

Success at Mediation Requires Preparing Your Case File This is Article 1 of 4-Part Series

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In my 25 years as a certified circuit mediator, now exclusively so, I have often seen this truism in action: Those who fail to prepare for mediation should be prepared to fail at mediation.

There are four areas of preparation focus, the timing and sequencing of which are critical. This article addresses preparing your case file.

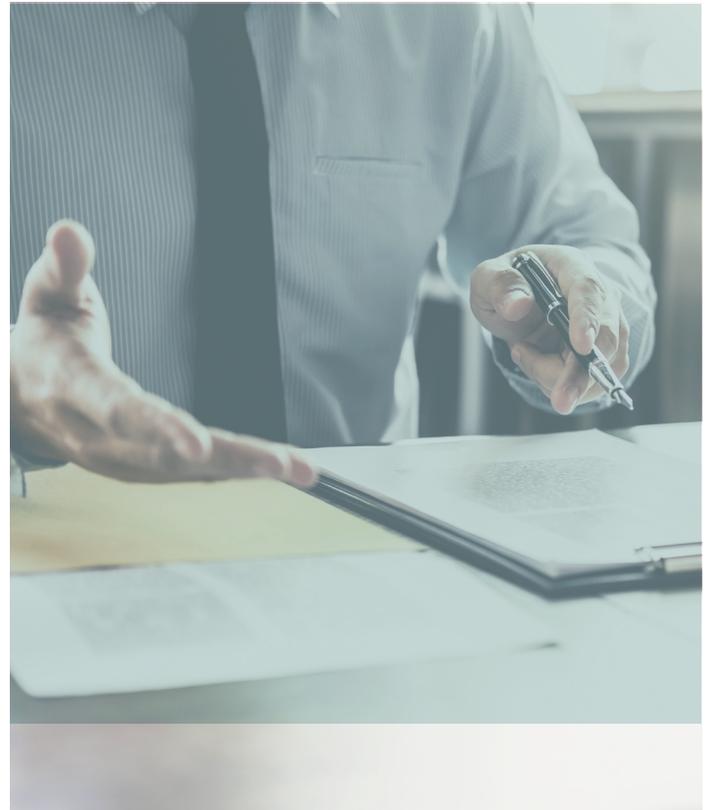
Begin preparing the file at least two months before mediation. Whether it is physical or digital, thoroughly review and organize your file.

Most cases rely on documentation. Assess the status of yours. Are there overdue discovery responses? Have your third party subpoenas gone unanswered? Is your documentation current or outdated? Do you have all of the receipts or billing statements you need to quantify economic losses?

As you seek to acquire needed documents, do likewise with witness evidence. Schedule meetings with relevant people to obtain written, audio or video statements. Review deposition testimony to identify salient transcript excerpts or, more ideally, video recording excerpts.

Preparing your file helps you “crunch the numbers” to formulate a mediation game plan. To the extent your numbers are based on amounts due and owing, make preliminary arrangements with those who can assess proposals to settle those accounts.

Determine the point people for such discussions, advise them of your mediation date, obtain



the best contact information to reach them during mediation and begin setting appropriate expectations.

When you have organized your file, reviewed the status of evidence and pursued what remains lacking, you can candidly assess your client’s case and your ability to prove it. Perhaps the case is not showing the strength you initially anticipated. Maybe it is outperforming your expectations.

Lastly, use that organized file to create your mediation presentation, to “speak” to all three of your audiences. Primarily, you seek to impress the other side’s decision-makers about the merit and value of your case as well as your ability to

effectively make that case to a jury. Secondly, aim to impress your mediator, who will discuss such topics when caucusing with the other party.

Can you identify the third audience? Your client. Mediation is often the first, and last, time your client gets to see you "in action." Do you want your client to sing your praises to all who will listen or leave the mediation underwhelmed and remain silent or worse?



An impressive presentation not only favorably impacts the settlement value of the case, but also inspires your client to send you more work and tell others to do likewise. Mediation presentations are worth the cost.

To capitalize on the opportunity mediation provides you and your client, you must first prepare your file. It is the foundation upon which the other three preparation foci rely. We'll cover the next one in my next article.

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