

SIX STRATEGIES FOR A MORE EFFECTIVE MEDIATION



Turning conflict into collaboration with proven approaches

By Tim Reuben, Founder and Managing Principal

It's often easy to get into a dispute with someone, but not so easy to get out of one. That's where mediation comes in. It is a private and confidential process where a mediator tries to help find a resolution so you can get out of fighting and move on to something more productive. Other than the cost of the mediator, and (hopefully) a good lawyer, there is almost no downside to attempting to settle your issues through mediation, so it should typically be on the must-do list. But here are a few tips on mediating.

Tip No. 1: Remember what the point of a mediation is.

When you settle a dispute, whether it is a lawsuit or an issue that hasn't yet gotten to a courthouse, you will always have to compromise on what you believe you deserve. So will the other side. You can always continue to battle, but litigating is time consuming, expensive, and extremely taxing on your soul. The point is to find an option to going down the nasty road of controversy. And for that, you will have to give a little to get a little. So don't go in expecting to be a winner and receive everything you want. The win in a mediation is the end of the dispute, not a complete victory.

Tip No. 2: Leave your emotions at home. Many disputes are highly charged and can bring out strong emotions on both sides. But being outraged or angry or sad or defiant doesn't help you to create an option. Instead, you want to be calm and pragmatic and see what kind of option you can create for yourself. When the negotiating is over, you will then have a choice that you can live with and thus end your dispute.

Tip No. 3: Make your best points. Your goal is to convince the other side that they need to compromise their position, so determine your strongest arguments and best facts and push

them. Don't waste time on the small stuff and never be petty. Simple straightforward points about your position need to be communicated to the mediator so he or she can explain them to your adversary and show that you have legitimacy, and they have risk. By making good arguments, you improve your chance of getting an acceptable resolution.

Tip No. 4: Know what you can live with and what you can't.

If you attend a mediation, during negotiation you will have to give up something that you believe you deserve. Figure out in advance what you can comfortably sacrifice to resolve the situation. Consider that you must give up something that the other side wants. You may have to compromise, but the good news is that it will be your choice under your control.

Tip No. 5: Patience is a virtue. Mediation is a process that takes time. People need to tell their tale, then process any counterpoints, then contemplate compromise. Don't expect things to resolve quickly and don't worry if they don't. Disputes ripen over time to a point where parties that refuse to compromise at one point become more malleable as time goes on. Frequently, successful mediation takes multiple sessions. However, if the parties have patience and open minds, at some point an experienced mediator can find common ground that both sides can live with.

Tip No. 6: Use a good mediator and don't be afraid to change.

Hire a mediator who will work hard to achieve a resolution. If you don't like your mediator during the first session, end early and then hire a different one for the next session. Sometimes it's chemistry, sometimes it's timing, sometimes it's experience, but whatever it is, use an experienced mediator to help and if that mediator isn't working, change it up.