Best Practices in Probate Mediation

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BEST PRACTICES IN PROBATE MEDIATION 2018

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Your reporter recently completed his fifth year as a Probate Mediator in the Summit County, Ohio Probate Court, having commenced a modest civil private mediation practice based upon thirty-five years plus as a civil trial lawyer defending personal injury, malpractice and commercial litigation matters in several states in state and federal courts. Shortly after being retained in Summit County, he was retained as a mediator in the Stark County Probate Court, where he also has spent the last year installing a new program for Eldercaring

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Coordination, designed to steer families towards solutions when mediation does not work.

Your reporter also serves as a mediator of the civil division of the Stark County Court of Common Pleas. Stark County has long enjoyed an outstanding reputation for mediation results. The Ohio Supreme Court seeded the mediation program twenty years ago, which led the court to hire Joe Calbretta and Jeff Wilkof as Court Mediators. Their success led to the establishment of Attorney Mediation Services LLC, where your reporter found a home as well and works today in private cases.

The thousands of court mediations attended by your reporter as counsel did not wholly prepare him for Probate Court. The Court's jurisdiction is created and limited by statute. The beneficiaries of the court often cannot speak for themselves-children, differently abled individuals and decedents. Many counsel

who regularly appear in Probate Court are neither litigators nor familiar with mediation. The "participants" in probate litigation and mediation – unlike litigants in personal injury cases and commercial litigation – are not familiar with courts and court procedures. And, as counsel occasionally point out, your reporter's background in land use, estates and trusts, and corporate and tax law shows a need for research.

The consequences of a mediation session in Probate Court can be more consequential than a one-off civil dispute. An eminent domain case may permanently disrupt a business. A decades old dispute between third generation owners of a family business affects not only finances but family relations. Not to mention the omnipresent competency issues in will contests and guardianship cases. The lessons are clear: the issues and personalities in a probate mediation can be complex and require individual examination.

Extra care must be given by the mediator to the Mediation Case Summary and initial conversations at mediation. Often the knowledge the mediator seeks to understand the controversy is steeped in years of resentment. Often, counsel calls the mediator before the session to explain a difficult issue. And the mediator must deal with the urgent request of a part, participant or lawyer at the beginning of a session NOT to allow a certain person to enter the meeting room. The probate mediation presents a different set of challenges which must be addressed before resolution.

The reporter is grateful to Judge Elinore Marsh Stormer of the Summit County Probate Court, to Judge Dixie Park of the Stark County Probate Court, and to the Judges of the Stark County Court of Common Pleas General Division for their continued support and patience.

1. **Where are we now?**

Mediation is the preferred procedure for resolving disputes – either before filing suit or after – in most civil areas. Not only in personal injury or mass tort, but in probate, juvenile and domestic, corporate and employment, construction, business to business litigation, as well as consumer cases.

2. **How did we get here?**

There are many reasons why parties select mediation as opposed to litigation:

a. **By Default.** Our courts are overwhelmed by criminal cases. Especially in metropolitan counties, it is rare to get a case on the date it is first assigned for trial. Continuances are most inconvenient for business and their employers, and trial lawyers increasingly seek to avoid trials. Take a look at the attachment provided by Dean Matt Wilson of the University of Akron Law School to a Scanlon/Bell Inn of Court meeting.

Civil trials have declined from 267 in 1980 to 37 in 2014 – and less since then. Only 11 civil jury trials in 2014 with 10 judges.

b. **Inexpensive Discovery.** Mediations are a voluntary method of disclosing information, even if "ordered" by the court. A party is not limited by the rules of evidence or a judge in presenting its cases. Issues immaterial in court are frequently discussed, either in open session or in confidential sessions with the mediator. The parties are asked open-ended questions by the mediator about interests and outcomes. They are not cross-examined, but constantly urged to give <u>all</u> explanations to the issues presented. I will ask (unless counsel pulls me aside and requests I do not) who are the witnesses?

Occasionally the disclosure of information intentionally not disclosed to others is critical, as in financial or medical records.

3. Control the Process.

Mediators are selected by the parties or approved by the court. The parties have a high degree of confidence in the experienced mediator of choice, either by experience or by referral from a colleague. We can, by patience and technique, seek the parties trust in a way that a court cannot.

4. Costs, Efficiency, and Confidentiality.

The parties can resolve their case in less time that it takes to prepare for and defend a single deposition, let along several. I recommend that in business and family disputes (often the same) that the parties exchange paper discovery and then mediate before discovery depositions. You would be surprised how much "discovery" is discussed in a mediation session.

