

SELECTING YOUR MEDIATOR

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There are many factors that contribute to the success of mediation, some of which are under your control and others which are not. The concept of a successful mediation encompasses cases that settle, but also cases where significant progress is made that will position the matter for resolution at a later date.

One of the most important factors within your control which will increase the odds of a successful mediation is the selection of the mediator. It goes without saying that the mediator must have some expertise in the type of matter that is being mediated and the law associated with it. However, other qualities one should consider in choosing a mediator that will ultimately prove to be more significant are: preparation, engagement, and follow-up.

The best mediators are completely prepared. For the high volume full-time mediator, carefully reviewing numerous briefs is a weighty undertaking. To make the most of your mediation time, seek a mediator who reads submissions carefully. An effective mediator will do so, and will also create a working summary that encompasses both parties' positions. The

initial part of the joint session where the mediator summarizes his or her understanding of the case will expedite the entire process and ensure the best use of the time allotted.

A mediator who has given serious and careful consideration to the parties' positions will move the negotiation process more expeditiously. The issues up for discussion will be narrowed, the dialog guided more intelligently, and, if called upon, the mediator is sufficiently prepared to give an informed and reasoned evaluation of the case.

The second factor – engagement – is critical. Patience is a virtue, and the most important quality an effective mediator will possess. While every case cannot settle, it is essential to have a mediator who is completely engaged, part of the process, and willing to exhaust every possibility in attempting to reach a resolution. Litigants deserve that level of commitment and the mediator must be prepared to give it. This entails the ability to take in stride the potential frustration of the parties, and mitigate any desire to prematurely terminate the mediation.

Another essential quality that ensures a mediator's complete engagement in the process is the willingness and ability to speak with the clients. This is not a trait that every mediator possesses, no matter what their strengths are in other areas. On many occasions, whether the party is an individual or corporate representative, this may be the only chance they have

to be heard by a neutral. A mediator willing to empathetically listen, discuss the case, and, if appropriate, share their thoughts on the matter with the client will prove invaluable.

The third and final quality to seek in a mediator is someone who is dedicated to follow-up when a case does not settle. The definition of a successful mediation includes not only a satisfactorily settled case, but also those cases that do not resolve at the initial meeting but are positioned for future discussions that will ultimately lead to a settlement. In many cases where all parties are convinced that the case will never settle, they are often surprised to see it resolve through the efforts of the mediator at a later date. A systematic approach by the mediator to follow up on every case that does not settle is invaluable. Merely stimulating further conversation can often times lead to a resolution. A neutral's diligence in following cases post-mediation will invariably result in a majority of those cases being settled.

Let preparation, engagement, and follow-up be your guide in selecting a mediator, and you will have laid the groundwork for more effective case resolution.