

**Preparing For Mediation and
Settlement Conferences**

Set the Tone for Trial

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What are the GOALS for this mediation/ settlement talk?

Client goals...
your goals...



Strategy????:

Get information...

Give information...

Set a tone with opposing counsel...

Settle case

Your clients goals?

Your goals?

Who is your mediator and what are they about?



Mediator training?

Mediator's ability to communicate your case and position?

- supply insights about you case to the mediator
- supply mediator tools to understand your case issues

Mediator's tenacity-easily give up?

Mediator's response to opposing counsel?

Can mediator deal with emotional client?



Preparing your client

Explain the process

Client participation?

client goals and expectations defined?

Day in Court...

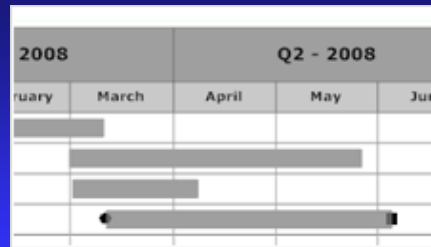
Apology...

Are you and your client aware of the numbers\$



Talk about the numbers before mediation/ settlement conference

- subrogation,**
- realistic expectations of case value,**
- potential case outcomes**



Preparing an event timeline

Prepare as Exhibit for Trial

-simplify complex events and issues

Simplify all visuals

Keep visuals clean/ entertain with color and images-if possible

Resources for software timeline:

www.SmartDraw.com

www.timelinemaker.com

**Before mediation,
do you know the strengths and
weaknesses of your case?**

Theory

What is the **problem?** What went **wrong?**

How can it be **fixed**-or can it be fixed?

Tie the accident into the injury or damage

-Work backward (end to beginning)

Who is **responsible and why**

Real Damages?

Theme

Your case branding, logo, advertisement

Tone of your case...



What is your focus?

Theory? Theme?

Goals for mediation or settlement?

all lead toward focus

Premature mediation

Do you need additional discovery? Can the mediator help get it?

Follow-up mediation needed?

Keep case on the settlement track? How?

Does the mediator have good business and economic sense?

Mediation vs. Settlement

Mediation provides a third party

- who should be neutral and facilitate communication toward a win/ win settlement for all parties

- less expensive than courtroom
- private-no public hearing
- solutions can be creative
- convenient-your location of choice

Settlement can be less effective

- no facilitator for communication
- effort may be limited

Is mediation a safe harbor for exploring resolutions?

Facilitative mediation- helps with communication

- break views of the client that hamper negotiations
- provides a trusted source

Evaluative mediation- based on settlement conference before a judge-pointing out case weaknesses

- concerned with legal rights of parties
- practice “shuttle diplomacy”

Transformative mediation-

- meet with parties together only
- transform relationships
- parties structure the process and outcome
- mediator follows their lead

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Thank you for your attention.