

Sotomayor Law

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Mediation, Arbitration and Business Dispute Services

How to Prepare for Mediation

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You've selected your mediator, and the mediation session is scheduled for next month. Preparing for mediation as thoroughly as possible is the key to achieving the best possible outcome. Where to begin?

1. **You need a mediation plan.** The plan will help you organize your preparation and deepen your understanding of the case. Your plan should consist of:
 - a. Determining your client's and your own **goals and objectives**.
 - b. Identifying your client's and your own **true interests** underlying the goals and objectives.
 - c. Developing a **strategy** for achieving those goals and objectives. Distinguish between needs and wants.
 - d. Considering **various approaches** at the mediation, both procedurally and substantively.
 - e. Realistically determining your **alternatives** if you cannot reach an agreement through mediation.
 - f. Considering the **other party's** and counsel's likely **true interests** as well as the other party's likely **alternatives** if no agreement is reached.
2. **Know the law and the facts.** Knowledge is power. You want a sound basis for negotiation. You need to know the strengths and weaknesses of your case. Don't overpromise. Be realistic.
3. **Honestly assess potential damages and exposure.** Consider checking out jury verdicts or settlement reports to compare with your case. Gather all information to account for hard damages. Remember to consider the potential liability your client may have for attorneys' fees, expert fees, and other costs if you don't prevail, or the potential scenarios following a statutory settlement offer.
4. **Prepare an estimated litigation budget through trial (and appeal).** This gives clients a healthy dose of reality about the value of mediation. Most clients are really mad at the beginning of a case, and often all it takes is a bunch of legal bills to redirect that anger to you-know-who.
5. **Check emotions.** Spend a lot of time exploring the emotional aspects of the dispute and how they will affect the outcome of the mediation. Develop a strategy for conveying the emotional components and then eliminating them as an obstacle to a sensible resolution.

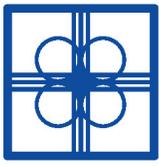
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- 6. Make sure the right people will be present.** Most mediators require that all parties and those whose approval is necessary for a complete resolution be personally present. Sometimes circumstances prevent that, but that can make the difference between achieving a settlement and not.
- 7. Consider cross-cultural issues.** Planning for mediation includes being aware of who the other parties are, their negotiation style, their personalities, and the best ways to communicate with them. A key factor can be cultural influences on negotiation style as well as overall goals and objectives.
- 8. Submit and exchange a thoughtful mediation brief.** So much time is wasted in mediation because counsel choose not to share their views of the cases with each other in advance. Almost always, they end up sharing the briefs once they get into the mediation session. It is tremendously valuable for counsel and parties to know the other side's position so they can research and prepare before getting to the mediation, save time, and get into the meat of the dispute and possible solutions. Just send confidential information to the mediator separately.
- 9. Review the process with your client.** Most individual parties have no experience with mediation and will be comforted and confident if they understand the process in advance. For sophisticated business clients, strategize about ways to use the process to achieve goals and objectives.
- 10. Speak with the mediator in advance.** If the mediator doesn't call you, take the initiative. Will there be a joint session? Explain special issues, problems, or interests. Begin – or continue – the rapport-building process.
- 11. Expect the unexpected.** As much as everyone plans and tries to share information in advance, mediation often reveals unexpected information or unknown feelings and concerns. Prepare to be flexible. Prepare to listen. Train yourself to pay close attention to what everyone else is saying, instead of thinking about your next comments. Read between the lines. Pretend to be neutral. Pathways to resolution often reveal themselves when you really hear the other side. While you are advancing your interests, you should also be looking for opportunities to collaborate on solutions.

You can win in mediation. But, as Henry Ford once said, "Before everything else, getting ready is the secret to success."

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