



# Lawyers and Divorce Mediation

by Katherine E. Stoner, Attorney-Mediator

**You can mediate without a lawyer, but here's how consulting a legal adviser can help you.**

A legal adviser is a special type of lawyer -- one who is willing to consult with you as an integral part of the mediation process. While business lawyers have long served the role of consultant to their clients, divorce lawyers are accustomed to taking over and handling the entire case. For this reason, many lawyers who have special expertise in the divorce area are unwilling to stay on the sidelines as a consultant. As mediation is used by more and more divorcing couples, however, the need for consulting lawyers also increases. As a result, many divorce lawyers are happy to work as consulting lawyers.

## Why Consult a Legal Adviser

At some point before or during mediation, you may want to consult with someone about your legal rights. While you can learn a lot about your rights from doing your own legal research, consulting with an actual legal adviser can help you get answers that are specifically tailored to your case.

Even before the mediation, a legal adviser/law coach can help you evaluate the option of mediation, select a mediator, and persuade your spouse to mediate.

During the mediation, a legal adviser can act as a law coach on an as-needed basis. Between sessions, you can consult with your law coach to clarify questions and prepare for negotiations. A good legal adviser can coach you in negotiating techniques and help you think up creative solutions to propose in the mediation that are better than or at least as good as what you could get in court.

A legal adviser can also help predict the range of possible legal outcomes if you were to go to court -- and the cost of paying a lawyer to fight for them. Knowing the possible outcomes can be essential to a successful negotiation.

Perhaps most important, a legal adviser can review any written agreement prepared by the mediator to make sure that it says what you want it to say and that it will be legally binding once signed.

Finally, your legal adviser can interface with the court, helping you prepare the papers needed for an uncontested divorce once your settlement agreement is signed, if your mediator does not do that for you.

## When to Consult a Legal Adviser

It's a good idea to have a brief consultation with a legal adviser early on during the mediation process. If you wait until you've already negotiated an agreement to consult a legal adviser, you may be in for some surprises about your legal rights that could undermine your commitment to the agreement you've just negotiated. Going back to mediation and trying to renegotiate the agreement at that point is often disastrous.

If you instead start the process with solid legal information, you can negotiate an agreement that takes into account all of your legal rights. This makes it much less likely that the mediation will fall apart at the last minute.

**As your mediation progresses, you should feel free to consult with your legal adviser on an as-needed basis between mediation sessions, whenever you have questions about your legal rights or proposed settlement terms.**

## **Qualifications of a Legal Adviser**

**Your legal adviser will most likely be a lawyer licensed to practice law in your state. But you will want to look for some more specific qualifications as well.**

**You want a lawyer with significant experience in the area of divorce law. In some states, lawyers can get certified as specialists in certain fields of the law. If this is true in your state, consider looking for a certified specialist in divorce law, family law, or matrimonial law. Many certified specialists are quite knowledgeable about mediation and are experienced as consulting lawyers. Their high hourly fee is often justified by the quality and efficiency of their advice.**

**In addition, your legal adviser should have a good reputation for competence, honesty, and respectful treatment of clients. Ask your referral sources about these qualities.**

**It is also critical that your legal adviser be experienced in and supportive of mediation. A legal adviser who is ignorant of or hostile to mediation can undermine everything you are trying to accomplish in mediating your divorce. For example, a lawyer who doesn't approve of mediation or who thinks mediation is a good idea but doesn't know enough about it could easily advise you to take a position that is legally correct but extremely adversarial. What you want is advice designed to inform you of your legal rights and to help you promote a reasonable settlement.**

## **Fees**

**Most divorce lawyers charge an hourly fee. Most of them also expect to be paid an initial large retainer (advance deposit) of several thousand dollars to cover the cost of beginning a contested case. Because you hope that mediating your case will lead to an agreement for an uncontested divorce, you shouldn't have to pay a large retainer. Look for a legal adviser who will charge you only by the hour, without a big retainer. But be prepared for the hourly fee to range as high as \$250 to \$500, especially in or near big cities. When you find a legal adviser who charges by the hour without requiring a retainer, be sure to confirm the fee arrangement in writing.**