



Top 10 Tips to Maximize a Positive Result at Mediation

10. DECIDE THE BEST TIME TO MEDIATE. Consider mediation when you have enough information to adequately advise your client and, if possible, before attorneys' fees are a significant impediment to settlement.

9. STRATEGICALLY CHOOSE YOUR MEDIATOR. In order to be effective, your mediator must be able to quickly build trust with the parties and counsel. Consider what mediator personality, experience and style will resonate with your client and the other side's client and attorney(s).

8. WORK WITH YOUR MEDIATOR. Make sure your Mediator is familiar with the key legal and factual parts of your case, any settlement discussions, and the parties (and personalities) attending. Consider sharing as much information as possible with the other side before the mediation session; the more time the other side has to consider that there is real risk to proceeding to/with litigation, the better. Let the mediator know in advance any issues that may help or hinder your client's (and/or the other side's) willingness or ability to settle the dispute.

7. EDUCATE YOUR CLIENT. Talk to your client about the cost, risk, time and stress associated with litigation, the factual and legal weaknesses in the case, and about how mediation is different than litigation, *i.e.*, in mediation, the mediator is not a decision-maker and parties (and counsel) are working together to find a resolution that everyone agrees is better than litigation.

6. BE STRATEGIC WITH YOUR NEGOTIATION. Start with a number that is aggressive but can be justified/explained. Your starting position should also allow you to make a big enough move at the beginning so you can reduce concessions as you move along. Be sensitive to the "pace" of the negotiation and don't try to rush it. "The right number at the wrong time, is the wrong number." Be aware that a starting number that is viewed as highly unreasonable may discourage the other side from participating in mediation.



5. USE YOUR MEDIATOR'S EXPERTISE. Encourage your client to talk to the mediator; this will be their “day in court” and, in many cases, being heard is an important part of moving toward resolution. Use your mediator as a negotiation partner - ask their advice and work with them - but let your mediator use their judgment on items such as when/how to best convey offers/ demands. How and when an offer/demand is presented can greatly impact whether the other side will agree to it – let the mediator use their expertise and judgment. Let the mediator be the “bad guy” (or back you up when you need to be the “bad guy”); the mediator can reinforce to your client the weaknesses or risks in their case and/or of proceeding to litigation.

4. GET CREATIVE. Generally, avoid take it or leave it offers/demands, unless it is the very, very end of the process (and then they usually aren’t necessary). If negotiations are truly stalled, work with your mediator to jump-start negotiations; in many cases, putting something/anything on the table can serve this purpose.

3. AVOID SURPRISES. Often employment matters involve much more than the legal case. If there is something you or your client will need to resolve the matter, disclose it to the mediator sooner than later (especially if it may be unexpected by the other side). Your mediator can help advise you as to when/how to raise the issue.

2. GET YOUR FINAL NUMBER ON THE TABLE. This is your client’s opportunity to find out their best option for settlement at this time. Each side should be sure that they did everything in their control to try to reasonably resolve the matter at the mediation session.

1. HAVE PATIENCE FOR THE PROCESS. The parties are at mediation because they are at an impasse, so both parties will need to change - which takes time and can be very difficult and stressful. The vast majority of cases resolve at mediation, even if the parties feel discouraged at one or more point during the day. Encourage your client to stay engaged, and not to give up!