



Make the Most of Your Mediation – The Employment Case

By Hon. Lynn Duryee (Ret.)
February 4, 2016

Mediating employment disputes before legal action is filed gives parties an opportunity to settle their differences before incurring impressive attorney's fees and expending valuable effort. Yet, it's no easy thing to settle a case before discovery has been conducted. Here is how one set of motivated participants successfully settled a pre-filing employment dispute in four hours.

1. Plaintiff submitted a reasonable demand far in advance of the mediation.

Four months before the mediation was even set, plaintiff's counsel sent his adversary a 10-page, beautifully written, old-school demand letter. The letter laid out the facts and law in support of plaintiff's claim. It gave a demand that was aspirational, but not astronomical. And, most importantly, the letter was served in plenty of time for all the defendant decision-makers to review and consider in advance of the mediation.

2. The lawyers agreed to exchange all the information they had well before the mediation.

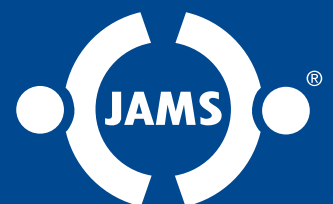
The lawyers appreciated that they would be able to better advise their clients about the benefits of settlement if each were in a position to evaluate the case as fully as possible. Accordingly, they exchanged the evidence available to them: wage statements, overtime records, emails, names of witnesses and expected areas of testimony, as well as current legal theories. This helped lawyers on both sides start the mediation feeling fully prepared to discuss the case with the mediator and with their clients.

3. The lawyers cultivated a respectful relationship with one another.

In separate pre-mediation calls with counsel, each side told the mediator that his opponent was a "good guy." Although the lawyers disagreed on the facts and the value of the case, they had made a genuine

*This article was originally published by LAW.COM
and is reprinted with their permission*

1.800.352.JAMS | www.jamsadr.com



effort to understand the position of the other side and respect the views of the opponent. The respect they had for one another contributed to the professional ambience of the mediation.

4. All principals attended the mediation.

The employee and employer were present in separate rooms, and both came prepared to speak openly with the mediator. Defense counsel had not had the opportunity to meet with plaintiff, and so, with counsel's permission, the mediator invited defense counsel to meet the plaintiff and hear her story. The plaintiff came fully prepared to speak about her experience regarding pregnancy discrimination, while defense counsel rose to the occasion and listened carefully and compassionately. This brief session in itself was one big reason the case ultimately settled.

5. The parties maintained momentum by remaining optimistic about settlement and making changes to their positions.

Both sides were clear that they wanted to settle the case, and both were clear that their number (and not their opponent's) was in the fair range. The parties were quite far apart during most of the negotiations, but each side continued to make baby steps to

move closer together. Ultimately, each side offered a bracket, and after brackets were exchanged, the case settled easily. During the day, each side remained fully committed to settling. Neither side threatened to walk out. Neither side accused the other of bad faith. Each lawyer greeted the news about the change in position of his opponent with optimism. There was a feeling all during negotiations that settlement was just around the corner.

Early preparation. Excellent briefs. Professional lawyers. Presence of decision-makers. Mutual respect. There's the prize-winning recipe for settling a case in just a few hours. ●

Hon. Lynn Duryee (Ret.) is a JAMS neutral who joined after serving on the Marin County Superior Court for more than 20 years. She presided over and settled thousands of commercial, contract, and negligence cases, along with every other type of civil case filed. She can be reached at lduryee@jamsadr.com.

*This article was originally published by LAW.COM
and is reprinted with their permission*

1.800.352.JAMS | www.jamsadr.com

