

Crunch Time: How to prepare for and participate in mediation when disputes are at their most difficult.

An Advocate's Quick Guide to Preparing for a Difficult Mediation

(from a mediator's perspective)

1. Time and effort :: If it is truly in your client's best interest to resolve the case prior to trial or without additional litigation, put forth an appropriate amount of time and effort in preparing both yourself and your client for the mediation conference.
2. Know your client :: Get a good read on and have enough interaction with your client to know how s/he responds under pressure situations and plan accordingly. If you need to recruit the help of the mediator in working with your client, reach out to the mediator and speak frankly.
3. Consider the equitable :: Sure. The merits, statistics, and legal arguments of any case are important; however, discussing with your client the equitable aspects of the dispute will encourage a different kind of thinking and may reveal ways in which the suit and/or resolution will impact other areas of their lives.
4. Process expertise :: Think of ways to utilize the mediator's expertise in the mediation/negotiation process to further your client's interests and achieve resolution. The mediator's job is to assist the parties—use them!
5. Negotiation strategy :: Although numerous resources exist instructing advocates on how to negotiate and leave a mediation conference with the upper hand, focusing on these tactics will likely preclude the possibility of resolution. Try to avoid playing games; be real.
6. Communication :: If you sincerely believe mediation is not in your client's best interest or issues and circumstances exist that may prevent resolution, contact the mediator and express your concerns well before the conference. Speak frankly; be real.
7. Read :: Read, don't gloss over, communications from the mediator. The mediator does not send information to waste anyone's time—it likely contains valuable, useful information.
8. Be flexible :: Avoid the temptation of drawing a line in the sand and being anchored to a bottom line or a position.

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Dispute Resolution
Conference

Exploring Settlement is Hard Work

- A settlement option's viability depends on a party knowing:
 - Her values and goals
 - Possible outcomes of her other options
 - Strengths and weaknesses of the opposing side's case
- A party's emotional, mental, and financial fatigue makes this work even harder.

The “All in One” Settlement Tool

- When attorneys and mediators are prepared, mediation is a valuable tool for exploring settlement.
- Provides an opportunity to:
 - Identify/clarify a party’s interests and goals
 - Provide information and challenge perspectives regarding possible outcomes
 - Understand the opposing party’s perspective

Panel Discussion: Using the Tool

- How is a case's mediation process affected by the court it is in?
- Does the form of a mediation contact matter?
- What is essential pre-mediation preparation for an attorney and mediator?
- How can attorneys and mediators utilize each other's skills to address difficult issues?

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How can attorneys and mediators utilize each other's skills to address difficult issues?

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