



One way Mediation Saves You Money – Watch Out for this Expensive Tactic in Litigation

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Here's a common scenario in divorce litigation: You go into the divorce attorney's office, tell your story, and the lawyer suggests you draw up a draft Property Settlement Agreement (PSA) for presentation to your spouse. You pay your money (my Fairfax, Loudon, Prince William divorce mediation clients usually tell me such a draft costs them in the neighborhood of \$1,500). Then, your lawyer sends that draft PSA to your spouse, or you are given that document to present to him or her at home.

BAM! That sets off fireworks.

Your spouse is usually less than receptive to see YOUR divorce lawyer's version of what is a good settlement. Not only is a PSA written in that intimidating language known as "legalese", but many spouses who receive such a "premature" Property Settlement Agreement do not understand that it is only a draft and that their comments are welcome.

They see it as a threat.

Even when the terms of the PSA are intended to be "fair," they are often still perceived by the recipient spouse as "one-sided" and a "call for battle" for three reasons:

- *there is no mutual agreement on the terms;*
- *anything that comes from an attorney's office often feels like an attack;*
and
- *divorce attorneys do not tend to write their Property Settlement Agreements in neutral terms (at least that is how it looks on paper to the recipient)*

It is said that these draft PSAs are “meant to get the ball rolling on settlement”.

If that is your understanding of why your divorce lawyer wants to draft such a serious and expensive document before you and your wife/husband have hashed out the details of your settlement, you may want to ask a few questions before you plunk down your \$1,500 or so dollars.

Ask your lawyer:

- *Why is this tactic being chosen?*
- *Are there other ways to “get the ball rolling” that I should consider?*
- *How will this help move my case toward settlement?*
- *Will this strategy make settlement more difficult?*
- *Will this tactic help me get what I want?*
- *How will it benefit the children?*
- *Is this a less expensive way to do things than to actually settle the case and then write up the PSA?*

Paying twice for the same document is a lot of money, but that is what often happens in these types of situations. I deal with a lot of mediation clients whose cases began this way. What I see is that, despite the fact that any PSA can be amended to reflect the actual settlement of the parties (which the parties are always told), the spouse who received the original “Premature” Property Settlement Agreement now has no trust in the other party’s attorney who originally drafted the document. The recipient spouse usually wants me to draft a new PSA because, as their mediator, my clients know that the language in any document that I draw up will be neutral and will reflect exactly what they agreed to in mediation.