Lastly, the parties help craft the Report of Mediation, which is an agreement. The agreement is reached by the parties, not imposed by a hearing officer, judge or jury.

5. **If Your Family isn't Dysfunctional Now, it will be.**

Probate issues arise from a variety of family issues – some historical, some surprising to others. If you have families and partners, you don't need enemies. The mediator is prepared for emotional issues, which surprises some family members.

a. **Immediate Specific Issues.** We need care/money/support for our mom.

b. **Long Term.** We will get past this particular issue, but the family has long term issues/disputes over money/disputes with caregivers. Probate mediators look into the future.

c. **Privacy.** We don't want our decision or rationale to be disclosed to third parties. Confidentiality is enormously important with dysfunctional families.

d. **Emotional.** I/we need to be in charge.

I/we want to be seen as reasonable.

I/we want the dissenter to be punished.

Each issue needs to be carefully and respectfully engaged. The hallmark of any mediation is respect for all parties; thoughtful listening and careful explanation of possible partial or full resolutions after the issues have been fully framed. I encourage you to consider submitting your probate conflicts to mediation. Your clients will be pleased with the outcome, the process, the cost, and the collegiality of the process. Let's look at some specific issues.

e. **Who has the Money?**

Who wants it?

f. **Controlling Family Members.**

Who is in charge?

Who wants to be?

Why?

g. **Plan for the Future TODAY.** It is coming.

6. Lawyers Issues.

See 5(f) above. We don't know any lawyers who need to be in control, do we? The way to resolve all non-economic issues is to listen patiently and to use these issues to come to agreements that may pave the way to a global settlement. The private caucus – the mediator emphasizes confidentiality with the client and lawyer – is a good place to have a low-key conversation about non-economic issues. I typically emphasize that the lawyer should be proud to have been part of a settlement of a difficult case, and that the client can report to his family that she/he did a good job for their family, and the family can be pleased that some difficult issues have been resolved.

Lawyers, leave your trial face at home. The mediator has read your mediation case summaries and probably the docket too. Think about negotiating

strategies, not cross-examining the part at the table. Especially with non-litigators, lawyers need to prepare their clients for the mediation. Take a look at the attached article from one of the best trial lawyers and mediators in our state, Frank Ray, regarding practice tips on preparing a client's civil case for mediation.

7. **Guardianships.**

Who should be the Guardian of the Estate?

Who should be Guardian of the Person?

Remember, the court has independent duties with respect to the election of the Guardians and can contradict the wishes of the family, which is frequently, a subject of mediation between competing family members. Remember a Guardian must pass a background test.

8. **The Uniform Mediation Act – O.R.C. 2710 (attachment).**

Chapter 2710 of the Ohio Revised Code contained Ohio's version of the Uniform Mediation Act. "Mediation" is broadly defined: "...any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute."

There are unlimited scenarios. We do not need the typical 5-minute speech from the mediator to all, followed by brief opening statements. The parties do not even have to be in the same rooms. Preparation occasionally includes a series of *ex parte* conversations with the parties, lawyers and judge.

Mediations can be done remotely by phone or even mail (I do not recommend either). If sometimes your client wants to tell his/her side to the group, or if sometimes your client doesn't want to be in the room with the other

side – bring this up to the mediator. Be wary of mediators who insist on mediating every case with the same procedure. They're not listening.

The 'non-party participant." The Act specifically allows a party to bring a friend to the mediation.

I call this the "Uncle Festus" rule. Typically, a shy person brings a barn burner with the specific goal of pissing off the other side. This is permitted. When brought to my attention, I will tell counsel and the party/barn burner that mediation works best with collegiality rules. Sometimes, I attempt to reason with the party not to bring Uncle Festus to the table, but I certainly point out to all that while the law permits him/her to attend, all must be polite and collegial.

Mediation privileges. Most lawyers understand that comments made in mediation are confidential. Few understand that all present have the right to enforce comments made in the process.

Exceptions to confidentiality include, of course, the written settlement documents signed by all parties. In the event of an unsuccessful session, a mediator can only disclose that in fact a mediation occurred, and whether or not a settlement was reached.

9. Negotiations.

The first exchange of proposals generally raises – not lower – the temperature of the parties. Please explain to your clients that negotiation is a process, and typically takes a while. Simply because you are an experienced negotiator does not insure that your client will follow your advice.

I would ask all counsel to specifically engage in some preparation for the mediation. Lawyers are experienced mediation counsel; your clients are not. Take the time to send an e-mail and/or letter, and schedule prep time, even if it is just 30 minutes before the mediation. Often, clients are scared, frightened and anxious.

Tell them probate lawyers are all scared, frightened, and anxious before juries and judges, and would like to get this mediation settled instead.

