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I'm In Mediation, Do I Need A Lawyer Too?

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Categories: **Mediation**

Divorce Mediator Justin L. Kelsey of Skylark Law & Mediation guest blogs on the pros and cons of hiring an attorney for a divorce mediation.

*A recent LinkedIn discussion debated the value of meeting with a lawyer when participating in mediation. There are a variety of pros and cons to retaining separate counsel while you are engaged in a divorce mediation. Here are some of them: **Benefits of Hiring a Lawyer while Participating in Divorce Mediation:***

- **Legal Advice:** *A mediator can provide legal information but not legal advice. That's because legal advice is particular to your individual situation and the mediator as a neutral shouldn't be providing advice to either individual.*
- **A Private Sounding Board:** *Sometimes people are afraid to raise certain issues in mediation because they're not sure if it's relevant or how the other person will react. A lawyer can help you decide what issues you should raise and the best way to raise them.*
- **Education about the Law:** *Mediation is a negotiation, and if you don't have a lawyer with you then you are negotiating for yourself. One of the best ways to do well in a negotiation is to be prepared. While the mediator can provide legal information, you may not even know the right questions to ask unless you have first met with a lawyer and prepared for your meetings.*
- **Negotiation Coaching:** *Even the best negotiators can have difficulty negotiating on their own behalf. It's not only difficult to be objective about your own situation, but you may have a relationship with the other person that makes it difficult to*

negotiate with them. A lawyer can help you prepare for those challenges and provide you advice on the best way to approach issues.

- **Another Perspective:** Every professional has different levels of experience, and your attorney may think of an option or solution that you, the other person and the mediator all missed.

Risks of Hiring a Lawyer while Participating in Divorce Mediation:

- **One Step Forward, Two Steps Back:** If you reach agreements in a mediation meeting and then your lawyer gives you advice that changes your mind that could destroy progress you made in mediation.
- **Cost:** Working with a lawyer in addition to a mediator increases the cost of the process.
- **Polarizing Advocacy:** If your lawyer has strong opinions about what is best for you they may criticize the mediation process, especially if you are reaching agreements that might be less than what the lawyer believes you could get in court.
- **Another Perspective:** While this can also be a benefit, sometimes there are too many cooks in the kitchen to get things done.

Minimizing the Risks: Despite these risks, **I always recommend that my mediation clients meet with their own lawyers during the mediation process.** Even though there are risks, all of these risks can be minimized or eliminated if you know about them ahead of time.

- **One Step Forward, Two Steps Back:** You can minimize this risk by working with a lawyer from the beginning of your case and getting legal information and advice before you reach agreements. Then you will never feel uninformed.
- **Cost:** The cost can be minimized by using your lawyer efficiently. Ultimately being prepared for mediation meetings may reduce how many mediator meetings you need. Also, the result of being

uninformed or misinformed can often be more costly than what you will spend for timely advice.

- **Polarizing Advocacy:** *While your individual lawyer is your advocate, you control the ultimate decision. Make sure that you work with a "**mediation-friendly**" lawyer who understands the reasons you chose mediation and respects your right to make final decisions in the case. We advise people to hire lawyers who are also trained in mediation and collaborative law.*
- **Another Perspective:** *You can minimize this risk by not trying to repeat every conversation with your lawyer and your mediator. Use each for their particular expertise.*

This blog is re-posted from Skylark Law & Mediation's Scaling the Summit Blog.

About the Author: *Justin L. Kelsey is a Massachusetts divorce mediator and collaborative law attorney at [Skylark Law & Mediation](#). He is a member of the Board of Directors of Massachusetts Collaborative Law Council and the Board of Directors of the Massachusetts Council of Family Mediators.* **Disclaimer:** *The information you obtain at this site is not, nor is it intended to be, legal advice. You should meet with an attorney for advice regarding your individual situation. You are invited to contact our office. Contacting the office does not create an attorney-client or mediator-client relationship. Please do not send any confidential information to the office until such time as an attorney-client or mediator-client relationship has been established. This blog is considered an advertisement for the Law Office of Lynch & Owens, P.C. d/b/a South Shore Divorce Mediation. The Massachusetts Rules of Professional Conduct broadly govern all advertisements and communications made by attorneys and law firms in the Commonwealth. Generally, legal websites and any other content published on the internet by lawyers are considered a type of communication and an advertisement, according to the Comments to Rule 7.2.*

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