

Chicago Daily Law Bulletin®

Volume 162, No. 101

Serving Chicago's legal community for 161 years

As with litigation, mediation turns on your degree of preparation

Just like any case an attorney may prepare for court, preparation in advance of any mediation session is essential.

Any statute or case law you intend to present in the mediation should be readily accessible, and you should be prepared with courtesy copies of any relevant legal material for everyone attending.

Your theory of the case should also be clear and should be supported by facts and law. A prepared attorney equals an effective advocate for the client, which means coming to the mediation prepared to help the mediator understand how the law and facts support your position.

Initial preparation

Be prepared, formulate a convincing theory, create a mediation plan and strategize in advance with the client. When preparing for mediation competency is essential. To gain credibility and establish rapport with a mediator, you will want to have a strong understanding of how the law applies to your position.

You will also want to explain why the opponent's position under the law is flawed. It might help to think of mediation as the first step in trial preparation. If a favorable outcome is not reached in the process, you will be better prepared to move forward in litigation.

Developing the theory of your case

Your theory of the case should be simple and easy to understand. Be prepared with a condensed version of your client's story so the parties and mediator can readily follow along. This allows the mediator to effectively convey your client's position to the opposing side.

Also be prepared to present evidence that supports each of the required elements of your theory. If you present your evidence effectively, both you and the mediator should be able to summarize and clearly articulate your theory.

Creating a mediation plan

A mediation plan is like an outline — it will guide you through the process and help you formulate your strengths and weaknesses in advance. Some attorneys choose to create mediation plans the same way they draft legal memorandums.

Consider separating your mediation plan into the following sections:

1. A detailed background of your case
2. A summary of the theory of your case
3. Needs and interests (rather than a position)
4. Hindrances and/or impediments that would be expressed as concerns
5. Outline your best alternative to negotiated agreement and worst alternative to negotiated agreement
6. Mediation session
 - a. opening statements
 - b. cross talk/joint session
 - c. caucus

Think of this mediation plan as a framework. You must review each with your client prior to the actual mediation.

On mediation day, "the plan" will serve as your road map. It ensures you cover necessary points and remain focused.

Since mediations can last several hours and may continue over

Having the client participate in the theory of the case and the road map will lead to less fear.

the course of several days, the plan will help you stay on track. Should you get stuck in the mediation, do not hesitate to refer back to the plan to help you move your client's position forward.

Knowing this plan well will ensure you do not miss major issues.

Strategizing

Have your strategies fully mapped out prior to the mediation. You will want to formulate your strategies based on the ev-

COLLABORATIVE CONCEPTS



**BETH
FAWVER
McCORMACK**

Beth Fawver McCormack is a partner at Beermann. She practices exclusively in family law matters and is a collaborative law fellow, mediator and child representative.

idence you plan to bring to the mediation.

Always be prepared to adjust your strategy once the mediation begins. Know what evidence you want to produce and keep in mind what you may wish to hold back depending on the flow of the process. Most importantly, be prepared to concede on small issues and stand your ground on major ones.

Knowing your case

Know the strengths and weaknesses of your client's position before entering into the mediation. Assess the strongest elements and be prepared to convey these points to the mediator.

These are the elements that will move your client's position through the mediation and ideally

your opponent certainly will. Be prepared to have rebuttal arguments should this happen.

Dealing with your opponent's case

It is important to understand your opponent's strengths and weaknesses as well. Review and take detailed notes on important documents you have received. If mediation occurs early on in the case you may not have all the documents you would ideally like to have. In these situations, you will need to work with what you have.

Be present in the mediation — listen and take time to reflect on what points are worth fighting for and what points are worth conceding to. Remember, your goal is to advocate for your client but also to move forward.

Preparing your client for mediation

Remember that mediation is a stressful process for most clients — particularly those entering into mediation for the first time. It will help both you and your client if you explain the general process of mediation in advance and welcome any questions.

Depending on your client's nature, you may need to be firm on how he/she is expected to conduct him/herself in the mediation. For example, you may need to be clear about when the client should or should not speak.

If the client is going to speak at the mediation, it is essential to provide him/her with helpful techniques for managing his/her emotions to keep the mediation on track.

Having the client participate in the theory of the case and the road map will lead to less fear. This will help the client have confidence in the mediation, which will limit some of the emotion.

Finally, be clear about what you will take, and what you would like your client to take to mediation.

Ensuring that the client feels prepared and knows what to expect is just as important as the attorney's preparation.