Client Preparation for a Successful Mediation

Hon. Morton Denlow (Ret.)

I. Explain the purpose of a mediation is to achieve a negotiated agreement, not a legal decision. The clients, not the mediator, are the decision makers in mediation. Mediation is not about winning, but attempting to reach an agreement that is acceptable to all parties.

II. Explain the advantages of settlement over litigation (the 7 Cs):
   a. Client control of the outcome;
   b. Cost control;
   c. Certainty;
   d. Confidentiality;
   e. Creative resolution;
   f. Continuing relationship; and
   g. Closure

III. Explain your mediator’s procedures to the client so they are not surprised by the process. Describe your mediator’s background and experience to let them know they are in good hands.

IV. In order to be successful in a mediation, the client should look forward, not backwards, because they cannot change the past, but must decide whether they will be better off going forward by going down the litigation path or the settlement path.

V. During the mediation process it is useful if clients:
   a. Acknowledge that there are at least two sides to the dispute;
   b. Attempt to put themselves in the shoes of the other side to understand what is important to them;
   c. Participate with an open mind;
   d. Exercise patience recognizing that it may take time to find out the best proposal the other side will offer them;
   e. Appreciate that in order to reach a settlement it must work for both sides;
   f. Understand that at the end of the day they have to make a settlement proposal that makes it difficult for the other side to walk away;
   g. Engage in the process in a business like way and keep the temperature down, because the mediation is not a trial but a negotiation.

To set a case with Judge Denlow, contact Case Manager Deborah Stewart: dstewart@jamsadr.com or 312.655.9192.