

Guidelines for Successful Mediation

In my experience, parties and counsel have found the mediation process most productive and useful by considering the following points:

1. Preparation is vital. The better prepared you and your clients are the smoother the process will go. Mediation preparation should be much like trial preparation, except that mediation is non-adversarial and the mediator is not a judge. As always, the more knowledge you have about both sides of the dispute, the better off you are.
2. Let me know in advance if there are any problems or concerns I should be aware of prior to the mediation, as this may assist me in assisting you at the mediation.
3. Know who will be present at the mediation. Once we are in mediation, I cannot make someone appear who you thought was going to be there. A little communication with the opposing counsel in this respect can go a long way toward making the mediation as successful as possible.
4. My job is to help the parties resolve their dispute by asking questions, pointing out strengths and weaknesses on both sides and exploring the inherent risks in proceeding to trial. Let your client know in advance that I do this with both sides, not just one or the other. My job is also to be neutral and impartial. If you or your client at any time feels that I am not being neutral and impartial bring it to my attention immediately.
5. The responsibility for setting this dispute lies with the parties themselves, not with the lawyers or the mediator. This is a wonderful and rare opportunity, and the more the client realizes this the more likely a productive mediation will result.
6. Know what to expect of your mediator. Be familiar with the Florida Rules for Certified and Court-Appointed Mediators, specifically the Standards of Professional Conduct. Standards of Professional Conduct relative to mediator conduct provide, among other things, the following:
 - a. The mediator may not force or impose a settlement;
 - b. The mediator shall not unnecessarily prolong the process;
 - c. Decisions are to be made voluntarily by the parties themselves;
 - d. The mediator shall not coerce or unfairly influence a party into settlement;

- e. The mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice or impartiality;
- f. The mediator shall not render a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute;
- g. The mediator shall not require a participant's further presence at a mediation when it is clear the participant wishes to withdraw;
- h. The mediator shall suspend or terminate the mediation if the mediator believes the participants are unable or unwilling to participate meaningfully in the process, or that an agreement is unlikely;

These are what I feel to be the highlights of the Standards of Conduct relating to the role of a mediator, and this is not intended to be an exhaustive discussion or enumeration of the Standards.

Obviously, there are many styles of mediation, and you should select a mediator whose style is compatible with the type of case being initiated. My approach is to keep the parties focused on and in control of their negotiations. I will work as long and hard as it takes to fully explore and exhaust all possibilities for settlement. I will make suggestions and ask if certain proposals or ideas have been considered, but I will not come up with my own solution and try to sell it to the parties. I believe that as long as people are talking and exchanging useful information, the process is serving its purpose.