

# MEDIATION NEWS

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Smullin Mediation

Our year-end edition includes Michael Carbone's essay on "Mediation Strategies: A Lawyer's Guide To Successful Mediation." He prefaces it with four characteristics of a skilled mediation advocate. These include:

**Preparation** Mediation is like a trial. While it lacks a judge and jury, the opposing party and its counsel are the only people who can provide both value to you and your client and end the litigation. Mediation is your one chance to display your knowledge of the facts, the law and their significance at trial to the people with that power. So give yourself the gift of early preparation.\* Typically, this will provide you time to place newly discovered, uncomfortable facts in advantageous context.

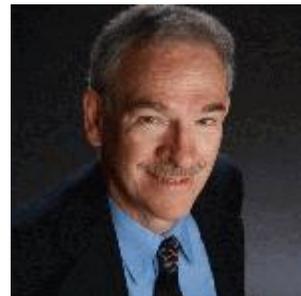
**Openness and Candor** In any negotiation, confidence, like clarity, is power. Both are best evidenced by openness and candor.

**Patience** When essential parties are present and desiring a settlement, the single biggest reason for mediation failure is the absence of patience. Lawyers "bargain in the end zones" often out of concern that the client may think that a significant move is abandoning the client's position. I have found that if the parties will spend the time the process requires, the case will settle. Spending the time often means being patient as opposing counsel and his or her client bargain timidly to work through the emotions underlying the litigation. It is all about taking the time.

**Willingness to compromise** No negotiation will succeed if one or both parties are determined to cling to their positions regardless of communication about the case. Every lawsuit involves risk. Inability to respond to the elements of that risk makes a satisfactory settlement impossible. If the parties are prepared to compromise and to spend the time, they will be successful.

Best wishes for an excellent holiday season.

**Dave Smullin**



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*Tammy Lenski*

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## Quotes

*People have one thing in common, they are all different.*

*Tact is the art of making a point without making an enemy.*

*If we cannot end now our differences, at least we can help make the world safe for diversity.*

*There is no way to peace. Peace is the way.*

\*See *Mastering Mediation*, Duryee and White, Aspatore, 2012, at pages 15 and 17.

*Obstacles look large or small to you according to whether you are large or small.*

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## Featured Articles

### [It Happened in Mediation - Believe It or Not](#)

*by Daniel Ben-Zvi & Michael Young*

The authors have peeled back the protective cloak of confidentiality just enough to provide a glimpse of the wild, the unpredictable, and the utterly preposterous things that have happened in real mediations.

### ['Think Like a Mediator' Conflict Resolution Program at Rikers Island](#)

*by Mary Austin, Richard Brewster, Nina Martinez & Hillary Zilz*

The article describes the authors' experience teaching a six session course called "Think Like a Mediator" on conflict resolution to inmates at the women's jail facility (the Rose M. Singer Center) at Rikers Island in New York City.

### [Are You Really Ready for Divorce? The 8 Questions You Need to Ask](#)

*by Bruce Derman & Wendy Gregson*

This article outlines what couples need to do in order to face the numerous dilemmas that are inherent in divorce. If people have not resolved their dilemmas before the divorce, they go through the process trying to manage their fear in different ways by hiding their doubt, responsibility; vulnerability, or dependency.

### [Mediation Strategies: A Lawyer's Guide To Successful Negotiation](#)

*by Michael P. Carbone*

Every successful negotiation requires that you have a sound strategy. In this article I will explain the steps that I believe you should follow when developing a mediation strategy.

### [Traits of a 'Mediator'](#)

*by Sam Imperati*

Although there are many intangibles in the definition of a "good" mediator, certain character traits are invaluable. It turns out that these same character traits may have other uses as well.

## Mediation in the News

### [Mediation in Larry Nassar lawsuits could be extended into December](#)

Attorneys on all sides are seeking to extend the mediation phase in the federal lawsuits filed over alleged sexual assaults by Larry Nassar.

### [Mediator ordered in white nationalist case vs Michigan State](#)

A mediator will try to settle a dispute between Michigan State University and white nationalist Richard Spencer, who wants to speak on campus.

### [Cutting Legal Aid To Families Has Had The Entirely Opposite Effect To The One The Government Intended](#)

The Ministry of Justice took funding away from divorce law so more couples would seek mediation – but they are choosing to go to court with no lawyer instead.

### [UK Civil justice overseers back 'presumption' of mediation](#)

Compulsory mediation edged closer today as civil justice experts came out in favour of parties in most cases being required to engage in alternative dispute resolution.

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