10. Closing Comments.

Probate lawyers are very experienced in planning and solving difficult personal and family issues. Transform that energy and experience to the mediation and good things will happen. Make your client part of the deal. Thank your client. Tell her/him that the resolution was possible only with their help.

Chapter 2710: UNIFORM MEDIATION ACT

2710.01 Definitions.

As used in sections 2710.01 to 2710.10 of the Revised Code:

(A) "Mediation" means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(B) "Mediation communication" means a statement, whether oral, in a record, verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(C) "Mediator" means an individual who conducts a mediation.

(D) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(E) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(F) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency or instrumentality of the state or of any political subdivision of the state, public corporation, or any other legal or commercial entity.

(G) "Proceeding" means either of the following:

(1) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;

(2) A legislative hearing or similar process.

(H) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(I) "Sign" means either of the following:

(1) To execute or adopt a tangible symbol with the present intent to authenticate a record;

(2) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

Effective Date: 10-29-2005

2710.02 Application of chapter.

(A) Except as otherwise provided in division (B) or (C) of this section, sections 2710.01 to 2710.10 of the Revised Code apply to a mediation under any of the following circumstances:

(1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator.

(2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure.

(3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator,

or the mediation is provided by a person that holds itself out as providing mediation.

(B) Sections 2710.01 to 2710.10 of the Revised Code do not apply to a mediation in which any of the following apply:

(1) The mediation relates to the establishment, negotiation, administration, or termination of a collective bargaining relationship.

(2) The mediation relates to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that sections 2710.01 to 2710.10 of the Revised Code apply to a mediation arising out of a dispute that has been filed with an administrative agency or court.

(3) The mediation is conducted by a judge or magistrate who might make a ruling on the case.

(4) The mediation is conducted under the auspices of either of the following:

(a) A primary or secondary school if all the parties are students;

(b) A correctional institution for youths if all the parties are residents of that institution.

(C) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 2710.03, 2710.04, and 2710.05 of the Revised Code do not apply to the mediation or part agreed upon. However, sections 2710.03, 2710.04, and 2710.05 of the Revised Code do apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

Effective Date: 10-29-2005

2710.03 Mediation communications privileged.

(A) Except as otherwise provided in section 2710.05 of the Revised Code, a mediation communication is privileged as provided in division (B) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in section 2710.04 of the Revised Code.

(B) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication. A mediator may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(C) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

Effective Date: 10-29-2005

2710.04 Waiver of privilege - privilege precluded.

(A) A privilege under section 2710.03 of the Revised Code may be waived in a record or orally during a proceeding if it is expressly waived by all mediation parties and by whichever of the following is applicable:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator.

(2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(B) A person that discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 2710.03 of the Revised Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(C) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 2710.03 of the Revised Code.

Effective Date: 10-29-2005

2710.05 Exceptions to privilege - partial admission of nonprivileged communication.

(A) There is no privilege under section 2710.03 of the Revised Code for a mediation communication to which any of the following applies:

(1) The mediation communication is contained in a written agreement evidenced by a record signed by all parties to the agreement.

(2) The mediation communication is available to the public under section 149.43 of the Revised Code or made during a session of a mediation that is open, or is required by law to be open, to the public;

(3) The mediation communication is an imminent threat or statement of a plan to inflict bodily injury or commit a crime of violence.

(4) The mediation communication is intentionally used to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity.

(5) The mediation communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.

(6) Except as otherwise provided in division (C) of this section, the mediation communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation.

(7) Except as provided in sections 2317.02 and 3109.052 of the Revised Code, the mediation communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(8) The mediation communication is required to be disclosed pursuant to section 2921.22 of the Revised Code.

(9) The mediation communication is sought in connection with or offered in any criminal proceeding involving a felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(B) There is no privilege under section 2710.03 of the Revised Code if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that the disclosure is necessary in the particular case to prevent a manifest injustice, and that the mediation communication is sought or offered

in either of the following:

(1) A court proceeding involving a misdemeanor;

(2) Except as otherwise provided in division (C) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(C) A mediator may not be compelled to provide evidence of a mediation communication referred to in division (A)(6) or (B)(2) of this section.

(D) If a mediation communication is not privileged under division (A) or (B) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under division (A) or (B) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

Effective Date: 10-29-2005

2710.06 Communication or disclosure by mediator.

(A) Except as provided in division (B) of this section and section 3109.052 of the Revised Code, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject of the mediation.

(B) A mediator may disclose any of the following:

(1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) A mediation communication as permitted by section 2710.05 of the Revised Code;

(3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against abuse, neglect, abandonment, or exploitation.

