

MATTERS TO CONSIDER AND DISCUSS WITH CLIENTS IN PREPARATION FOR MEDIATION

1. Case evaluation

a. What will happen if the case does not settle?

Will it go on to a formal forum?

If so, what is the likely outcome?

What are the strengths in the case for both sides? The weaknesses?

How long of a delay will there be in obtaining a final decision in the litigation process?

What interests are there on both sides in obtaining an expeditious resolution of the matter?

What is a reasonable monetary range of the value of the case?

Other non-monetary values?

What is the other side's range of values?

What are the major issues? The minor issues?

What are the best and worst alternatives to a settlement?

b. What are the costs associated with not settling?

Monetary

Emotional

Time

Effect on productivity

Effect on others in the workforce

2. Negotiation Plan

a. Consider several hypothetical negotiations and evaluate the probable outcomes of each.

b. Consider the expected negotiation style of each side and determine the most effective way to deal with that style.

c. Adopt a flexible negotiation approach.

e. Consider who might be necessary approval authorities.

f. Determine if demonstrative evidence is necessary or useful, and if so, bring it.

3. Mediation Process

a. Explain the mediation process and the role of the mediator.

b. Explain the benefits of mediation:

eg: avoidance of risk, delay and costs

ability to control own destiny

ability to be creative in a resolution

ability to possibly preserve or develop a positive relationship

- c. Explain that initial negotiation positions may be unrealistic.*
- d. Encourage patience, flexibility, open-mindedness, listening and politeness.*
- e. Anticipate impasses and the need to work through them.*
- f. Anticipate sensitive issues and formulate strategies to deal with them.*