3 RULES FOR A SUCCESSFUL MEDIATION by Mimi Methvin

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After much trial and error over the years, here are my top three guidelines for a successful mediation:

1. Have the Right People at the Table . While it's possible to settle a case while the person holding the purse strings is a thousand miles away, it can be a challenge. This is especially true if a stand-in attends the mediation under the guise of being the person with authority. Much time is often lost in such a scenario, as the mediator tries to figure out why progress is not being made.

Mediation works because of the unique dynamic which occurs when the true parties in interest meet across the table. Consensus and creative solutions are more likely to evolve if the parties are allowed to express themselves, listen, dialogue, and adjust their views as new information and insights come to light. It helps if the ingredients for this gumbo are in the same pot.

When feasible, bring the right representative to the table, and ask whatever questions are necessary to make sure you know the extent of your representative's authority. If attendance of the proper person is not possible or practical, let the mediator know in advance.

2. Submit an Effective Pre-Mediation Statement. Skilled mediators can employ a number of approaches to facilitate settlement depending upon the needs and personalities in the case. By providing key information in advance, counsel can help the mediator be effective.

The statement should include, at a minimum, a brief outline of the key factual and legal issues involved in the litigation, the main "sticking points" preventing settlement, a description your client's strongest and weakest points in the case, and a settlement proposal that you would be willing to make.

If desired, counsel can also specify a preference for a "facilitative" or an "evaluative" mediation. Both involve restoring communication, offering settlement options, and transmitting offers back and forth. Evaluative mediation involves more structure and input from the mediator, however, often including his or her prediction of the outcome at trial.

3. Address All Remarks to the Mediator: I suspect there are training programs out there which suggest it's a good idea for a defense attorney to speak directly to the plaintiff during the opening session of a mediation. Reasonable mediators may differ on this point, but I think this is almost always a bad idea, even when it starts out as an apology. Such a tactic puts plaintiffs on the spot, as they feel all eyes watching for their reaction. In addition, once an attorney starts speaking to the opposing party, there is always the risk that the monologue will fall into advocacy for the attorney's own client, which simply serves to polarize the session.

Addressing your remarks to the mediator is, in my view, a smarter and safer approach, and doesn't stop you from saying, "my client is genuinely sorry for what happened to the plaintiff."