

Should I involve my attorney in the mediation process?

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The decision to mediate, and when, can be a matter of strategic and fundamental importance in resolving a dispute and should be given full consideration in each situation. Even where mediation is prescribed, by court or contract, for example, a considerable amount of preparation, planning and strategy is required. This is where a legal representative who is fully versed in the mediation process can prove to be invaluable.



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Unfortunately, in South Africa, and in many other countries around the world, the mediation process is often considered to be a 'soft option'. This is quite untrue. Mediation requires a significant amount of hard work from participants and their representatives to achieve an outcome that is acceptable to both.

Your legal representative should properly understand the benefits of mediation, how it can be used to resolve a dispute, and should know when mediation is appropriate. Some legal representatives may even be able to guide you through the mediation process.

Some of the roles that legal representatives play in mediation are that they:

- prepare you as to what to expect from the process;
- coach you so that you can take full advantage of the mediation process;
- advise you of the possible arguments that the other side may make;
- advise you on the legal ramifications of certain decisions;
- advise you on the possible outcomes of the case if/when it goes to trial;
- advise you on the possible costs of litigation should the mediation fail;
- assist with the drafting and signature of a settlement agreement.

It is important that the mediator be given a chance to establish a relationship of trust with the parties directly. Attorneys can help by encouraging you to trust the mediator and to participate in the mediation process, while still protecting your interests.

The success of mediation depends, to a large extent, on strict confidentiality and on your willingness to participate in an active way.

It's a good idea to involve your attorney, particularly if he or she is open to being collaborative and is also open to helping you to solve the issues at hand.

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