

# EFFECTIVE ADVOCACY IN MEDIATION

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# 1. PREPARING FOR SETTLEMENT

- The first letter
- Disclosure
- Educating your client
- The pre-negotiation letter
- Controlling emotions
- Developing rapport with your client
- Building rapport with opposing counsel
- Preparing with your client
- Coaching your client

## 2. CHOOSING THE RIGHT DISPUTE RESOLUTION PROCESS

- Factors to consider
- Lawyer's obligation to inform client of ADR
- When is a dispute not suitable for mediation?
- Factors in deciding whether to arbitrate
- Creative Arbitration
- Effective Use of Mediation-Arbitration

## 2. CHOOSING THE RIGHT DISPUTE RESOLUTION PROCESS

- Judicial Dispute Resolution
- The settlement conference vs. a mediation
- Choosing the collaborative process
- Screening for power imbalances and risk
- Choosing the mediator

# 3. NEGOTIATING SETTLEMENT

- When to negotiate
- Modes of negotiation
- Where to meet
- Making the first offer
- Order of negotiation
- Positional negotiation

# 3. NEGOTIATING SETTLEMENT

- Principled negotiation
- Negotiating with opposing counsel
- Creative settlement techniques
- Planned early negotiation
- Third party problems
- Offers to settle
- Ten commandments

# 4. EFFECTIVE ADVOCACY IN MEDIATION

- The role of counsel
- When to go to mediation
- Preparing your client
- Preparing yourself
- The mediation brief
- Problem-solving advocacy

# 4. EFFECTIVE ADVOCACY IN MEDIATION

- Anticipating problems at the mediation
- Do's and don'ts of mediation advocacy
- Negotiating with your own client
- Lawyer/client problems
- Using the mediator
- Advocacy in mediation-arbitration
- Documenting the settlement



# 5. WHAT DOES THE MEDIATOR WANT?

- Executed agreement
- Information to check conflicts
- Briefs and retainers on time
- Show up on time
- Heads up regarding potential problems
- Concise summary of family and history of the case
- Outline of issues and each party's position
- Comparative net family property statements
- Divorcemates for each year in issue

## 5. WHAT DOES THE MEDIATOR WANT?

- Updated financial statements
- Expert reports
- Interim agreement and orders
- Offers to settle
- Experts in attendance, if necessary
- Copies of key documents
- Chronology, if helpful
- Client's briefed on process
- Parties and counsel prepared to negotiate