

PREPARING FOR MEDIATION CHECKLIST

Initial Considerations

- Ready enough?
- Outstanding questions?
- Agreed Order for mediation?
- Confirm with other parties (and mediator).
- Logistics?
 - Timing (too early or too late?)
 - Joint session?
 - Restrict caucuses?
 - Stop point?
 - Cooperative v. Competitive bargaining?

What to Pack

- Pleading Files
- Evidence Files
- Current file
- Books

- Checklists
- Laptop/printer/paper/ink cartridge
- Calculator?
- Calendar
- Check for the mediator

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- Trial notebook
- Notepad/pen/highlighter/post-it notes/file folders/misc.
- Flash drive

Pre-mediation Analysis

- Review:
 - Chronology
 - Prior settlement proposals
 - Relevant evidence
 - Discovery responses, including depositions

- Legal authorities
- Evaluate:
 - Describe and frame the problem.
 - List the issues:
 - People issues?
 - Factual issues?
 - Legal issues?
 - Sub-issues?
 - Marshal evidence re each issue.
 - BATNA of each party?
 - Interests of each party?
 - Knowns and unknowns?

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- Leverage of each party?
 - Fixed or dynamic?
- List options to resolve issues, including criteria to be used.

- Strengths and weaknesses of your case?

Plan

- Meet with client(s) (7-14 days before mediation) and discuss:
 - Goals
 - Interests
 - Evaluation
 - Strategy
 - Logistics
 - Avoid bottom lines.
 - Confirm logistics with others attending.
- Develop a negotiation plan:
 - Theme/mantra?
 - Opening offer?
 - Who makes?
 - State problem before proposal.
 - KISS
 - Concessions?
 - Closing strategy

PREPARING FOR MEDIATION CHECKLIST

- To close or not to close?
- When and how?
- Tactics:
 - Good-cop/bad-cop?
 - Wisdom.
 - Recess?
 - Other?

Document preparation

- Letter to mediator (notebook?):
 - Chronology
 - List of Issues
 - Background
 - Pretrial deadlines and trial date
 - Rapport among lawyers and parties

- Other salient documents
- Avoid positions
- Update discovery
- Spreadsheet?
- Proposed closing documents?
- CYA – to be signed by client before closing.