, *Mediation Quarterly*, Vol. 23, (1989):37-52.

**Common Ground Negotiation Services**  
**434-806-4116 ~ [cgns@susanoberman.com](mailto:cgns@susanoberman.com)**  
**[www.commongroundnegotiation.com](http://www.commongroundnegotiation.com)**