

**Mediation
Demonstration**

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Hon. Layn R. Phillips
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The National Center for
Dispute Resolution **'18**
CONFERENCE

**PREVENTING THE WALKOUT:
AVOIDING & BREAKING IMPASSE**

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Impasse

“I sense a great deal of hostility coming from you.”



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Avoiding Impasse

- Reality Testing in Separate Caucus Sessions
 - Confronting a party with conflicting factual information, isolating provable facts, focusing on potentially dispositive case law
 - Inquiring about all direct and indirect costs of litigation
 - Inquiring about all uncertain aspects of case development/outcome
- Require the Presence of Empowered Business Representatives
- Targeted joint merits sessions--e.g., damages, make the expert available



Separate Caucus: Techniques

- Transaction/Distractor Costs
- You Be The Judge
- The Judge/Jury From Heaven Outcome Ranges
- The Judge/Jury From Hell Outcome Ranges
- Closing The Gap: One Last Brief, One Last Offer, One Last Hour



Breaking Impasse

- Bracket/Range Proposals:
 - Mediator or party-proposed; double-blind to mediator
- Meet Separately with Business Representatives, No Counsel
- Creative Business Solutions
- Mediator's Recommendation



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CONFIDENTIAL
MEDIATION CASE SUMMARY

Judge Peggy Foley Jones (Ret.), Giffen & Kaminski; Dispute Resolution Commission Member

Layn R. Phillips, founder of Phillips ADR Enterprises (PADRE), former United States Attorney and former United States District Judge

Carolyn Taggart, Esq., Porter, Wright, Morris & Arthur

Robin Weaver, Esq., Squire, Patton Boggs

COURT: Cuyahoga County Court of Common Pleas

CASE CAPTION: *Mary Doe, Administrator of the Estate (daughter) of John Doe v. Hospital Care*

SUMMARY OF MATERIAL FACTS:

Plaintiff Mary Doe, administrator of her father's estate, bring a medical malpractice wrongful death and survivorship case against Defendant Hospital Care. John Doe, age 71, presented to the Hospital Care emergency department (ED) on 1/5/16 at 6:00 p.m. He had not been feeling well for about a week and had had intermittent chest discomfort and pain for about two days. He arrived with chest pain and shortness of breath and high blood pressure. He had stopped taking his blood pressure medication two months prior. He was a long term smoker who quit approximately one year prior. He had a family history of heart disease and his father had a heart attack at age 65.

He was placed on a cardiac monitor in the ER. At 8:35 p.m. he was disconnected from the monitor to go to the bathroom. He was examined by a Hospital Care resident between 9:30p.m. and 9:50 p.m. At 9:50 p.m., a friend arrived in the room and found him to be nonresponsive. A code blue was called and he was able to be revived. He was then transported to the cardiac cath lab at 10:54 p.m. He was shown to have 100% occlusion in his left anterior descending artery. He died in the hospital on 2/15/16. At the time that he arrested, Mr. Doe had not been placed back on the cardiac monitor. Plaintiff contends that if Mr. Doe had remained on the monitor he would have been attended to more timely and he would have survived. Plaintiff contends that Doe should have had a stent put in to open his blocked artery and he would have returned to a normal life.

It is the Defendant Hospital's position that the short period of time between the last time Doe was seen by a care provider and the time that he arrested was extremely short and in light of the 100% occlusion of the LAD, earlier intervention would not have made a difference in the outcome.

Defendant Hospital Care contends that their Defense Medical Expert, a renown cardiologist, will opine, the short period of time between the last time decedent was seen by the resident and when he arrested was extremely short and in light of the 100% occlusion to a major artery to the heart, the likelihood of the decedent surviving with earlier intervention is highly questionable. Decedent was like a walking time bomb waiting to go off.

HISTORY OF SETTLEMENT DISCUSSIONS

Plaintiff has made a settlement demand of \$2,000,000. The Defendant has not made a settlement offer.

