

## Mediation Do's and Don'ts

### Do prepare thoroughly!

We are sometimes surprised by parties who come to a mediation session essentially “winging it.” Attorneys and clients spend hundreds of hours getting a case ready for trial but may appear for mediation without having taken the same approach to preparing. Since approximately 90% of the cases we mediate settle, it is in each party's best interests to spend the time needed to place themselves in the best possible negotiating position. Honest discussions between counsel and client regarding the mediation process and the strengths and weaknesses of their case help lay the foundation for a productive mediation session. It is also in the best interests of the parties to properly brief the mediator. While we pride ourselves on being thoroughly prepared for mediation, our initial understanding of a case can be compromised if appropriate briefs and supporting materials are not provided by the parties in advance of mediation.

### Do schedule enough time for mediation!

A successful mediation takes time, focus, compromise, and patience. Very few settlements can be crafted in a few hours. Parties generally spend a portion of mediation establishing their positions, before money discussions even come into play. Trying to rush the process only results in an impasse. While there are cases that can be settled in a half-day, most cannot. Nothing is more frustrating for parties than failing to reach a settlement due solely to time limitations. Many complex, multi-party cases cannot possibly settle in a day, and this fact needs to be recognized beforehand. In such instances, several days of mediation, often 30 days apart, need to be agreed to ahead of time so that all parties can understand the process.

(Please watch our next newsletter for more mediation Do's and Don'ts)

*Someday you'll find yourselves on the Horns of a Dilemma.*

*Don't lose the war just to win the battle...*



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## Civility in Mediation (Lessons your Mother Taught You)

Since mediation requires the consent of all parties to settle, nothing will be gained by overly aggressive behavior, rudeness, or misleading behavior. Experienced lawyers use the initial session (joint) of mediation as an opportunity to understand the other parties and as a unique chance to soften up the other side. A friendly and sincere approach is the most effective. Engage the other side in casual conversation prior to the opening remarks and try to identify mutual interests. Keep your voice conversational, and be respectful at all times. Any approach that seemingly diminishes the dignity of opposing counsel or parties will be counterproductive, and those whom you want to reach will have tuned you out.

Prior to the mediation, you are asked to submit a “best case brief” to the mediator and to share it with opposing counsel. Although this brief helps the mediator to prepare for the session, its primary purpose is to help the other attorney's client understand the risks and expenses involved in litigation. This best case brief will, in all likelihood, be given to the other attorney's client. It will be the first piece of unfiltered information that the client has

received since the commencement of litigation. Stay factual, cite the law in a manner that will be understood by a lay person, and do NOT threaten. The best case brief is the initial step in establishing your credibility with the other side. Don't squander it.

Use the joint session as an opportunity to introduce yourself. Take a cooperative stance and humanize yourself to the other lawyer's client. Acknowledge that the depositions have been difficult for both sides, explain that you are an advocate but that you are here today to make a good faith effort to settle. Tell the other side who your clients are and that they have come with authority to settle the case. It is appropriate to acknowledge how strongly each side feels about its position, but emphasize that you are present to listen and learn.

At the end of your presentation, re-emphasize the problems that both sides will have with litigation. Tell the other side that, although you see certain facts and the law differently, you are here to see if a mutually acceptable resolution can be obtained. State that you are going to work with the mediator to explore all possible ways to settle the case and that you are confident that the other side will do the same.

## NOTEWORTHY:

**Construction photos:** Please see our page of construction photos--new ones added frequently. ([www.conflictsolutionsinc.com](http://www.conflictsolutionsinc.com).)

**Florida clients** have been enjoying the convenience of our new Boynton Beach, office. (Tel: 561-308-9494.) We also have an office in Naples, Florida (Tel: 239-417-5969)

**Maine clients:** Please remember that we maintain conference space at 75 Pearl Street in Portland for your convenience. Our Raymond conference center, which is open in the summer months, will be undergoing renovations. Come see us next summer! We travel throughout the U.S.

**Reminder: We travel throughout the U.S.!**

**We've got you covered!**

...through our national network (**Global Dispute Resolution Network**) of four highly skilled mediators who cover the East Coast, the Heartland, and the West Coast. Difficult and complex disputes resulting in consistently successful settlements.

[www.globaldisputeresolutionnetwork.com](http://www.globaldisputeresolutionnetwork.com)

**Last but not least, No, we thank you!**

“Dear Pat:

Thank you again for your assistance at the...mediation. I received a nice letter from my client...expressing his appreciation and gratitude as well...” R.P.



## HAPPY THANKSGIVING

From all of us at  
**Conflict Solutions.**

**We appreciate your  
business and thank you  
for your loyalty.**

**Pat, Devon, Sharon, & Rachel**