

PRACTICE HINTS

This is the first meeting with clients after the consultation session and after they have decided to mediate; it is the second actual meeting.

PURPOSE AND TASK

To structure the process; the underlying assumption is that clients adopt a crisis mentality because they have no information, or are confused by misinformation and overwhelmed. The mediator needs to organize information and issues to diffuse the crisis. Setting an agenda for the whole process and each individual session can be critical for the parties to see what they have accomplished and what yet needs to be done—much like a "Trip-tik" from the Auto Club laying out your route from New York to San Francisco (use that metaphor with clients).

WRITTEN MATERIALS TO BE GIVEN TO CLIENTS

- Agreement to Mediate (should have been received by clients before session either by mail or given in consultation session)
- Financial Profile
- Client History

DESIGN OF THE SESSION

The session begins with exercises calculated to allow for general assessment and to understanding how the parties conceptualize their future relationship after the divorce and their notions of fairness, and then to move directly to the specific tasks such as setting the agenda, addressing immediate issues and homework assignments (information gathering).

The specific exercises are:

1. **Relationship Expectations** This is not therapy. The mediator is merely trying to establish where the relationship is now and where they hope it might be in the future. The purpose is to pierce the myth of finality that when they go to court and have a final agreement their relationship is over.
2. **Goals/Interests: Fairness** It is important to establish common ground. Don't let parties discuss specific plans; it is too early in the process and they don't have enough information or awareness of options. Focus on "protection of the children", "financial responsibility and security for each" and the "equitable distribution" of property.

Identify the standard of fairness they choose to use—their personal standard rather than a legal standard (what court would do) or a mathematical standard (50/50=fair) early in the process before discussion of specific difficult topics takes place in later sessions.

3. **Agenda Setting** Give the parties the issues that need to be addressed; they do not typically know or are not able to distinguish them on their own. Financial responsibility issues will be lumped together with property division issues, or if left to develop an agenda ad hoc, they'll list specifics "my coins",

"the kids' college education", etc. Direct the parties' participation in thinking about which will be the easier or harder issues. Protect both parties from feeling that the discussion and tentative resolution of an issue early on will be "set in stone"—all issues are always open for review. Remember that parties will often confuse themselves viewing all issues as inextricably connected with every other issue—the agenda is merely a means of methodically beginning discussion in a businesslike manner—a place to begin.