BARRIERS TO SETTLEMENT

Plaintiffs expectations regarding the value of this case; additionally, Plaintiff is relying on a recent plaintiffs verdict in the amount of \$2.5 million as indicative of the value of this case.

PROCEDURAL STATUS OF THE CASE:

The parties have not exchanged any written discovery and have not proceeded to any depositions. Plaintiffs counsel provided some information informally to defense counsel. The parties felt that it was of value to attempt to resolve this case prior to expending time and effort in litigating this matter.

DEFENDANT'S Factual/Legal Strengths

- Mr. Doe had not been feeling well for about a week and had had chest discomfort and pain for several days prior to presenting to the ED;
- He had stopped taking his blood pressure medication for several months;
- Between the time the patient was last seen by a care provider and the time that he coded, at most, 20 minutes had passed;
- He had 100% conclusion of his LAD , determined by cardiac catheterization following the arrest;
- The likelihood of the patient surviving with earlier intervention is questionable;
- It does not appear that he had a close relationship with some of his adult children, especially his daughter, from whom he was estranged at the time of his hospitalization.
- Expert testimony that even if decedent had been connected to the heart monitor, the likelihood of earlier intervention would not have mad a difference.

EMOTIONAL ISSUES PRECLUDING SETTLEMENT:

This is a wrongful death case. According to Plaintiffs counsel, Mr. Doe was a very young and active 71 year old. He is survived by two children, five grandchildren, and a brother . He was retired but he was still working part-time at a hardware store. His passion was singing and he served as a member of the church choir.

PLAINTIFF'S ASSERTIONS AS TO THE STRENGTH OF HER CASE:

- Mr. Doe was on a cardiac monitor and should have been placed back on the monitor;
- If Mr. Doe had been placed back on the monitor, he would have been attended to more timely and would have survived;
- Mr. Doe was a very young and active 71 year old, had a large family, was retired but still working, had a strong faith, served in the Marine Corps and had a passion for helping people and singing;
- In support of his demand, Plaintiff has cited a recent County case where the verdict was \$2.5 million dollars and equates that case factually with Mr. Doe's situation.




Top Ten Considerations for Successful Mediation

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ONE: Choosing Mediator

- Choose a trained and experienced mediator with a reputation for being patient, perseverant, persistent, intelligent, hardworking, creative and responsive.
- Consider opposing counsel's suggestion of a mediator.
- Interview the mediator.
- Mediator subject matter expertise preferable? Remember training and process are equally important.
- Do you want an evaluative, analytical, transformative or facilitative mediator?
- If the case does not settle, does the mediator follow up with the parties to continue negotiations?



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TWO: Preparation by Mediator

- Pre-mediation phone conference with parties/attorneys to discuss matter in dispute, mediation process, users' input into process, goals (settle, tell their stories, feel heard, closure, promotion of communication between parties or preserving relationships), waive opening, costs, participants, timing, and what to bring to mediation.
- Read the parties' mediation summaries (confidential or non-confidential), pleadings, motions, expert reports, deposition testimony, case law, etc.
- Prepare a list of questions for parties/identify risks.
- Prepare an opening statement.
- Develop possible outcomes/resolutions/settlement terms based on mediation statements and experience.



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THREE: Preparation by Lawyers

- Prepare with perception of resolution, settlement value and not verdict value or trial tactics.
- Lawyers should be prepared for mediation. Master facts, law, risks, and arguments that will impact resolution process.
- "By failing to prepare, you are preparing to fail." -- Benjamin Franklin.
- According to the ABA Task Force on Improving Quality of Mediation, parties thought lawyer preparation was important enough that they made decision to hire (or not) lawyers on the basis of the lawyer's preparation at mediation.¹
- Have creative discussion about clients' possible settlement options.


