



PREPARING FOR MEDIATION



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WELCOME



Hello. I'm Ed Krauss, and I look forward to hearing from you. My mediation experience covers twenty years, working with and mediating for private citizens, courts, school districts, cities and other government units, during which time I provided well over a thousand hours of service.

I specialize in two fields, financial and employment/personnel. I mediate financial matters for the Financial Industry Regulatory Authority (FINRA), the Delaware Court of Common Pleas, the Delaware Municipal Court, the Franklin County Auditor, and other entities. Matters mediated include investments, property evaluation, landlord/tenant, real estate

broker/agent, real estate agent/client, land use, historical preservation, commercial and economic development, foreclosures, credit issues, loan agreements.

Another area of specialization is personnel disputes, including lack of promotion, age, sex, and race discrimination, grievances and disciplinary actions. I can help employers and employees avoid litigation by acting as a neutral third party to help both sides find a mutually acceptable resolution.

I continue to build my skills by taking training, already well over one hundred hours, and I have been lead or support trainer in providing hundreds of hours of training.

Organizations served as an employment/personnel mediator include United States Postal Service, Ohio Department of Job and Family Services, Bureau of Workers Compensation, Department of Rehabilitation and Correction, several counties and communities

I am a facilitative mediator. I don't try to steer the conversation or process in any direction, nor do I offer opinions on who might be right or what the best choices might be. Rather, I facilitate a mutual search for the best available answer that both sides can agree on. I am the optimist in the room. I know that the mediation process can work for the parties in a dispute if they give it a chance, even if they do so reluctantly. I take the role of a mediator very seriously. I am honored that people will allow me to offer them a structure, a process, for resolving a dispute that may be quite emotional, may involve significant financial and personal consequences. I defend that process by being neutral, unbiased, and facilitative.

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If you are a person turning to mediation to resolve a conflict, how can you best prepare so that a mutually acceptable resolution is as likely as possible? If you are an attorney, how can you provide the most valuable assistance to your client when a mediation is going to take place?

For the person going into mediation (commonly referred to as a party), with or without an attorney, it is important to understand what mediation is and is not. For the attorney, the best way to increase your effectiveness is to shift your thinking and preparation from a litigation model to mediation.

Both the party(ies) and the attorney should be aware that mediation is not arbitration, litigation, discovery, nor a deposition. Mediation is a conversation, a dialog facilitated by a neutral third party in a structure of organized problem solving.

The fact that this process is a conversation allows for freedom in exploring a wide range of possible solutions. The mediator will not offer legal or financial advice, will not say who might be right or wrong. On occasion, depending on the matter at hand, the mediator may - with the clear permission of the parties - offer a solution for



consideration, but the goal is to have the parties design their own resolution, accept it and own it. In situations where one side may be pro se (landlord-tenant is a common example), or in certain domestic disputes such as post-decree parenting agreements, the mediator may offer suggestions for consideration based on the mediator's experience with similar situations: "Here's a way of handling that situation that has worked for other families."

In business, financial or employment disputes - contract fulfillment, debt settlement, investments, discipline, termination, Equal Employment Opportunity - it would be common for the mediator to make no suggestions, but to ask clarifying questions of both sides and to offer summaries for both sides to consider so that pro se parties, or attorneys and their clients can begin to formulate resolutions.



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As a mediator, I've had many situations where attorneys brought briefcases and boxes full of documents to the mediation, only to learn that the vast majority of that weight could well have been left in the office. The reason is that the mediation table is not a court of law, evidence is not submitted. For example, if a maintenance contract was (in the opinion of the recipient) not properly fulfilled, a copy of the contract would be useful. Copies of the emails that went back and forth over several months are not useful. Why? Because the point of a mediation is not to prove something to a third party such as a judge, but rather to agree on what might be a solution. Litigation is about the past; who is at fault? Mediation is about the future; what is a mutually acceptable solution going forward?

What happens in a typical mediation?

The mediator starts by talking about the process, what it is and how it will proceed. Points of emphasis, as mentioned above, are that this is not a legal process and that the goal is to find an agreement that all parties can accept. Documents are signed, including an Agreement To Mediate which refers to the confidentiality of the process and an agreement on who pays for the mediation service. If the parties are paying it is usual for the split to be equal - 50/50 or 33/33/33 - but there is no rule covering that, and on occasion one party pays the full cost.



Before beginning, an explanation of caucus is provided. A caucus is an opportunity for parties to speak privately. This may be attorney and client in a separate room for some minutes, or it may (if desired by the parties) include the mediator. In the latter case the mediator can act as a devil's advocate, a person providing a reality check. Note: Some mediators separate the parties soon after the introduction and shuttle between rooms. My style, also used by many mediators, is to have the parties stay at the table as long as that is effective and share their viewpoints, their concerns, their potential solutions.



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So what should a party, or a client and attorney, have as a mindset going into a mediation?

First, remember that the purpose of the time together is to, if possible, find a resolution that will close the matter then and there. This is critical in preparation and in pre-mediation conversations with an attorney, union steward, or friend who is accompanying the party. Mediation is voluntary, and thus there is not a winner and a loser, because no one will voluntarily agree to lose. So



what does a mediated settlement sound like? People say "I can accept that. It isn't everything I wanted, but it is resolved and I can get on with my life, with running my business, with enjoying my family and friends." By choosing mediation over litigation people save time, money, energy, stomach acid.

Second, as described above, bring what documents you want to show *the other parties* to make sure there is a mutual understanding. Remember that the parties are thoroughly familiar with the case; only documents which can clarify a point of misunderstanding are of value.

I've done numerous mediations where the parties started off so angry they were unable to look at each other, only to stand three hours later and shake hands. By understanding how to approach mediation, and what to expect, you increase your chances of also ending with a handshake.

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