

**PREPARING YOUR CASE FOR MEDIATION
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I. Tips, Techniques and Strategies for Effective Negotiation

1. Professionalism - Welcome the Process, Relationship Building
2. Preparation - Be Ready and Motivated
3. Persuasion - Know your Case
4. Win Over the Mediator - Bring Your Ammunition
5. Be Open Minded - Have a Positive Mindset

II. Pre-Mediation Mediator Selection

1. Mediators Wear Many Hats: Lawyer, Judge, Therapist, Friend, Foe
2. Is Your Mediator Effective?
 - a. Showing respect, compassion, and patience during the process
 - b. Grasping the issues
 - c. Energetic, tenacious, dedication “closing”, not looking at the clock
 - d. Client connection to the mediator: Identity and life’s experiences
 - e. Ability to read people, body language, eye contact

III. Pre-Mediation Preparation

1. Risk Analysis
 - a. Predictable versus the unpredictable
 - b. Courtroom climate: venue, judge, jury pool
 - c. The client’s ability to withstand trial, analyze all witnesses

2. Financial Analysis

- a. Case value and exposure
- b. Status of the litigation, costs to date and future costs

3. Preparing the Client

- a. Are the adjuster and claims management in alignment?
- b. What decision maker will be present?
 - i. Plaintiff, Defendant, Representative with Authority
 - ii. Phone, Face Time, Email, Alternatives
- c. Having Plaintiff understand the process as a dress rehearsal for trial

4. The Briefs and Their Importance

- a. Educating the Mediator
 - i. We want to help you look great for your client
 - ii. We want to let you know we understand the issues
- b. Delivery method and timing: hard copy versus email, our Portal
- c. Confidential versus sharing with opposing sides
- d. Articulate the facts, issues, law and evidence
- e. Provide procedural history and the trial date
- f. Exhibits - limit to the most significant
- g. Convey pre-mediation settlement discussions and stumbling blocks

IV. Presenting Your Case at Mediation

1. Bring Your Persuasive Ammunition "Show and Tell"

- a. Expert witness or investigative reports, photos, graphs, exemplars, models, videos, white boards, blow up, social media

- b. Deposition transcripts excerpts, declarations
 - c. Live Witness: Experts, Family, Friends

 - d. Pre-Trial Motions: MSJ, Motions in Limine
 - e. The Law and Key Jury Instructions
2. Can You Sell It To Me With a Straight Face?
- a. Corroboration, credibility, backbone
 - b. Embellishing or understating damages
 - c. Over playing or underestimating the challenges in your opponent's case
 - d. Over selling the strengths of your case
3. The Learning Curve
- a. What will your client learn from the other side?
 - i. The adversary's arguments and the evidence to support them
 - ii. New facts and future discovery
 - b. Evaluating the parties: it's all about perception: shining star, lack luster
 - c. It's not all about the facts and the law: who's in the mediation room?
4. Have Your Client Involved
- a. Allow the mediator to work directly with your client
 - b. Give opposing counsel and the parties an opportunity to meet with each other
 - c. Utilize the mediator to improve the attorney-client communication
 - d. Discuss openly with the mediator any differences in opinion on case value
5. Use the Mediation Venue for Closing Argument

V. Compromise is Empowering the Negotiation Not “Weakness” or “Backing Down”

1. What does “bidding against yourself” mean?
2. Empowering the Negotiation
3. The obligation of communicating settlement offers to the client
4. Statutory Offers - the end or continuation of negotiation?
5. Allow the Mediator to convey top dollar and bottom line demand
6. Negotiate terms along with dollars: payment time lines, confidentiality, other