

Inside the Judge's Head

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A remote location most lawyers would love to explore is the inside of the judge's head. This explains the perpetual popularity of Bar Association programs featuring trial judges' CLE speeches and publications with titles such as "A View From the Bench," "Judicial Perspectives," and "Judges' Tips and Pet Peeves." Understanding how the judge analyzes the essential legal and factual issues of your case can be incredibly helpful in preparing your case for trial, and perhaps even more so in your preparation for dispositive hearings on Motions for Summary Judgment, Motions to Dismiss and even for routine discovery motions.

Recently, I made the transition from 24 years as Circuit Judge in the Fifteenth Judicial Circuit to a very different role in the world of ADR. In the mediations I have observed or conducted, I have noticed that most lawyers unknowingly pass up a golden opportunity to learn how judges might actually analyze the legal and factual issues in their cases. As I see it, the very real advantage of selecting a retired judge as your mediator is the valuable opportunity presented for you to explore a judicial analysis of the important issues in your case.

I have observed that attorneys too often tend to view mediation as an adversarial proceeding, solely a chance to convince those on the opposing side that their case is likely the winner in court. By doing so, a lawyer misses the chance to explore options for resolution based on seeking to understand both sides of the case from a neutral judicial perspective. This requires counsel to approach the mediation session with an open mind.

If you directly ask your retired judge-mediator how he or she would rule on the case, you are not likely to get an answer; however, in the confidential context of the mediation caucus, your request for the mediator's judicial analysis of the issues, of the questions likely to be in the judge's mind, of the mediator's opinions and reactions to the strengths and weaknesses of your position, you are very likely to learn something important. You gain a glimpse inside the judicial head.

The key, it seems to me, is keeping an open mind during mediation, and trying to gain insight into a different view of the case from a neutral perspective, rather than simply continuing a single-minded effort to "win" your case that day. Leave your trial lawyer's ego back at your office on mediation day. You can always



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pick it up and use it to your client's advantage when and if your client's case does go to trial.

Keep in mind that a successful resolution for your client, which ends the anxiety and stress of litigation, is the promise and the goal of mediation. But, if that goal is not achieved, you will have benefitted from the time, money and effort put into the mediation by the knowledge you gained exploring "inside the judge's head."

Lucy Chernow Brown, retired Judge 15th Judicial Circuit, joined the JAMS panel of distinguished neutrals after serving 24 years as a judge in Palm Beach County, Florida. For more information about Lucy Brown, please visit our Miami Resolution Center.

