

## The Top Five Mediation Misconceptions

I am a certified mediator and arbitrator in Florida. As a professional Neutral, I frequently get asked about what my work involves. When I ask the questioner about what they think about mediation, I get some surprising answers. Here are “the top 5”: five statements that I run into as a mediator that do not track the reality of what mediation is or what mediators do.

1. ***Mediation and mediators only work on divorce cases.*** Not so. Divorce may be a common place where non-business people and families encounter mediators, as this is a widespread technique used by courts across the United States to help divorcing couples reach a final conclusion with less trauma and cost than a battle in open court might inflict. Here are some recent statistics: For just the quarter October through December 2019, more than 32,000 cases were mediated or arbitrated across the state of Florida by court order. (See Uniform Data Reporting, ADR Programs, October through December 2019). Of these cases, approximately 6600 involved family cases, where mediators resolved questions of support for minor children and parental rights and obligations. That means over 25,000 cases participated in alternative dispute resolution in just one quarter in just one state that did NOT involve a divorce or family law issue.
2. ***The Mediator will say how the case should be resolved. Also, whether your lawyer is any good.*** Again, not going to happen. Mediators typically try to get the parties to work together to find a mutually acceptable solution to a dispute. While the parties may be at the mediation because of an order from a court, they are not required to reach a settlement. Depending on the state, Mediators may be ethically barred from imposing or even suggesting a result (even a legally correct, “good” result). Why? Because this is what arbitrators and judges do and is not considered to be in the same arena as what mediators do. A Mediator with experience who may depend on word-of-mouth referrals from lawyers will also keep any opinions about a lawyer to herself.
3. ***The Mediator works for one side or the other.*** A mediator is neutral. Unlike a lawyer who is hired to advocate for the client’s position and provide advice in the client’s best interest, a mediator does not work for one side over the other. Instead, the mediator can be described as the advocate for the deal or settlement, working to get the parties to a place where they can resolve the case, wherever that place may be. This perspective is very different from the pure advocacy a lawyer provides, and often contains the reality checks and balances that parties might want to overlook or assume away.
4. ***If you settle during a mediation, and decide later that you do not want what you agreed to, you can change it.*** Usually, this is untrue. The point of the mediated settlement is to bring an end to the matter and if parties could come back and re-start or call a do-over on the negotiation, it would undermine one of mediation’s great benefits: efficiency and finality. If you have a change because of a clerical kind of error --- say a misspelling, or two numbers in a date got transposed – those kinds of errors can be addressed. If there is a substantial change that affects the fundamental agreement between the parties, then it is likely the party seeking the change will have to get the court involved unless the other side agrees to the proposed changes.

5. ***Mediation is not the same as meditation.*** Both concepts may bring you inner peace and affect your headspace. Mediation, however, is a specific conflict resolution technique used by courts worldwide to resolve cases without the costs and time investment a trial requires. Not for nothing, many mediators do meditate. Doing so keeps them neutral and balanced, which allows a much more effective mediation.