

## **Success at Mediation Requires Preparing the Decision-Maker** **Article 2 of 4-Part Series**

**Blane McCarthy**

Last October, I wrote the first in a four-article series about effective preparation for mediation.

That article (linked on my website [jacksonvillemediator.com](http://jacksonvillemediator.com)) focused on the importance of preparing your case file, urging you to obtain and organize the important documentation, witness evidence and “numbers” that will inform your decisions and persuade the other side as to the reasonableness of your proposals.

Indeed, an organized case file is the foundation for a successful mediation.

I recommend starting that process at least two months before your scheduled mediation so that the remaining tasks can be timely completed and effective.

Next, turn your preparation focus to your client and decision-maker, who may not be one and the same.

The individuals attending the mediation with you need to be oriented about the process, the case evidence, your negotiation plans and tactics, the other side’s likely arguments and the best way to behave and dress.

### **The Mediation Process**

Excepting insurance professionals and institutional clients, most people have never observed portrayals of mediation conferences, let alone experienced one directly.



Walk your clients through the mediation process – its stages (joint session, caucus and who is in each), pacing (slow at first and then increasingly quicker as the learning curve levels off), and the mediator’s role (neutral with an outsider’s perspective).

Your mediator will likely cover much of this information at the outset, but orienting your clients in advance will put their minds at ease and allow them to be more comfortable and composed.

### **The Case Evidence**

Since you have already prepared your case file, you can intelligently review its strengths, weaknesses, and evidence.

Expectation setting is critical to a productive mediation, so be candid and thorough.

Don't allow your clients to first learn of case deficits during opposing counsel's opening presentation.

They will become disoriented and will question both your competence and the wisdom in retaining you for the case.

## Your Negotiation Plans and Tactics

After you have frankly described the positives and negatives in your client's case, explain how you intend to handle the negotiations.

Discuss your view of an appropriate settlement range, why you propose starting where you wish, and why you may utilize certain approaches during the conference.

Your aim should be to build client trust and to minimize discomfort, surprise and confusion.

## Likely Arguments from the Other Side

Give your clients a preview of what the other side will likely share, show and argue during the mediation.

You want to eliminate bad behavioral responses from your clients, so inform them beforehand.

Shine a bright light on the ugliness in the case such as conflicting documents, incriminating evidence, poor performance during deposition.

Whatever issues exist, counsel your clients about such things so those issues can be appropriately factored into the decision-making process before the start of the mediation.

## Creating a Favorable Impression

Most likely, the other side's decision-makers have not seen your client before the mediation conference.

He or she has a chance to make a favorable first impression and you should prepare your client accordingly.

You may feel uneasy about giving your clients feedback on attire, hygiene and behavioral control, but for the betterment of their cases, be brave enough to have awkward discussions.

Some parties need extra coaching on this issue, so help them to be the best version of themselves, just as if they were going for a job interview or first meeting the parents of their potential future spouse.

Preparation is the key to success in most endeavors, including mediation. Preparing the case file and the client decision makers are the first two steps.

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**Blane McCarthy is a full-time mediator who works out of Miles' Jacksonville office. He is Florida Bar Board Certified (Civil Trial), is an ABOTA member, and is a Past President of the Jacksonville Bar Association.**