

# ROLE OF THE LAWYER

## Different stages of the process

- Instructions and party statements
- Agenda setting
- Exploration of issues - sometimes lawyers filter the communication
- Negotiations
- Private session
- Agreement

Different types of power that parties hold in their relationship such as economic, emotional, physical, psychological status, language and information.

## Disclosure

It is important that there be disclosure of all issues relevant to the dispute - if financial issues are being mediated, the mediator may ask the lawyers to assist their clients in preparing financial disclosure forms.

Need to clarify what issues are in dispute and how the lawyers intend to deal with them.

*See page 61 of Mediation in Practice.*

- Whether the mediation is to be open or closed ie. issues of confidentiality
- Process to be followed during mediation including whether the meetings will be conjoint, individual or a combination of conjoint and individual.
- Time and place for the mediation.

### **The Lawyers concerns**

- That the client may be placed in a vulnerable position vis-a-vis the other spouse
- Power issues

- Agreeing not to litigate issues under mediation may reinforce the status quo
- The client may be induced to make too many concessions in an effort to reach resolution
- Time may be lost mediating.
- Dealing directly with the other spouse may cause conflict and distress for the party
- Mediating with the spouse may create false hopes about a possible reconciliation.

### **The Lawyer will**

- Describe the mediation process to the client
- Obtain the consent of the client to proceed with the mediation
- Contact the lawyer of the other spouse to suggest mediation

- Ensure that both spouses are provided with a list of experienced mediators.
- Distribute up to date CV of the mediator
- Clarify the parameters of the mediation issues i.e. which issues are to be part of the mediation process and which are to be excluded.
- Agree upon a time limit for the mediation process, as well as the arrangements for payment of the mediator's fee.
- Encourage mediation if it has not been attempted.
- Support mediated resolutions.
- Lawyer has role in the agreement by both parties to enter into mediation (if only one client or lawyer is supporting mediation it cannot proceed)
- Role in clarifying payment of fees
- Checking and distributing copy of mediator's CV
- Clarification regarding form of mediation - open, closed etc.

- Mediator to be provided with full disclosure of all information pertinent to the issues in dispute.
  
- The mediation agreement
  
- The mediator's fees and billing practices should be fully explained, including the hourly rate, method of billing, whether a retainer is required, and cancellation policy.
  
- The issues to be discussed in mediation.
  
- The lawyer consults on the terms of mediation with the mediator and the other lawyer and is committed to same.
  
- The mediator should communicate to the lawyers any approaches that might prove helpful in maintaining a co-operative atmosphere.

*Photocopy pages 164 & 165*

*See Journal of Family Studies*