¹ ABA Task Force on Improving Quality of Mediation, February 2008



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FOUR: Preparation by Parties


- Appreciation of other side's position.
- All parties must be physically present, including persons with authority and supportive family members.
- Understand realistic expectations, i.e. settlement value (not verdict range).
- Understand benefits of mediation: emotional closure, eliminate risks at trial, confidentiality, control process, cost-effective, "day in court," apology, litigation is time consuming (appeal?), collection problems, control outcome, creative solutions that a jury cannot award i.e. reference, structure settlement, apology, confidentiality, and reinstatement.




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FOUR: Preparation by Parties

- Prepare yourself to be flexible, patient, cooperative and open minded.
- Understanding of mediation process:
 - 1) opening session will allow parties to hear first hand from opposing counsel about other side's position, strength and weaknesses;
 - 2) caucus is private session to clarify information and to better understand parties' concerns and interests; and
 - 3) settlement agreement terms will be discussed and agreed to.




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FOUR: Preparation by Parties

- Prepare to give an apology or acknowledgement in opening statement. You can apologize in a way that admits no liability or fault. Examples (employment case): "I am sorry that we are meeting under these circumstances and that you feel humiliated about losing your job and I hope we can move forward today" or (nursing home malpractice case) "I am sorry for the loss of your mother and I want you to know that she was well liked at our facility. I am here in good faith to resolve our differences."
- A sincere apology will go a long way towards making the other side feel appreciated and set the tone for good faith negotiations.




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FOUR: Preparation by Parties

- Active Listening/Appreciation of Other side: If you and other side appreciate one another, you are more likely to reach a wise agreement than if each side feels unappreciated.² Three elements to appreciation:
 - To understand each other's point of view;
 - To find merit in what each of us thinks, feels or does; and
 - To communicate our understanding through words and actions.

² Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions as you Negotiate*.




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FIVE: Opening Statement


- Take a deep breath, take off your litigator hat and, in the words of Jerry Weiss, "drop your weapons."
- Don't be offensive, argumentative or arrogant.
- Set the tone for the negotiation the moment you enter the room.
- "You'll never learn anything by talking." -- Lou Holtz.
- Active Listening (above).
- Let your clients speak, even if it is just an apology or acknowledgement that they are here in good faith to resolve the case.
- According to the ABA Task Force, 92% of mediators felt it was important for clients to be heard in opening statements versus 42% of users.
- Careful preparation – don't "wing-it" – last or first opportunity to speak directly to opposing party.
- Power Point only in exceptional circumstances.



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SIX: Pre-mediation Summaries


- Mediation summary should include: factual summary, key legal issues, history of settlement discussions, suggestions for resolution, your views as to past and current barriers to settlement, views on emotional issues each party may face in arriving at settlement, court opinions.
- Highlight portions of key documents and underlying interests of both parties from a non monetary perspective.



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SEVEN: Impasse Technique


- Bracketing – Parties offer settlement ranges which define outer limits of where case will settle.
- Mediator Proposal – double blind basis to all parties in separate caucus. The parties are asked to accept or reject the terms as proposed. There is no risk to party who accepts because if other party rejects – the mediator tells parties case did not settle and doesn't reveal if other side accepted.
- Pie Chart – Beneficial with multiple parties – have all parties draw chart evaluations of percentage of liability and compare or keep confidential. Most times percentages are all the same.
- Give other side's closing argument in caucus.



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SEVEN: Impasse Technique

- Confidential evaluation by mediator. Evaluation is a controversial issue because mediator is perceived as no longer "neutral." Some believe it has no place in facilitative mediation; however, evaluations can be effective if used correctly. Process is confidential, can be done jointly or separately, involves mediator expressing opinion on likely outcome or value of claim or defense. Examples: range of damages \$25,000-\$50,000; opinion as to merits of motion (chances of successful summary judgment are slim) or (I have some doubt of your chances of winning at trial) or (don't you have a causation problem here?)
- Evaluation has both potential benefits and dangers – there are risks to this technique.