(C) A communication made in violation of division (A) of this section shall not be considered by a court, administrative agency, or arbitrator.

Amended by 130th General Assembly File No. TBD, HB 483, §101.01, eff. 9/15/2014.

Effective Date: 10-29-2005

2710.07 Confidentiality of mediation communications.

Except as provided in sections 121.22 and 149.43 of the Revised Code, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code.

Effective Date: 10-29-2005

2710.08 Inquiry by proposed mediator - disclosures - qualifications - impartiality.

(A) Before accepting a mediation, an individual who is requested to serve as a mediator shall do both of the following:

(1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known

facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation;

(2) Disclose any known fact described in division (A)(1) of this section to the mediation parties as soon as is practical before accepting a mediation.

(B) If a mediator learns any fact described in division (A)(1) of this section after accepting a mediation, the mediator shall disclose it to the mediation parties as soon as is practicable.

(C) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(D) A person that violates division (A), (B), (C), or (G) of this section is precluded from asserting a privilege under section 2710.03 of the Revised Code.

(E) Divisions (A), (B), (C), and (G) of this section do not apply when the mediation is conducted by a judge who might make a ruling on the case.

(F) Sections 2710.01 to 2710.10 of the Revised Code do not require that a mediator have a special qualification by background or profession.

(G) A mediator shall be impartial, unless after disclosure of the facts required to be disclosed by divisions (A) and (B) of this section the parties agree otherwise.

Effective Date: 10-29-2005

2710.09 Participation of party's attorney - withdrawal of mediator.

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded. A mediator may withdraw as mediator at any time.

Effective Date: 10-29-2005

2710.10 Preemption of federal electronic signatures statute.

Sections 2710.01 to 2710.10 of the Revised Code may modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but sections 2710.01 to 2710.10 of the Revised Code shall not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

Effective Date: 10-29-2005

How to prepare a client's civil case for mediation

By Frank A. Ray

To produce the best opportunity for a successful civil case mediation, lawyers for parties to the dispute should prepare for the mediation conference as if proceeding to trial.

Attorneys effectively posture a case for mediation by engaging in the same process that produces persuasive pressure points that influence the decision-making by a court and jury. The onus for convincing an adversary party of unfavorable exposures in a litigated case falls on the advocating party's trial lawyer, not the mediator. In preparation for a mediation, no viable alternative exists for counsel's thorough preparation and understanding of issues that drive the outcome of the case.

Write a clear mediation position statement

Through a party's attorney's written mediation position statement, the party's message should speak not only to the mediator, but also more importantly, to adversary parties and their counsel. In the narrative of the mediation position statement, a lawyer should project transparency about anticipated presentation of the case at trial. If admissible evidence will carry the day for a party at trial, in mediation, counsel's discussion of decisive evidentiary issues probably best influences and positions a dispute for resolution.

In a mediation position statement, the authoring lawyer should avoid use of effusive adjectives and adverbs to describe projected outcomes in the case. Understated narrative usually trumps a shrill or chest-beating commentary. Overstatement and hyperbole fail to advance the fundamental purpose of mediation—arrival at an agreed reasonable compromise to terminate a dispute.

A properly crafted mediation position statement for a civil case should address and discuss the following:

- Procedural status of the litigation;
- Descriptions of relevant facts supported by copies of key documents and excerpts of witnesses' written or recorded statements;
- Indisputable dispositive legal issues;
- Disputed dispositive legal issues with a discussion of the rationale for probable rulings by the court;
- Assessment of claimed damages and remedies; and
- Each party's proposed terms for global resolution of the case.

Exchange statements in a reasonable amount of time

Once the clients approve the content of mediation position statements, counsel should exchange the statements between or among counsel for all parties to the mediation. Counsel should do so at a time far enough in advance of the mediation conference that adversary parties have adequate opportunity for review, evaluation and response to the content of the statement.

If parties find themselves in a rushed mode for evaluation and decision-making by the time a mediation conference convenes, the unsettled feeling of a client's decision-maker probably translates to a stalemate in negotiations. By serving a mediation position statement on adversary counsel at a reasonable time in advance of the mediation conference, a lawyer's written advocacy will enjoy the best opportunity to strike a chord in the adversary's mind of risks for an unfavorable result at trial.

Provide a copy of the statement to the client

When a party's attorney receives a mediation statement from adversary counsel, the receiving lawyer should immediately provide a copy to the client. Even if the adversary's statement might qualify as "bad news" for the client, transparency in the process also dictates that clients are fully informed of risks as well as benefits associated with trial of the case.

