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Making Mediation Work for You

By Commissioner
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Mediation has proven to be an efficient, effective, economical and satisfying means of dispute resolution for matters that would otherwise come to court. It works for temporary orders (early stage mediation), case management (mid-stage) and full/final resolution of the legal, financial and parenting matters. In practice, there are as many types and styles of mediation as there are mediators. However, there are some universal rules, which if followed, will best prepare you and your client for the experience and lead all parties to the greatest likelihood of success from the process.

Before the Mediation Session:

- Make sure that the matter is ready for this step: that the facts are clear enough for early stage mediation (temporary orders); or that you have identified the issues sufficiently for case management (mid-stage mediation); and have done "just enough" discovery to enter into a full and final settlement of all legal issues (mid- or late stage mediation).
- Select an experienced mediator who is qualified and knowledgeable to handle the process and issues specific to your case (property, parenting, Collaborative Law, special needs, elder law).
- Meet in advance with your client to discuss the reasonable range of settlement; to set fair expectations for the process and the outcome; and to discuss options and their costs should the case not settle.
- Work with your client to prepare and circulate a Pre-Mediation Statement summarizing the salient facts, legal issues, and preferred outcomes. Avoid inflammatory rhetoric and being positional: focus on your client's needs and interests – both short and long term. Be sure to distribute it sufficiently in advance to court, certainly no later than the date set by the mediator.

At the Mediation Session:

- Have a "pre-meeting" of counsel

and mediator to ascertain time or other limitations; to alert others to what you see as the real issues or sticking points; and to listen and respond to the mediator's proposed strategy for attaining full resolution of all issues. To be most effective, there needs to be a plan that all know and agree to (for example: to caucus or not, limitation of issues, contact or time).

- Be focused on the matters and facts at issue. Stick with your client's interests, rather than positions; encourage open-mindedness of client and counsel alike; be respectful and avoid needless confrontation. Set aside your own pre-conceived notions and let matters flow.
- Pay attention to the disposition of the clients, counsel and mediator as negotiations evolve. Avoid name-calling, storytelling and nasty stories, which serve only to inflame the parties and deter settlement.
- Recognize that an authentic and durable settlement is one that meets the interests and concerns of the other party, as well as your client's. Keep this in mind as you are contemplating and crafting proposals or counter proposals.
- Upon attaining even a partial settlement, insure that it is accurately memorialized in writing and signed by parties and counsel alike.
- If the matter does not fully settle, explore whether to bifurcate the issues and meet again, or to follow another process such as mediation-arbitration, arbitra-

tion, trial on limited issues, trial on stipulated facts or full-out, "ignore any settlement so far" warfare.

After the Mediation Session:

- If a second session is required, consider limiting it to certain issues or a limited time frame; and discuss (and hopefully agree on) what will happen if the matter still does not settle
- If the matter resolved at the first session, promptly draft the final papers required to complete the matter with the court and to take the matter off the court's calendar
- Exchange closing/debriefing letters to your client and the other side to bring closure to the case

Considering that there are many forms and styles of mediation, discuss in advance what you have in mind that will most encourage a prepared, thoughtful, and effective mediation experience for your clients. Follow the rules listed above, and you will find yourself among the 90+% of cases that settle at mediation!

Stephen Gaddis retired in 2005, after serving 25 years on the bench. He is now a professional mediator and arbitrator and can be reached at Stephen-Gaddis@Comcast.net. He has posted a wealth of materials on mediation, arbitration and Collaborative Law on his website, found at www.GaddisMediation.com.