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EIGHT: Trust Mediator




- Mediators must be trusted or they cannot be effective facilitators. They are the “third channel of communication” so trust us when we say:
 - Consider lowering your counter offer;
 - Consider bracketing;
 - Consider our instinct that the opponent’s bottom line is much less;
 - “I think it may not settle for X”;
 - “Step on the gas”;
 - “Step on the brakes”;
 - “I feel like we’re trying to swim upstream. How can we make this easier?”




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EIGHT: Trust Mediator




- Mediators know what is being said in the other room – they are good listeners and are trained to interpret a person’s body language. Mediators have a “sixth sense” and a lot of process training. Mediators can keep the focus on negotiating a settlement while at the same time de-escalate feelings of anger. We do this for a living, it’s our vocation. Please trust us.




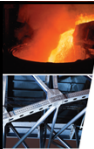
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NINE: Respect your Opponent/Good Faith



- GOOD FAITH: Most mediators believe a successful mediation is one where all the parties felt that they had a fair process. This, to me, means that all the parties had an opportunity to be heard and all the lawyers negotiated in “good faith.”
- Good faith means the parties enter the mediation process seriously and negotiate in a reasonable manner. You are not there to gain leverage for later negotiations, learn opponent’s strategy, or give opponent a hard time.
- Parties should sign a mediation agreement containing good faith provision.
- TRUST: Most parties don’t trust their opponent when they arrive at mediation. My experience tells me that most parties are often times so emotionally involved with dispute that it is difficult for them to shake their opponent’s hand when they walk in the door let alone trust them at negotiations.







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NINE: Respect your Opponent/Good Faith

- In April 2012, at the American Bar Association Dispute Resolution Conference, which I attended, Moty Cristal, a highly experienced crisis negotiator, talked about TRUST vs. RESPECT in negotiations. According to Cristal, if trust was a prerequisite to negotiations, there would be no negotiations in many environments. Cristal suggests that removing trust from the negotiation can often lower the parties' anxiety. Trust is too big of a burden to ask for in many negotiations.
- Cristal opines that what is more important to a negotiation is to show respect for your opponent. When the principle becomes respect rather than trust, the focus shifts to self-responsibility as each party must be accountable to show respect toward the opponent. When both sides accept the responsibility to show respect to one another, a dynamic exists that is conducive to obtaining a resolution even when the parties don't trust one another.

<http://www.giffen.com/mediation/2012/04/04/Trust-vs-Respect-in-Negotiations/>






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TEN: Summary - Top Ten Considerations for Successful Mediation

1. Choose an experienced mediator;
2. Have a pre-mediation conference;
3. Prepare your self for mediation;
4. Prepare your client for mediation;
5. Set the tone during your opening statement;
6. Prepare a mediation summary that's both factual and honest and contains suggestions for resolution;
7. Be open minded, flexible and don't take a bottom line approach;
8. Trust the mediator;
9. Respect your opponent; and
10. Act in good faith.



Trust the Process



Peggy Foley Jones

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Take a moment at day's end and ponder the improbable: Your client, opposing counsel and the judge are all satisfied with the outcome with one of your most difficult cases! A mediation can provide a process where the improbable happens.

Mediators are there to help assist you and your client resolve problems in a cost efficient, time saving and mutually beneficial way for everyone.

Mediation allows your client a forum to air his or her issues and a chance to be heard. It gives parties the opportunity to actually sit across the table from one another to ask questions, explore risks, confront weaknesses, vent frustrations, share feelings and discuss how others may neither see nor hear a story in quite the same way they do. This process can be more satisfying than the courtroom experience. There is an opportunity for creative and flexible problem solving, which is not possible with court determinations.

The role of the mediator is to assist the parties to realistically understand the benefits of resolving the case without going to trial and assist them in making the difficult decision to settle. The role of the mediator is analogous to the director of a play.

