



THE DO'S AND DONT'S OF MEDIATION

THE DO's

- DO** properly dress and present yourself at mediation.
- DO** ask your lawyer questions in advance. Mediation can work when all parties are prepared and understand the goal of mediation. If you have any qualms or queries regarding the nature or process of mediation, how long it lasts, the cost, what the potential outcomes are, or what the next steps may be if settlement is or is not achieved, it is always prudent to discuss these with your lawyer ahead of time to ensure you are fully informed and can meaningfully participate.
- DO** remember the importance of confidentiality. All communications at the mediation and the mediator's notes and records must be kept confidential. As such, you should not share any details which occur at mediation outside of mediation and, likewise, anything you say or admit during mediation cannot later be used against you. Mediation is a private process sheltered from the scrutiny of the public domain.
- DO** share your side of the story. If you have any information you want to share with the mediator during the mediation to help them understand your position, this is your chance to do so. Mediation is a collaborative process and clients are allowed to present their input at the appropriate times. If you want to tell the mediator something that you do not want other parties to hear, you can request to speak with the mediator confidentially to do so.
- DO** participate confidently and meaningfully. Mediation provides you the opportunity to tell your story, control the process, and fully participate in open and frank discussions to reach a resolution on outstanding issues.
- DO** keep your mind open – remember that this is a chance for all parties to step away from or avoid an adversarial court process and come to a mutual resolution.

THE DON'Ts

- DON'T** forget to verify the meeting details in advance.

- DON'T** skip breakfast! Mediations can be long, tiresome, and emotionally draining. Although you may have down time throughout the day to grab a bite, it is always a good idea to fuel yourself before mediation.

- DON'T** go in with unrealistic expectations. Mediations involve negotiation and compromise between the parties. Prepare for the likelihood that an opening offer from the other side may not be close to what you wanted or expected, That is okay – it is all part of the process of compromise.

- DON'T** let emotions run wild. Mediations can be emotionally charged, especially when dealing with family members or with individuals with whom you have a long history. It is important to disengage from any anger and depart from using blaming language. Remember, mediation is not about winning or hurting the other side – it's about engaging with a view to compromise.

- DON'T** forget why you're here. Litigation is an adversarial, expensive and time-consuming process. Mediation is your chance to settle your issues outside of this process and have your voice heard. Moreover, given the digital era we live in, mediation also presents the benefit of a private forum whereby the disclosure of your personal information will be limited and sheltered from otherwise public court processes. Seize the opportunity and participate meaningfully with an eye to resolution.

The above Do's and Don'ts are detailed in the WEL Paper: "Best Practices in Estate Mediation and Documenting the Settlement" - Preparing Your Client, pages 17-18

<https://welpartners.com/resources/WEL-Best-Practices-in-Estate-Mediation-and-Documenting-Settlement.pdf>