

# St. Louis Mediation Center LLC

## How to Prepare for the Mediation

### 1. Set aside the full day

Mediation is a process and it takes time. The attorney and the party should set aside the entire day for the mediation. Outside distractions should be kept to a minimum. There will be plenty of opportunity to call your office or home through the day. The fax machine is available for incoming or outgoing faxes when the mediator is not meeting with you. It is best not to make evening dinner plans, flight reservations, or plans to take in a ballgame the day of the mediation. No one should be pressed into settling or not settling because of an engagement away from the mediation. (If you wish to check the dates on which Mr. Wiesenthal is available, please visit our [online calendar](#))

### 2. Review the facts of the case

Every lawsuit is based upon a series of events that culminated in the dispute that is the subject of the court case. The attorney and the party should be prepared to discuss the facts of the case with the opposing side as well as with the mediator. To the extent that the particulars of each event might be relevant to the lawsuit, the lawyers and parties should be familiar with the witness statements, depositions, documents, and exhibits that will be used to prove or challenge each material fact that supports a claim or defense to the lawsuit.

3. Be prepared to discuss the strong and weak points of your case  
Mediation is risk analysis. Through the mediator the parties compare their cases against the probable outcome at a trial on the merits. This analysis requires each side to confidentially and honestly review the case -- warts and all -- with the mediator. The perfect case is rare. In most instances, each side has or perceives some justification for an event leading to the dispute. Every case is subject to legal or practical problems that may impact the outcome of a trial. Mediation provides a confidential and realistic review of a case.

### 4. Consider the costs

Lawsuits are driven by dollars.

- How much, if anything, is the plaintiff likely to recover?
- How much will it cost the plaintiff to recover the damages a jury might award.
- How much has already been spent?

Likewise, what are the defendant's costs of litigation, past and future?

- How much will it cost the defendant to defend itself through trial and appeal of its case?
- What financial damage is being suffered by either party because of the mere pendency of the lawsuit?
- What are the effects on a party of a bad outcome at trial besides the loss of the lawsuit?

How can both parties benefit by an immediate resolution?

#### 5. Bring copies of important documents

Pictures and documents can be effective settlement tools. There are no rules of evidence in a mediation so if there is something you think will help the other party understand your position, bring it with you. For example, copies of time cards, check stubs, photographs, emails, and bank statements can help demonstrate graphically what the other side will need to face if the case does not settle. Copies of relevant cases – including a copy to give to the other side for its candid consideration – can be a useful tool in helping each side assess its risks. Likewise, a financial statement, insurance policy, or a prior judgment or lien may prove useful in a mediation though it might be inadmissible as evidence at a trial. Bring enough copies for the mediator and the other side to use together.

#### 6. Make sure the client or representative has authority to settle

The people at the mediation should have the authority to settle the case. They are the people who will have gone through the process of hearing the other side and the back and forth of settlement negotiations. So, if someone is needed to make a decision, he or she should be present. For example, an individual party who wants his or her spouse to help make a decision should bring the spouse to the mediation. A corporate party should be represented by an officer. A partnership should be represented by a partner. The person present at the mediation in most instances should not have to refer to someone who is not in attendance for permission to settle. If it is not possible for a decision-maker to be present, he or she must be accessible by telephone throughout the mediation process.

#### 7. Bring a positive attitude

Agreements created by the parties provide far better solutions than judgments imposed by judges and juries, which may not even be enforceable or collectible. Therefore, the effort put forth at mediation should be the same as that put forth at a trial. Bring to the mediation an open mind and a willingness both to listen and to compromise. If you do not like the other side's final offer, you can do not have to settle and you can proceed with the litigation.

#### 8. Prepare a memorandum for the mediator

A few days prior to the mediation, send a confidential memorandum to the mediator outlining your case. The purpose of the memorandum is to acquaint the mediator with the type of case and where appropriate the underlying law supporting each side's

claims. The memorandum should include enough of the underlying facts to give the mediator an idea of what you expect to prove at trial. It should also include any information that you believe might be helpful to the mediator in understanding your case and you should use the memorandum to address any concerns you might have concerning your case or the mediation. It should be no longer than 4 to 5 pages.

#### 9. Prepare an opening statement

The mediation will begin with a joint session. The lawyers, parties, and the mediator will sit around a conference table and each side will have the opportunity to present its version of the facts and law of the case at issue. This opening statement is for the other side – not the mediator. It is probably the only chance that each side will have before trial to talk directly to the other side. Each side should use this opportunity to show the other what it will be facing at a trial on the merits, including best case and worst case scenarios as to outcome. The opening statement sets the tone of the mediation and when done well, insures a successful resolution of the mediation.