Successful mediations begin with an understanding that all parties and their lawyers come to the table in good faith. This means the parties and the lawyers must trust the mediator and be willing to be honest about the weaknesses and strengths of their position.

Mediators expect lawyers will represent their clients zealously, but at the same time mediators require lawyers to listen to suggestions and seriously consider the mediator's view. Lawyers need to let mediators do their job. Lawyers, by nature, like to be in control of the situation and are trained to not ask questions they don't know the answer to. Successful mediations are not the ones where lawyers try to control the mediation process by making ultimatums, walking out of the mediation, focusing on legal issues, or refusing to listen to creative solutions to the problem. In the best mediations, lawyers leave their litigation mode and keep an open mind, participate in the exercises, consider the creative or risky proposals and trust the media-

tor's methodology and suggestions. Following the mediator's guidance means you and your client have a better chance to leave with a resolution.

Based on many years of experience as a judge and now as a private mediator, here are my tips for a successful mediation.

All Parties Must be Physically Present at the Mediation

The participants at the mediation must include the mediator, parties, attorneys and the person with settlement authority (i.e. insurance adjuster or in-house counsel). Some optional attendees may include supportive family members and expert witnesses. It is absolutely crucial that the person with authority attends the mediation. The decision-maker needs to see, hear and feel firsthand exactly how the plaintiff was injured and the affects of the injury upon her life. How can you tell if someone is lying if you never meet him? Often times the mediation is the first time the parties meet and it is very compelling to have the parties sitting across the table from each other listening and watching one another talk or vent about their common dispute. The lawyers should also have the complete and accurate subrogation and lien information and have the lien holders at the mediation or available by telephone.

Choose an Experienced Mediator with Mediation Training

The most effective mediators are those who have experience and training in mediation. There are two types of mediators: facilitators and evaluators. A facilitator helps the parties understand each person's position and never evaluates the case. On the other hand, the evaluator is a mediator who provides an opinion on the likely outcome or an independent unbiased evaluation to one or both of the parties. The truth of the matter is there is a large grey area between these two types of mediators. Some mediators will never provide an opinion of the likely court outcome of a case because they fear they may lose their neutrality in the mediation process. It may be useful to interview the mediator and ask about her particular style and philosophy of mediation and explain to the mediator what style of mediation the parties believe will be most helpful to their clients.

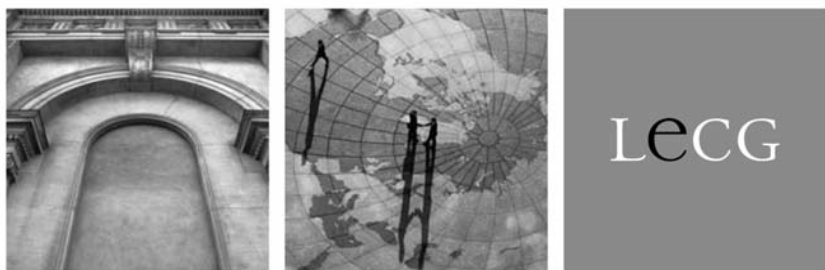
Mediate Only When the Case is Ripe

Generally, the best time to mediate is when the parties have enough information to assess liability and damages. Usually this is after discovery is completed, the expert reports have been exchanged and shortly before trial. However, there are no hard and fast rules about the best time to mediate a case, and there are exceptions when waiting until late in the process is not a good idea. Some factors to consider when determining when is the best time to mediate: the relationship of the parties; the cost of litigation; pending summary judgment motions; emotional and financial needs of the parties; privacy; and expediency. The best person to know when to mediate is the lawyer handling the case. Lawyers know their clients best and have done a cost-benefit analysis of the case. If one party is reluctant to attend the mediation, it may be helpful to let the reluctant party choose the time and/or choose the mediator. When a party chooses the mediator, it often begins to take ownership over the process, become more trusting of the mediator and more willing to participate. It is commonplace for one side to suggest the other side choose the mediator.

