

MEDIATION OUTLINE

I. INTRODUCTION

- A. Judge Bowman described the bases and timing for mediation
- B. Briefly, some benefits of mediation
 - 1. You as judges have 5 minutes per case to decide which case to try and which cases must be adjourned.
 - 2. A mediator can take whatever time is necessary to try the matter.
 - 3. Mediation is flexible as to time, place, style, can occur before or during discovery.
 - 4. Litigants often choose their mediator.
 - 5. Mediation far cheaper than litigation.
 - 6. As 70% of cases generally resolve at the first hearing, the benefit to the Court's docket is significant.
 - 7. Mediators can gently but clearly clarify risk.

II. HOW IT BEGINS

- A. Mediators generally set cases at convenience of all.
- B. Email is an excellent tool. I request dates within confines Of Judge's order.
- C. After receipt of dates, I choose first common date and confirm with letter.
 - 1. Date, time and place
 - 2. Fees
 - 3. Expectations, i.e. presence of insurance representatives, summaries.

III. TYPES OF MEDIATION

A. FACILITATIVE

- 1. Mediator offers no solutions
- 2. In purest form, mediation in one room. Purpose of caucus. Inherent problem in PI cases where everyone in room is professional e.g. attorney, paralegal, adjustor except for Plaintiff
- 3. The most popular type of mediation
- 4. Often used in neighbor disputes

B. EVALUATIVE

- 1. Mediator makes concrete suggestions for resolutions
- 2. Litigants in separate rooms

3. Often used in family matters.
4. Unlike facilitative, evaluative style seems to work best when mediator has subject matter knowledge.

IV. ANATOMY OF A MEDIATION

A. INTRODUCTION

1. Clarify my role as neutral. Not judge or jury. Not interested in right or wrong.
2. Purpose of mediation to allow parties to try to self resolve.
3. Why the parties are in separate rooms
4. Confidentiality
 - a. As to judge
 - b. As to other side
5. Have read summaries
6. Session to last as long as in interest of parties

B. FACT FINDING

1. Fact eliciting is more correct
2. Mediator listens and summarizes what he/she has heard

C. OPTION GENERATING

1. At this stage, options (offers to settle) come from litigants
2. Mediator should not be involved at this stage
3. As offers go back and forth, here is where mediator can actively participate. Several examples:

D. REALITY TESTING-RISK ANALYSIS

1. Losing i.e. in Oakland County Michigan Plaintiffs lose the vast majority of cases.
2. Costs
3. Time
4. Sanctions
5. Publicity

E. PROBLEM SOLVING

1. Anger
2. Power imbalance- should mediation be held if domestic violence has occurred
3. "It's a matter of principle"
4. Emotional attachment to dispute
5. Money issues

F. CLOSING THE DEAL

1. When in writing
2. When to introduce lack of cash
3. Stalemate techniques

- a. Summarize, summarize
- b. Put parties together
- c. See Counsel together
- d. Mediator number