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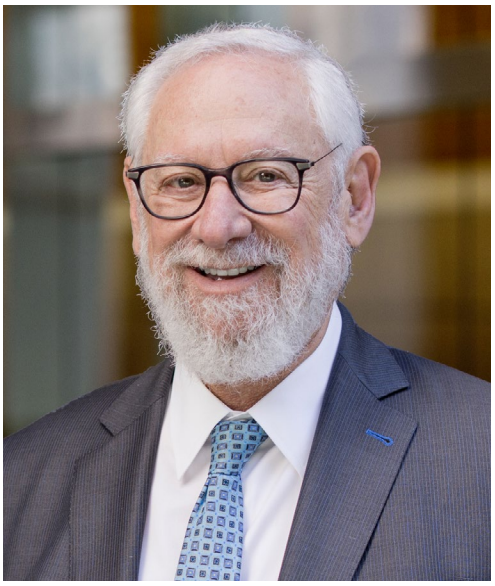
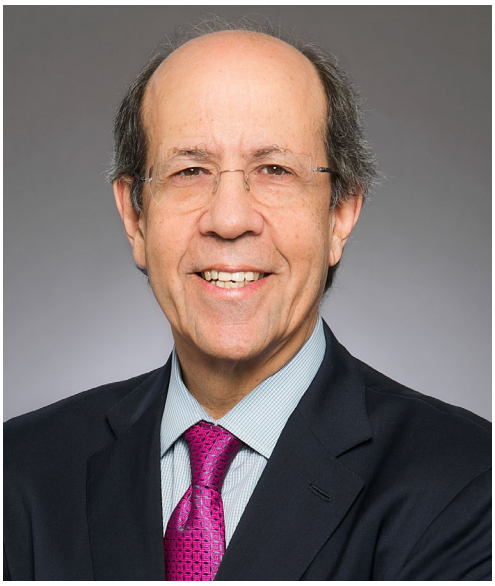
Trust, Tension, and Resolution: The Emotional Landscape of Complex Mediation

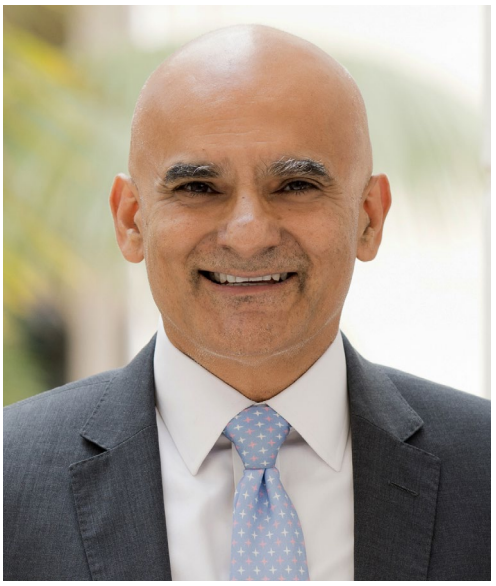
Complex mediation tactics from veteran mediators



Bruce A. Friedman, Esq.



Robert A. Meyer, Esq.



Hon. Shashi Kewalramani (Ret.)

From overlapping class actions and regulatory uncertainty to layered insurance and rigid parties, complex mediations demand more than a conference room and opening offers. They require planning, emotional insight and strategic flexibility, according to three seasoned JAMS mediators.

Longtime JAMS neutrals and former trial attorneys Bruce A. Friedman and Robert A. Meyer, and Judge Shashi Kewalramani (Ret.), who recently joined JAMS after retiring from his role as a magistrate judge on the U.S. District Court for the Central District of California, have collectively mediated thousands of disputes. These high-stakes cases span securities, antitrust, class actions, intellectual property, insurance and ERISA claims. Each neutral has a valuable, nuanced perspective on complex mediation, shaped by years of both advocacy and neutrality.

Complex Mediation: It's Not Just About the Law

Complexity in mediation can take many forms. Sometimes it's legal or procedural, like overlapping class actions or shifting patent standards. But just as often, a mediation becomes complex because of its emotional, financial or organizational characteristics.

"Complexity can mean multiple parties, technical statutes or competing interpretations of damages," Friedman explained. "But in class actions especially, it's not unusual for the defendant to feel personally offended by the lawsuit itself. Even in commercial disputes, there's more emotion than you'd expect."

Judge Kewalramani noted that business motives often drive litigation in ways even litigators may not initially understand. "Sometimes the lawsuit is actually about posturing for a bigger business deal or controlling a narrative in the market. Counsel needs to ask uncomfortable questions of their clients, like 'What do you really want?'"

Choosing the Right Complex Mediation Format

Whether to hold joint sessions, keep parties in caucus or proceed virtually depends on case dynamics and mediator style.