Another important consideration is the pendency of dispositive motions. If one party feels confident it will prevail on a summary judgment motion, then the best time to mediate the case may be after the summary judgment is ruled upon by the court. It is difficult during a mediation for a party to consider the interest of the other party and identify the other party's perspective when one side persists on arguing the merits of its summary judgment motion. However, if the case is a complicated one and requires an extensive amount of work and money to prepare the summary judgment motion, then the parties may prefer to mediate before filing the motion.

Prepare Your Client for the Process

A typical mediation has three parts: the opening session, the caucus session and the settlement session. The opening session begins with the mediator speaking first about the mediation process and the role of the mediator and the parties. This is also an opportunity for the mediator to put the parties at ease and encourage them to be active participants in the process. Following this, the attorneys and parties will give opening statements. The purpose of the opening statement is to allow the parties and the attorneys to hear firsthand from opposing counsel about the other side's position in the dispute. The process is helped if lawyers are willing to acknowledge at least some of the weaknesses of their case at this time. It is important the lawyer be firm during the opening statement but polite. It is common for one of the parties, usually the party claiming injury, to feel angry or offended by comments made by opposing counsel in the opening statement. For this reason, some mediators no longer allow the parties to give an opening statement. But clients should



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know that there will be an initial joint meeting and difficult issues may be raised. Preparing them for the process will help them participate and not become discouraged early in the process.

In addition to preparing your client for the opening, you should explain the caucus portion of the mediation. During the caucuses the mediator will meet separately and privately with each party in order to clarify information and to better understand the parties' interests, concerns and fears. The caucuses will last anywhere from one half hour to two hours, depending on the type of case. The mediator's work truly begins in the caucuses where the mediator will explore with the parties the following issues: possible outcomes of the dispute, creative settlement options, the time and expense of litigation, uncertainty of litigation, relationship of the parties, strength and weaknesses of the case, and the parties' motivations to settle. Frequently, lawyers and clients will have the best and most creative solution to resolve the dispute. It is therefore important for the parties and the lawyers to begin focusing on creative solutions to the dispute prior to the mediation.

Lawyers should not assume their clients understand the mediation process. It is important for the lawyer to explain the mediator's role carefully, making it clear the mediator is not there to decide the

case but rather is there to facilitate the parties in reaching a settlement. The lawyer should also explain that during the caucuses the mediator may appear at times to be taking sides with one side or another or may appear to be playing the role of devil's advocate. These techniques are all part of the job of the mediator to help the parties deal with and solve problems.

It is recommended the attorneys give some advance thought to the documentation of the settlement. If an exchange of money resolves the issue, the settlement agreement will be simple. However, settlements often require additional clauses such as confidentiality clause and releases. It is not a good idea to leave these issues until the end of the mediation because confidential clauses and releases can be impediments to settlement.

Consider an Apology Where Appropriate

Lawyers should never underestimate the value of a written or oral apology during the opening statement. This is particularly true if it is from someone in upper management or from the person whose actions are at issue. Keep in mind that while legal disputes often appear to be about money, there is always some emotional reaction looming in the

continued on page 21

continued from page 15

issues in adr

background. For example, a plaintiff who feels she has been wrongfully terminated feels she has been robbed of something. She is angry and humiliated that she heard about her termination through the grapevine via an email from another employee. The defendant employer can help restore this plaintiff's sense of dignity and self-respect by acknowledging the plaintiff's humiliation and admitting that the communication could have been more direct in the situation. This acknowledgment or apology, if properly worded, will set the tone of the mediation from the beginning and the defendant may garner good will in the process. Plaintiffs frequently assume the defendant does not appreciate fully the harm done to them or understand the myriad of emotional responses they are experiencing as a result of the dispute.

