



Caroline Vincent



10 Tips to Help Your Client Prepare for Mediation

- 1. Get to the Table.** The chances of settlement are huge if both parties make the time available to come together before a professional mediator. Reluctant clients should know that mediation is a risk free opportunity to explore settlement, 95% of cases settle before trial, and the investment of time and money is small compared to other litigation processes. The potential savings in time and costs is huge.
- 2. The Goal is to Seek the Best Offer from the Other Side.** Instead of focusing on the goal as “settlement,” focus on obtaining the best possible offer from the other side. Then, decide if that offer is a viable alternative to litigation/arbitration.
- 3. You Have to Give to Get.** To get the best offer from the other side, you have to be willing to make counteroffers, and compromise yourself. Be willing to make several moves toward a settlement amount you could live with, and work cooperatively to help the other side do the same.
- 4. Kill Them with Kindness.** You can catch more flies with honey than with vinegar. Be as civil as possible. An acknowledgement and thanks to the other side for coming to the mediation can be a tremendous boost to the process. Remember, you want the other side to move as far as possible.
- 5. Prepare, Listen and Learn.** Listen to the other side, the mediator, your attorney. Prepare before the mediation by taking an objective look at the strengths and weaknesses of your case. What are the risks of winning and of losing before a court/arbitrator? What are the costs of going forward? Review and adjust your analyses as you hear from the other side and talk over your case with the mediator.
- 6. Focus on Needs and Interests.** What do you, and the other side, really want? What is driving the dispute? Often it is about something other than what the parties state they seek in their legal pleadings, or state they seek in the mediation. Try to determine your needs (not just monetary ones), address the other side’s needs, and compare their offers to your needs.
- 7. Be Patient.** Stay in the process until the other side has stopped moving. Likely the case will resolve, but if not, knowing what the other side is willing to do is valuable information as you proceed with litigation.

- 8. Be Flexible, Be Creative.** Use the mediation session to explore alternatives. Brainstorm, think outside of the box. Most mediations last several hours to an entire day. Looking at many options brings fresh perspectives to the problem. Vindication and “winning” according to what a client hopes to get is only one tiny possible outcome of disputes. What other solutions could work?
- 9. It’s Your Problem to Solve.** Lawsuits are like any other problems in life, they have solutions. Contribute to solving the problem. Courtesy, willingness and cooperation are winners. Ultimatums, demands, storming out of the mediation are losers.
- 10. It Isn’t Over Until It’s Over.** Even if you leave without a settlement in place, stay open to further negotiations. Good mediators will follow up and help the parties continue to discuss settlement.

Caroline C. Vincent is an attorney mediator, neutral evaluator and arbitrator with ADR Services, Inc. in Los Angeles and Orange County, who has heard over 2000 disputes in her 25 year ADR career. She specializes in employment, complex torts, probate/elder abuse, insurance, professional liability and business and real estate disputes, including class and mass actions. Caroline is a 1978 graduate of the USC Gould School of Law where she served on Law Review, and teaches ADR Ethics. She is recognized in Super Lawyers for her expertise in ADR.