Conduct a pre-mediation discussion with the client

Counsel's list of essential tasks for any mediation should include a pre-mediation discussion with the client to address a realistic range of results at trial. Counsel who have only viewed clients' cases through rose-colored glasses have done their clients and themselves a disservice. Experienced trial lawyers can attest that a so-called slam dunk verdict rarely manifests. In mediated cases, thoughtful litigators address and assess pitfalls of cases with the same commitment invested in discussion of

positive aspects of cases. In advance of a mediation, and in advance of a trial, the client needs to hear a rhetorical discussion of "what ifs" from the client's counsel. Indeed, the client *deserves* to hear that discussion.

A mediation in which the parties have initially proposed entirely unreasonable terms for resolution probably arises from counsel's unwillingness to address a potentially unfavorable outcome for the client. A party's demanded terms for settlement that entail terms that no judge or jury could award will understandably evoke adversary counsel's distrust of the demanding party's willingness to negotiate in good faith.

Counsel for parties in litigation have a professional duty to address and, as necessary, attempt to adjust a client's expectations about foreseeable results in litigation. Former Ohio Common Pleas Judge Donald A. Cox, now serving as a private mediator, describes this process as "client therapy." While lawyers understandably strive to maintain clients' confidence in their attorneys' ability to achieve a desired outcome in litigation, those same lawyers best serve clients with discussion of the range of scenarios for the outcome of a lawsuit.

Pre-mediation discussions with the client should occur with the client's decision-maker. If the client is an individual or single fiduciary, the lawyer finds a readily identifiable audience. If the client is a business or group or association of people, the attorney for such a client or set of clients should identify clearly the decision-maker or decision-makers for the client or set of clients. The lawyer for a business client or multiple parties should insist on unfettered access to the decision-maker for direction in handling a mediation.

Attend the mediation conference

To optimize success in a mediation, the real decision-maker for each party should personally attend the mediation conference. Lead trial counsel for the parties should also personally attend.

In advance of the mediation conference, participating parties' counsel should encourage clients to avoid describing demands or offers as "take-it-or-leave it," "bottom-line" or "drop-dead" unless the clients are adamant and unwavering on such terms for resolution of the case. In pre-mediation discussions with parties, counsel should address compromise as a probable prospect for mediations that produce settlements. If adversaries fail to embrace compromise as a mutual fundamental and ultimate goal for a mediation, little purpose probably exists for convening a mediation conference.

No doubt, some civil cases should proceed to trial for disposition, but most cases are better disposed by purposeful mediation.

Author bio

For over four decades, Frank Ray practiced as a trial lawyer who conducted numerous jury trials for his clients. For the past two years, Mr. Ray has withdrawn from the courtroom and has entirely refocused his law practice as a mediator and arbitrator for a broad spectrum of civil disputes. He is a solo practitioner at Frank A. Ray Co., LPA, in Columbus.

SUMMIT COUNTY

YEAR	Total Civil Filings	Total Trials	% Total Trials	Jury Trials	% Jury Trials	Bench Trials	% Bench Trials	Mediations	% Mediations
1980	6468	267	4.1	111	1.7	156	2.4	---	---
1985	7513	197	2.6	111	1.5	86	1.2	---	---
1990	6451	243	3.8	93	1.4	150	2.3	---	---
1995	6754	132	1.9	92	1.4	40	.59		
2000	7142	139	1.9	113	1.6	26	.36	687	9.6
2005	7328	102	1.4	91	1.2	11	.15	1356	18.5
2010	6752	72	1.1	48	.71	24	.36	1859	27.5
2014	5283	37	.70	18	.34	19	..36	1029	19.47

CONSOLIDATED REPORT – ALL OHIO COUNTIES

YEAR	Total Civil Filings	Total Trials	% Total Trials	Jury Trials	% Jury Trials	Bench Trials	% Bench Trials
1980*	71,298	11,486	16.10	1699	2.38	9787	13.73
1985*	79,686	13,206	16.57	1576	1.97	11,630	14.59
1990	134,385	7393	5.50	1465	1.09	5928	4.41
1995	129,787	3999	3.08	1589	1.22	2410	1.85
2000	129,810	2453	1.88	1406	1.08	1047	.80
2005	159,501	2384	1.49	1175	.74	1209	.75
2010	153,426	1952	1.27	664	.43	1288	.84
2014	116,885	1363	1.16	472	.40	891	.76

Total Civil Filings excludes Foreclosure and Administrative Appeals

*1980 and 1985 – The Ohio Common Pleas Court General Jurisdiction Report included a category "All other cases" which probably included Foreclosure and Administrative Appeals.