THE MEDIATOR'S PLAYBOOK

Tips, Tricks & Taboos in Divorce and Family Law Mediation

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WORKSHOP PROMISE

Better process changes the outcome

CONFLICT ——— COLLABORATION

Prepared people + a safe structure + sound judgment

The goal is not simply to reach agreement. It is to build a process that surfaces interests, tests risk, and produces durable decisions.

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LEARNING OBJECTIVES

Three decisions drive a productive mediation

01
PREPARE
Build credibility with current facts, figures, sources, and valuation dates.

02
CHOOSE
Shift from past positions toward a forward-looking approach that fits the case.

03
MANAGE
Prepare clients for risk, tradeoffs, and outcomes that differ from court.

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PREPARE

Preparation buys negotiating room

Credibility is cumulative.

Each unsupported number creates a new conflict. Each sourced, current figure removes one.

A little disciplined work up front can reduce trial preparation later.

01	FACTS	What is known—and what is disputed
02	FIGURES	Financial declarations and updated documents
03	SOURCES	Traceable support for each material number
04	VALUATION DATE	A shared point in time for comparison

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PREPARE

Match preparation cost to case risk

Not every issue needs an expert. Every shortcut comes with a tradeoff.

LOWER COST / LOWER CONSEQUENCE — HIGHER COST / HIGHER CONSEQUENCE

QUICK ESTIMATE	TARGETED SUPPORT	FORMAL VALUATION
Low-stakes items; confirm the limits of Zillow/CMAs, AI, or informal evidence.	Updated records and focused documentation where uncertainty affects leverage.	Expert support when value, income, or credibility can materially change the result.

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PREPARE

The standard: current, sourced, usable

DO

- Bring complete financial declarations
- Update documents and valuation dates
- Label assumptions and disputed figures
- Share materials in a workable format
- Use creative evidence—then explain its limits

DON'T

- Arrive with unexplained numbers
- Rely on stale statements or screenshots
- Treat estimates as established facts
- Hide the key issue in a document dump
- Confuse a shortcut with a conclusion

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SCREEN

Screen the process before you schedule it

The session format should follow the risk—not the calendar invite.

01	SAFETY	Domestic violence concerns, coercion, and immediate safety needs
02	SUBSTANCE USE	Capacity, sobriety, and whether participation can be meaningful
03	POWER & CONFLICT	Emotional volatility, intimidation, and decision-making imbalance
04	FORMAT & ACCESS	Separate rooms, Zoom etiquette, support, timing, and technology

If the process cannot be made safe and productive, do not force the format.

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MANAGE EXPECTATIONS

Prepare clients for a different kind of decision

COURT

- A decision is imposed
- Rules narrow the available remedies
- The record organizes the dispute
- Winning and losing dominate the frame

MEDIATION

- The parties shape the agreement
- Interests can customize the outcome
- Risk and uncertainty become negotiating inputs
- Fair and equitable can align with what matters

Risk analysis is preparation—not pessimism.

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MANAGE EXPECTATIONS

Attendance is a process choice—not an afterthought

Before the session, decide who may attend, what role each person will play, and how confidentiality will be protected.

DISCUSSION PROMPTS — Utah Code §78B-6-207(2)(a): attendance by agreement • Utah Code §78B-10-110: a party-designated attorney or individual may accompany and participate

Workshop discussion prompt; confirm current law and case-specific requirements.

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CHOOSE THE FIELD

Choose what will be mediated before choosing who

FINANCIAL COMPLEXITY

High asset / income vs. lower asset / income

CUSTODY CONTEXT

Rule 4-903 conferences, custody issues, and the timing of recommendations

INFORMATION READINESS

What is known, what is disputed, and what still requires evidence

DECISION READINESS

Which issues are ripe for negotiation—and which need another step first

Scope first. Fit second.

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CHOOSE THE MEDIATOR

The right mediator fits the conflict

MATCHING QUESTIONS

What does this case need from the person managing the room?

PRESENCE	SOFT / HANDHOLDER	FIRM / PUSHER
BACKGROUND	NON-ATTORNEY	ATTORNEY / FORMER JUDGE
METHOD	PROCESS-LED	OUTCOME-TESTING
DYNAMIC	CALM / RELATIONAL	DIRECT / HIGH-CONFLICT

Avoid demographic shortcuts. Select for skill, trust, credibility, and process fit.

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CHOOSE THE APPROACH

Approach is a dial—not a label

01

FACILITATIVE

Clarify interests, improve communication, and help parties generate options.

02

EVALUATIVE

Test positions, risks, and likely outcomes to sharpen decision-making.

03

TRANSFORMATIVE

Use recognition and empowerment to change how the conflict is handled.

Use history to inform the conversation—not to trap it there.

Forward-looking does not mean fact-free.

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MANAGE THE ROOM

Keep movement without forcing settlement

01	NAME	Surface the emotion or dynamic without taking sides.
02	CAUCUS	Use private conversation strategically—not reflexively.
03	TEST	Challenge assumptions, ranges, and consequences.
04	REFRAME	Move from entrenched positions to interests and options.
05	PAUSE	Recognize when pressure is counterproductive or the process is spent.

Neutrality is not passivity. Active process management still requires restraint.

Close with clear, usable documentation—or clearly identify what remains unresolved.

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YOUR NEXT MEDIATION STARTS BEFORE THE SESSION

01

SOURCE THE NUMBERS

Make every material figure current, traceable, and usable.

02

DESIGN THE PROCESS

Screen safety, attendance, format, and decision readiness.

03

MATCH THE APPROACH

Choose the mediator and interventions the conflict actually needs.

QUESTIONS & DISCUSSION

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