Consider Allowing Your Client to Speak

Many attorneys do not want their clients to make an opening statement. They are warned about what will be said or that the client may be emotional or angry. Advising your client not to speak in the opening is usually a mistake. One of the guiding principles of mediation is that it is a process that

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pitfalls

cancellation of the domain name or transfer of the domain name to the trademark owner. Companies seeking damages, however, will have to file suit in federal court, which can be much slower and expensive.

Intellectual property audits and due diligence can help companies develop domain name registration and renewal strategies and identify any potential issues.

Business transactions almost always involve intellectual property rights. IP practitioners are a valuable asset in business transactions, helping companies and non-IP practitioners navigate this complex and rapidly developing area of law. The pitfalls detailed above are just a few (of many) that you may encounter in a business transaction. Identifying and avoiding these pitfalls are important steps to ensure a smooth and successful transaction. ☐

Melinda Lothes is an attorney with Baker Hostetler's Business Group, Intellectual Property Team, and focuses her practice on intellectual property transactions and prosecution. She is a 2004 graduate of Case Western Reserve University School of Law.

empowers the parties to jointly resolve a dispute. In order for this to occur, the parties must be active participants in the process. This means the parties should be prepared to tell their side of the story. Often times the opening statement is the first time the parties have met or have spoken in a long time. Both parties need to speak and vent emotions so each party can begin to determine the strengths and weaknesses of each case and determine what the resolution of the case will mean to each. Parties often speak more earnestly than lawyers about a situation they personally were involved in. This earnestness can go a long way in convincing the other party to be more understanding of the true issues in the case as well as being cathartic for the parties.

Do Not Litigate at the Mediation

There have been occasions when a lawyer in a personal injury case shows a videotape or a Microsoft® PowerPoint® presentation in the opening session to illustrate the significance of the plaintiff's injuries. When planning to make such a presentation, you should inform the mediator and the other lawyer prior to the mediation. There is nothing worse than starting a mediation with a conflict or having one of the parties feeling like it was "sand-bagged." The most successful mediations begin with the parties and lawyers cooperating and communicating with each other. Lawyers must avoid the natural tendency to or the appearance that they are at the mediation to fight and win the lawsuit. The goal of mediation is not about winning or about the skills of the lawyer. Rather the goal is looking for a path to resolve the issues in a way that is in the best interest of the client.

Know the Applicable Ethical Rule

Many states have rules aimed at out-of-state lawyers representing clients in mediations. On February 1, 2007, Ohio adopted Rule 5.5 of the ABA Model Rules of Professional Conduct. Ohio Rules of Professional Conduct Rule 5.5(C)(3) now permits a lawyer admitted to practice law in another state to perform services in Ohio on a temporary basis if those services are related to a pending or potential arbitration, mediation or other ADR proceeding.

Always Do a Mediation Summary

Most mediators require the parties to prepare a summary with the background of the dispute. If the mediator does not insist upon a summary, you should do one anyway. Provide the mediator with relevant correspondence, pleadings and other relevant documents. If a summary is mandated, be sure to ask whether it should be exchanged with the other side prior to the mediation or submitted to the mediator confidentially. Most mediation statements are exchanged between the parties. The more each side knows about how the other side views the dispute, the more likely the dispute will settle.

The following information is useful to include in the mediation summary:

- Factual summary and procedural status of case
- Identification of key factual and or legal disputes
- Copies of summary judgment motions pending
- History of settlement discussions
- Suggestion for resolution
- Your view on barriers to settlement
- Your view as to the emotional issues each party is experiencing
- Prior courses of negotiations
- Damages information

Trust the Process

More than 90 percent of the cases mediated settled at the mediation or shortly thereafter. It works. It is vital to a successful mediation that the parties and the lawyers trust the process. One of the most common impediments to settlement is attorneys who don't trust the mediation process and want to control the mediation. They hold back valuable information, they won't make concessions and they fight to keep control of the process. Mediators are there to help you, not hurt you or your client. Choose someone you trust. Then trust the mediator to design and guide the process. After all, that is why you hired them. ☐

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