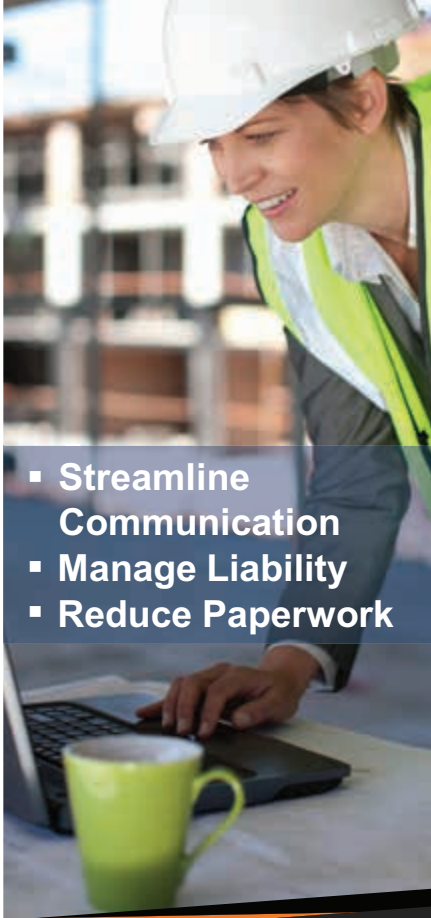


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Preplanning and Flexibility Keys to Successful Mediation

Hon. Nancy Holtz (Ret.) Mediator/Arbitrator,
Construction, JAMS

For almost every construction case, the best pathway out of a dispute is through settlement rather than through adjudication by judge, jury or arbitrator. Mediation provides parties with control over timing, process and the outcome of the dispute.

Mediation is more than a series of exchanges of dollar amounts and there are frequent obstacles which crop up. However, these obstacles are avoidable with preparation.

Here are a few points to keep in mind:

- ▶ Alert the mediator if there are any important non-monetary terms.
- ▶ Do not spend the entire mediation negotiating over money and only present other terms at the very end of the mediation.

- ▶ Avoid introducing new terms late in the process as they can provide leverage to the other side and derail the mediation.
- ▶ Come to the mediation with a settlement range in mind, but, be prepared to be flexible. Those last moves beyond the hoped-for endpoint may be tough, but will be worth it when the case settles.

Finally, it is tempting at the end, when everyone is exhausted, to simply shake hands and agree to have the lawyers follow up later with paperwork. Get it done. It is crucial to memorialize the basic terms of the settlement so that you have a binding agreement before you go your separate ways. ■