

Tips, Techniques and Strategies for Effective Mediation

Mediation is a Confidential Comfortable Place for You and All Parties to Attain Knowledge and Ultimately Make Informed Decisions

I. The Attorney's Perspective – What You Say You Want to Know

1. What Goes On In The Other Room
2. What Mediators Share With Each Other Outside The Attorneys Presence –
 - a. No We Don't Have Our Own List Serve
 - b. It's Lonely in The Room
3. "Tis The Season" –The Best Time to Mediate

II. Professionalism

1. Trust – From Inception or Earned
 - Take Away the Cloak of Suspicion – It Begins with All of Us
2. Lawyers, Opposing Counsel, Insurance Representatives, the Parties
 - Field Adjusters Exclusive for Mediation
3. The 5 Year Litigated 4 Session Mediated Resolved Case

III. Welcoming the Process With An Effective Mediator

1. Have a Positive Attitude and an Open Mind
2. Mediation Is a Process that Can Ultimately Lead to Resolution
3. The Alternatives, Thinking Out of the Box, Learning Curves, Evaluation, Re-Evaluation, Gaining Objectivity
4. Your Definitions of An Effective Mediator: (a) Works hard; (b) Grasps the issues, (c) Energetic, tenacious, (d) Compatible; (e) The opposition listens; (f) The client listens; (g) Their EGO is put aside; (h) Follows up on unresolved cases; (i) Tireless dedication; (j) Accessible: text, email, cell phone;

IV. Preparation – Know Your Case and Bring Ammunition

1. Pre-Mediation Telephone Conference
 - b. Readiness, Homework, Settlement Demands
 - a. Let the Mediator Know Your Needs Privately Pre-Mediation
2. Risk and Cost Analysis – Venue, Judge, Jury Pool

3. Case Status: pre-litigation, pre-trial motions, experts, current and future costs
4. Preparing the Client – Relationship and Confidence Building
 - a. Significance of the Event for the Client
 - b. It's Not All About the Money – Emotional, Other Agendas
 - c. Client Control – Direct Communication with the Mediator
5. The Significance of Submitting a Timely Brief
 - a. Submitting Days in Advance v. The Day
 - b. Educate/Sway the Mediator - Highlight the significant issues, law with exhibits
 - d. Provide procedural background and trial date
 - e. Provide a pre-mediation negotiation history, if any
 - f. Confidentiality – separate briefs versus sharing information

V. The Mediation Hearing – Empowering Your Mediator

1. It's All About Who's in the Room
2. Playing Poker with the Regular Crowd or A New Sheriff in Town
3. Know Your Danger Points and Address Them Confidently
 - a. Advocate from Confidence Not From Fear
4. Have the file and crucial evidence including deposition transcripts available
 - a. It's All About the Electronics, Show & Tell
 1. Expert Witness Reports, Photos, Graphs, Exemplars, Models, Videos, Tape Records, Power Points
 2. Witnesses Present – Family, Friends, Experts
5. Damages – Can You Sell Them to Your Mediator With a Straight Face?
 - a. Lawsuit Naming Teenage Plaintiffs Controlled by Parents
 - b. Medical Specials, Loss of Earnings, Life Care Plans, Loss of Earnings, Generals
6. Cases With An Emotional Component
 - a. Sexual Abuse, Sexual Harassment, Wrongful Termination, Wrongful Death

VI. The Take Away - How To Gauge Success Outside of Resolution

1. What The Parties Have Learned
 - a. Meet and Greets Help Assess Value
 - b. Impeachment: Surveillance, Social media
 - c. Coverage issues, Additional insurance, Additional discovery needed
2. Narrowing the Settlement Gap
 - a. Convincing the offer the top dollar offered and the bottom line demanded
 - b. The Mediator's Proposal
3. Binding Arbitration or Trial High/Low
3. Compromise Is Not "Weakness"
4. Knowledge is Empowering for Making an Informed Decision