

Attorneys: What You Can Be Doing to Improve the Chances of Success at Mediation

I think most attorneys suggest mediation to their clients because they truly feel a mediated agreement is best for everyone. Yes, I know that sometimes mediation is forced on the attorneys and clients, by a judge and by our court rules. As long as you're doing mediation, for whatever reason, please try and do whatever is reasonably possible to improve the chances of reaching an agreement.

For attorneys headed for mediation, it's always a good idea to do the following:

1. First, you can give your client a copy of articles on this site to answer some of their most pressing questions or concerns.
2. For Zoom mediations, practice ahead of time on Zoom with your client, and make them feel comfortable with doing this online. Stress to your client that using a computer or laptop is much better than using a cell phone in mediation, and that video is necessary to be able to effectively talk. The client and attorney should each have good internet, preferably hardwired rather than wifi, to have as few technology disruptions as possible.
3. Let the mediator know ahead of time if there are special considerations about this mediation. Does someone need to leave at 3:30 to pick up children? Will the attorney be offline for awhile to handle a court matter during the day? Are Orders of Protection in effect? Does someone have special needs? Is there a bankruptcy pending? Please schedule a conference call with the mediator a few days ahead of time to discuss those types of things in advance.
4. If specific settlement offers/ letters have been exchanged, please make sure the mediator gets those ahead of time, with your separate mediation memorandum.
5. Make sure the information you give the mediator is as up-to-date as possible. If you send along a settlement letter as your mediation memorandum, but several bank accounts have been changed or cashed in since the letter was sent, the mediator's approach may change. If someone has lost a job (or gotten one), that also changes the scenery.
6. Update your attorneys' fees and costs to the date as close as possible to mediation. Most people come to mediation not knowing exactly what they've spent on their attorneys' fees, either in total or what is still sitting in a trust account. Bring copies of all your billing statements, or have your billing department ready to provide you with a current printout.
7. If there are significant discovery disputes outstanding and they will affect someone's ability to settle, notify the mediator in advance and let everyone know what motions are pending to resolve the dispute. Many, many mediation sessions turn into discovery meetings, by necessity, if it turns out that someone simply can't settle an issue without further information.
8. Ask your client ahead of time if s/he can settle the case without having an appraisal on certain properties. If the answer is no, then insist that they get the appraisals before mediation. It makes no sense to pay for a day of mediation when you know that one party wants to be awarded the house, and thinks its value is \$400,000, and the other party

is sure the house is worth \$700,000. Both parties need to get documentation and expert opinions to back up their values in order to effectively mediate this issue.

9. Do an effective mediation memo to get the most relevant information possible to the mediator ahead of time. Read the article on this site about Good Mediation Statements.