

From the Roundtable:

MEDIATION BASICS:

Using Advisors in Mediation

Adapted from *Using Divorce Mediation*

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When using mediation, in addition to the mediator, you may want to work with outside advisors like legal advisors, counselors/therapists, financial advisors or other specialist. This piece guides you on:

- Assessing the need for an advisor
- Understanding the different types of advisors
- Finding various kinds of advisors
- Maximizing benefits while limiting costs

When to Use Advisors

Outside advisors aren't always necessary during mediation, especially if you have a lawyer-mediator who can handle legal aspects and paperwork for an uncontested divorce. However, consulting an advisor can be beneficial in certain situations, such as:

- When your mediator isn't a lawyer, you may need a legal advisor to explain divorce law and draft court-acceptable documents.
- For specific questions, like understanding the tax implications of a settlement, a financial advisor might be helpful.

Your mediator might also recommend consulting an outside advisor based on your circumstances. Weigh the potential benefits and costs of using an outside advisor to decide what's best for you.

First and Last Stop: Your Mediator

Think of your mediator as your first point of contact for any questions during mediation, including (1) whether to consult an outside advisor, (2) getting referrals, and (3) what to ask the advisor. This ensures that the advisor helps, rather than hinders, the process. If you use an outside advisor, inform your mediator. If you

receive confusing or inconsistent advice from the advisor, ask your mediator to help you sort things out. This lets the mediator coordinate what's going on outside the mediation with what's going on inside it.

Same Advisor — Different Hats

Advisors can be categorized into several types, including family, friends, legal advisors, counselors/therapists, and financial advisors. You might also consider working with negotiation coaches, parenting coaches, mediation support persons, or specialists like appraisers and insurance agents.

While it may seem overwhelming, you don't need to engage all these advisors at once. Depending on your needs, a brief consultation with one or more may suffice. You may also find an advisor who can fulfill multiple roles, such as a legal advisor who can serve as a negotiation coach or a counselor who acts as a parenting coach.

Why Consult a Legal Advisor

Before finalizing a settlement agreement in mediation, it's sometimes beneficial to consult a legal advisor to get advice specific to your case. They can help predict potential court outcomes and associated costs, which is crucial for effective negotiation.

A skilled legal advisor can coach you on negotiation techniques and suggest creative solutions that may be as favorable as court outcomes. It's essential to find an advisor who provides realistic expectations, and avoids extreme adversarial positions that may mislead you.

A legal advisor can also review written agreements to ensure they accurately reflect your intentions and, if necessary, help prepare paperwork for an uncontested divorce.

Beware of Adversarial Advisors

Be cautious of advisors — particularly those inexperienced in mediation — who provide adversarial advice that prioritizes your individual advantage without considering the negative impact on your family or the negotiation process.

Such advisors may even discourage mediation, suggesting that you would be better off in an adversarial setting. If you encounter adversarial advisors, evaluate their advice critically and seek out someone with a non-adversarial approach to ensure a more constructive mediation process.

When to Consult a Legal Advisor

If you choose to consult a legal advisor, do so early in the mediation process, to gain vital information about your rights and establish a working relationship. Starting with solid legal knowledge helps ensure a successful mediation. Throughout the process, feel free to consult your legal advisor as needed.

Qualifications of a Legal Advisor

Your legal advisor should be a lawyer licensed to practice in your state, ideally with specific qualifications for mediation. Look for a lawyer with significant experience in divorce law. Additionally, ensure your consulting lawyer has a strong reputation for competence, honesty, and respectful client treatment.

Look for someone with in-depth knowledge of mediation and who provides efficient, high-quality advice. It's crucial that they are experienced in and supportive of mediation; a lawyer who is ignorant of, or hostile to, mediation can undermine your mediation. You want a lawyer who informs you of your rights and promotes reasonable settlements. Consider asking the following questions:

- What is your experience with mediation?
- Are you familiar with the mediation process in my state?
- How do approach advising clients in mediation?

Unhappiness with the Advice

If you're confused or disagree with your advisor's advice, discuss it with them. Ask for their reasoning. Ultimately, decide whether to follow their advice, disregard it, seek a second opinion, or consult your mediator.

If you encounter conflicting information between your legal advisor and mediator — such as differing child support calculations — ask your advisor to clarify the discrepancy. This could stem from different interpretations of the law or the facts of your situation. If necessary, consider getting a second opinion to resolve this.

You Are in Charge of Your Life

Remember, you have the freedom to make decisions that align with your values, even if they differ from your advisor's recommendations. For instance, if your advisor suggests against a lump-sum alimony payment due to potential risks compared to ongoing payments, you might still choose the lump-sum to avoid future unpredictability and entanglement. Ultimately, the decision should reflect what makes sense for you and your situation.