Q&A with Caroline Vincent, Esq.

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Q: Will you (the proposed mediator) handle what some of us refer to as "evaluative mediations" instead of just knocking heads?

— Patricia Glaser, Glaser Weil Fink Howard Avchen & Shapiro LLP

A: Absolutely. I help the parties evaluate their respective cases for settlement, assessing strengths and weaknesses, costs and time to trial or arbitration, risk of outcomes, as well as emotional or personal reasons to resolve the matter versus continued litigation. I encourage them to convey their valuations to the other side, in a joint session of lawyers at the beginning of the mediation, and/or in key bullet points accompanying their respective offers and demands. This exchange of valuation points often fosters a productive and forward going negotiation. It also helps me as the neutral to hone in on the key evaluative drivers, while constantly working to move the parties toward resolution. Putting evaluation discussions front and center is key to helping parties make realistic and informed decisions between the developing deal on the table and the costs and risks of continued litigation. Call me old fashioned, but facts matter.

Q: How close do the parties need to be for a "mediator's proposal" to succeed in settling a case?

— Brad Brian, Munger, Tolles & Olson

A: The closer the better, but "close" is a relative word. More important is for parties to counter back and forth until they cease moving further. By then I will have informally floated numbers or ranges for their consideration in private caucuses, to get them closer to each other. Considering specific numbers or ranges as homework gives parties a chance to try them on for size, and focuses them on movement. I typically give the formal mediator's proposal as a last resort, even if parties are so far apart that it is a "stab in the dark". I ask permission to give my proposal, enhancing buy-in, along with determining how much time is needed to make a decision. Even if the parties are far apart, a mediator's proposal may be accepted, and if not there is an anchoring number that will serve as a reference point for further negotiations.

Q: If you are the neutral for a large, institutional client that has used your services repeatedly in the past, how do you address this with the parties.

— Jennifer Keller, Keller Anderle LLP

A: I disclose this to counsel before a mediation session, sometimes verbally and always in an email in my pre-mediation letter. In arbitrations, prior service is always disclosed in writing. At the session in both mediations and arbitrations, I repeat this disclosure at the beginning of the hearing to insure that the parties are informed. I explain that I am a professional neutral, that every case is different and sometimes the outcome may seem to favor the client, and sometimes not. Further, as a professional neutral I do not favor one side or another, my reputation depends upon my neutrality, and repeat business from counsel and large companies is how neutrals make a living. I answer any questions with non-confidential details about my prior service. Candor and a reminder of adherence to neutrality in service of each matter create trust and confidence in the process and the neutral.