
Understanding the Advocate's Role In Mediation

Presented by:

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The Advocate's Role

- Understand the Problem
- Understand the Process
 - Mediation vs. Settlement Conference*
 - Know your Mediator's Style
- Prepare the Client
- Be a Productive Participant

Mediation Defined:

- “Mediation,” a process in which a neutral third party facilitates communication between the parties to promote settlement. A Mediator may not impose his or her judgment on the issues for that of the parties; (Rule 17)
- Mediation allows parties to look at interests, emotions, relationships, and other non-legal concerns.

**To Succeed in Mediation You
Need To:**

- Communicate
- Investigate
- Evaluate
- Educate
- Create
- Cooperate

Communicate

- With your client
- With the other party
- With the mediator
- With the court or regulatory body

Investigate & Evaluate

- Interests
- Positions
- Process Options: *Type & Style**
- Substantive Options: *Interest Based & Legal Options*
- Walk Away Options: *WATNAs & BATNAs*
- Timing
- Personalities
- Views of the Disputes

Understanding the Advocate's Role in Mediation

Know your Mediator's Style

EVALUATIVE			
Problem Definition NARROW	<ul style="list-style-type: none"> •Urges/pushes parties to accept narrow (position-based) settlement •Proposes narrow (position-based) agreement •Predicts court or other outcomes •Assesses strengths and weaknesses of each side's case 	<ul style="list-style-type: none"> •Urges/pushes parties to accept broad (interest-based) settlement •Develops and proposes broad (interest-based) agreement •Predicts impact (on interests) of not settling •Educates self about parties' interests 	Problem Definition BROAD
	<ul style="list-style-type: none"> •Helps parties evaluate proposals •Helps parties develop & exchange narrow (position-based) proposals •Asks about consequences of not settling •Asks about likely court or other outcomes •Asks about strengths and weaknesses of each side's case 	<ul style="list-style-type: none"> •Helps parties evaluate proposals •Helps parties develop & exchange broad (interest-based) proposals •Helps parties develop options that respond to interests •Helps parties understand interests 	
FACILITATIVE			

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Educate

- Process
- Confidentiality
- Personalities
- Options
- View of the Dispute

Create & Cooperate

- Process Options*
- Substantive Options
- To diffuse emotions
- Interest Based Options
- Legal Options
- Identify Legal Issues
- Winning is not the goal

Mediation Components

- Opening Session
- Caucuses vs. Joint Sessions
 - Exploration of positions, concerns, interests and priorities
 - Development of Options
 - Reality Testing
- Ending the Session

Last Thoughts

Mediation is Your Process
Make it Work For You