



WHY DIDN'T YOU TELL ME—WHAT YOUR CLIENT WANTS TO KNOW ABOUT MEDIATION

BY JOSEPH HOHLER III

The value of preparation for mediation should be self-evident as many articles appearing in these pages over the years have made clear.¹ Unfortunately, when we prepare our clients (if we prepare them at all), it is with what WE think they should know instead of what THEY want to know and what is expected of them.

So, how can we, as attorneys and mediators, learn from these experiences and prevent them from happening to our new clients? Here are some ideas, action-items, and a little advice drawn from real experiences with clients who wished they had been better prepared before going into the mysterious unknown of a court-ordered mediation. (Obviously, this list is not exhaustive, but it should serve as a good starting point.²)

First: Make Time to Educate Your Client

How many times have you waited to explain the mediation process until you're in the mediator's lobby or the courthouse hallway, assuming you explained it at all? Probably far more often than you should care to admit.

The obvious solution? Set time aside in-office with the client specifically to go over what could or will happen in mediation. Explain the various processes. Strategize and explore outcomes. If you have them, give your client copies of mediation articles from the FLJ, including mine. More than anything, use the time to solicit questions from him/her in a relaxed setting, free of the pressures of a hallway briefing at the courthouse.

Second: Explain Their Rights

Many clients assume that they must reach an agreement in mediation, especially if the session is court ordered. If nothing else, they need to know that they can say 'no' and walk away at any time. It's empowering and, curiously, knowing they can say 'no' is often what helps get them to 'yes.'

Third: Know Your Mediator

You may have worked with the mediator before, but your client has not. Explain the mediator's style, if you know it well enough, so as to avoid surprises. If your client has a "rough" idea what to expect, then he/she won't be rattled by what he/she hears.

Fourth: Be Truthful and Realistic

Under-promise and over-deliver is the only way to avoid disappointing your client. Doing so requires honesty about the case and its possible outcomes. Don't bluster and posture and only point out the best possible outcome because that is only one possible outcome among many. After all, it's your client's life at stake, and it's best they get a reality check instead of the moon and stars.

Fifth: Value Client Input

Clients want to feel valued and involved in the mediation process, and their agreements need to reflect that input. After all, while an attorney will usually walk away upon entry of the judgment of divorce and forget everything, the client has to live with those agreements for the rest of his/her life.

What does that mean for you? Communication. Listening. Empathy.

At the end of the day, a well-informed client is a happy client and, if the old cartoon is right and "Knowledge is Power,"³ do whatever you can to empower your clients.

About the Author

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