

Managing Client Expectations

Managing client expectations is a critical component of a successful mediation.

The first time the client brings up case value is the time to begin to corral unrealistic ideas about what their case is worth. From a plaintiff's standpoint, you want your client to be happy with the case outcome. As a general rule, one should under promise, then over deliver. This can be tricky at the beginning of the case if the attorney is drawn into a discussion about what they think the case is worth because they are afraid of losing the client if they suggest a case value that is way too low in the client's mind.

As the mediation approaches, it is even more important to find out what the client's expectations are. Every effort should be made to be on the same page with the client by the time the mediation occurs. Unfortunately, this is not always possible.

With plaintiffs, this usually starts when discussing the amount of the proposed demand. It should be clear at this point to what extent the client has an unrealistic settlement expectation. Occasionally, the client just wants to "get it over with" or has total faith in the attorney. Even in these cases, try to find out if you client has any idea what they should get and why.

More often, the client has an inflated view of their case's value. For example, the client may be convinced, because of how they feel subjectively, that their soft tissue low back case with minimal property damage is a million dollar case. It is important to explore this. Find out how they came up with the number. Sometimes, it is based on what they were told by a friend or relative or what they may have heard or read. Almost always, the big settlement or verdict they heard about, has different facts that can be patiently and gently distinguished. Showing the client jury verdicts in similar cases can help bring their expectations in line with reality. Explaining the true cost of trial or the danger of a 998 offer can be helpful. In contested liability cases, explaining how comparative fault reduces case value will smooth the transition to client acceptance.

Sometimes, the only person who can truly bring the client's expectations in line with a realistic settlement range, is the mediator. If you are to candid about the weaknesses in the client's case, you risk alienating your client. It is a good idea to let the mediator know before the mediation if you have a client who is fixated on an unrealistic number. Let the mediator know in advance where you may need some assistance. You can work in tandem with the mediator to a. explore the client's reasons for the unrealistic case value and b. lay out the risks of choosing "door number two." A mediator can often ferret out emotional drivers for the client's insistence on an unrealistic number. A common driver is the perception of being disrespected by the defendant or their insurance company. Another driver can be the client's emotional attachment to the case. Sometimes, letting the mediator be the heavy in the mediation while you maintain allegiance with the client's position, will prevent the client from feeling betrayed. Talking to the mediator in advance can be critical in these situations.

Most of the time these issues can be worked out during the mediation. However, some clients, especially those with a conspiratorial bent, may not respond despite the mediator's best efforts. In those cases, it may be the defendant's post mediation 998 or flurry of discovery that brings the client back to reality. Or it may be the proximity of trial that causes the unrealistic client to fully appreciate the inherent risks.