

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
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