"I used to think joint sessions were helpful, but over time, I found they often raise the temperature without moving the ball," Friedman said. "Unless I need something very specific addressed, I avoid them."

Kewalramani considers emotional dynamics carefully before recommending a format. For example, you don't put the alleged harasser in the same room as the complainant, he said. To move the case forward productively, he asks the parties to provide confidential statements and then he schedules a phone call. He may re-

quest a key document or witness statement to prompt honest dialogue

And while virtual mediation offers convenience, it also limits informal dialogue. "In person, you get hallway conversations, sidebars among insurers," Friedman noted. "In virtual [proceedings], once the camera goes off, the conversation stops. That changes the rhythm."

Meyer stressed that persistence matters, especially when resolution doesn't happen in one day. "Some of the biggest breakthroughs come after the first session ends. My job is to make sure we leave the table with a plan to keep the dialogue alive," he added.

Preparation Is Nonnegotiable

In complex mediation, strategy and preparation are essential. All three mediators emphasized the importance of early engagement, thoughtful information exchange and candid discussions between counsel and clients to uncover both practical challenges and hidden motivations. Pre-mediation calls and shared briefs set the table for dialogue.

"You can't show up expecting the problems to disappear," Meyer said. "Too often, the mediation falls apart because key issues weren't addressed in advance."

Meyer, who frequently handles ERISA and securities class actions, emphasized front-loading the process. "One of the biggest mistakes lawyers make is failing to address issues with insurers in advance. You expect business-side negotiation, only to find it becomes a coverage fight that should've been handled weeks ago."

Friedman echoed the need to dig deep early, especially in class actions and tech disputes: "The key to success in mediation is the voluntary exchange of information. Plaintiffs often come in blind without knowing class size, insurance coverage or the defendant's financial position. That's not a recipe for productive negotiation."

Counsel's Role in Complex Mediation: Realism, Communication and Adaptability

All three mediators urged lawyers to evolve their approach to match the dispute's complexity.

"Really good counsel appreciates the negatives of the case as well as the positives and understands the dynamic nature of trials should the case not resolve," Kewalramani said. "Mediation is a chance to resolve the matter and use the neutral as a sounding board."

Friedman put it bluntly: "You've got to take the armor off. The brief can be adversarial, but once you're in the room, it's about problem-solving."

Building Trust, Managing Emotions

Emotional management and trust building are foundational in complex matters. As Friedman explained it, "You have to let people emote. Suppress that frustration, and it becomes a wall. A big part of my role is allowing space for that, then bringing it back to the practical issues."

"Trust is everything," Kewalramani added. "Credibility, honesty and kindness are good business. If you haven't built that reservoir of trust, you've got nothing to draw on when the tough moments come."

Meyer added, "You can't 'win' a mediation. That mindset kills momentum. The goal is to identify risk, assess value and help your client make informed decisions. Lawyers who get that are much more effective."

Creative Solutions for Complex Mediations

Sometimes, the path to resolution isn't linear. That's when creative approaches by the mediator can help break through an impasse.

Meyer frequently uses double-blind mediator proposals to help parties explore settlement without compromising their positions. "Let's say one side wants $10 million and the other wants to pay $1 million. I might propose $4 million. If both sides say yes, we settle. If one says no, the other never finds out. That preserves leverage but moves things forward."

Kewalramani described a recent case involving a fractured contract. "We broke the dispute into components. Settling just one piece gave us the leverage to resolve others. Partial progress builds momentum—and trust."

The three mediators all emphasized the value of breaks or sidebar conversations to advance the conversation.

For lawyers, the takeaways are clear: Prepare thoroughly, collaborate strategically and trust the process.

As Meyer put it, "When both sides walk away feeling like they were treated fairly, that's the hallmark of a good mediation. Sometimes it saves a company. Sometimes it saves a plaintiff's future. Either way, it's worth doing right."

Bruce A. Friedman, Esq., *is a respected JAMS mediator and arbitrator focused on complex commercial, insurance, class action and entertainment disputes. Previously a trial lawyer, he transitioned to a neutral role after decades handling high-stakes litigation, earning a reputation as a "great strategist" known for being knowledgeable, well prepared and effective.*

Robert A. Meyer, Esq., *is a nationally recognized JAMS mediator known for resolving complex commercial disputes with insight and credibility. He mediates high-stakes matters, including securities and derivative class actions, ERISA and intellectual property cases, professional liability claims, consumer class actions, and business litigation involving financial instruments, employment, and contract disputes.*

Hon. Shashi H. Kewalramani (Ret.) *is a JAMS neutral and former U.S. magistrate judge for the Central District of California with deep experience in resolving complex federal disputes. A registered patent attorney with a background in aerospace engineering, he brings technical fluency, trial experience and a practical approach to intellectual property, commercial, employment and civil rights matters.*