



## [The Construction Lawyer as Mediator](#)



While there has been much discussion about whether a construction attorney's involvement [is actually a detriment](#) to a construction project and its potentially litigious aftermath, I have spent a couple of posts here at [Construction Law Musings](#) to discuss the benefits of [hiring a construction attorney early in the project](#), and even [later in the event that a dispute arises](#). Without rehashing those discussions (I encourage you to check them out and weigh in), these two posts (and the other arguments made

elsewhere) assume that the construction lawyer's role was as an advocate and, more importantly, counselor for a particular client with the duty to protect that construction professional's interest.

There is, however, a third role that I personally embrace on a regular basis: the [role as mediator](#). Aside from the advocate's role (one that I enjoy and see as necessary for the protection of my clients), an [experienced construction attorney](#) can also serve as a neutral mediator to assist the two sides of a construction related dispute reach a resolution short of the time, risk and expense of a trial and a judge's decision.

I have [discussed mediation](#) (and other forms of [alternative dispute resolution](#)) extensively, but even I need a reminder of why I am a huge advocate of this dispute resolution method. I received just such a reminder last week when [acting as a mediator in the Chesterfield County General District Court](#). These sessions consistently remind me of a major benefit of mediation: the parties get to vent and share the "non-legal" issues that may drive a dispute. While a mediated agreement almost always comes down to money (at least in construction matters), the key to a settlement often has nothing to do with money. Without the restraints of the rules of evidence and courtroom procedure, the parties can, and should, voice concerns that in a courtroom would likely be deemed irrelevant. This will let the parties control the pace of the discussion and allow them, in my opinion, to feel that their concerns have been considered in a way that the litigation process may not.

Throw in the knowledge of the construction field (and probably litigation) that a construction attorney/mediator brings to the table, and you very well may have a recipe for a resolution without the negatives voiced elsewhere. By use of this subject specific knowledge, those of us who engage in mediation both as counselor and mediator can add a level of assistance for our clients and the clients of others that should lead to more client satisfaction and a smoother process over all. In short, the construction lawyer as mediator can be yet another benefit of the legal professions assistance to the construction industry.

Do you agree? What are your thoughts on the subject? I'd love to hear your comments below.

Photo credit: [Wikipedia](#).

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*