

# MEDIATION NEWS

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## Smullin Mediation

This month's Mediation News includes the essay "4 Things You Should Know About Civil Mediation" by Chris McHallam. Though some points in the essay may be familiar, McHallam's assessment of the meaning of a court decision bears repeating: "A court decision is a retrospective snapshot judgment based upon law and judicial perspective, not a carefully constructed resolution tailored to the parties' present and future interests."

McHallam also notes "There is no universal right time to mediate." One maxim is that the best time to mediate is when the attorneys know 85% of the facts and have done 15% of the work. Another is "as soon as possible." Client emotions and the cost of maintaining a law practice are normal temptations to litigate. Moreover, it is easy to forget that a reputation for solving problems quickly and fairly is the most valuable asset an attorney can have.

As McHallam notes, attorneys often are concerned that suggesting mediation may be perceived as a sign of weakness. While such concerns should lead to careful consideration of how to suggest mediation, they do not obviate the advantages of ascertaining the facts when they are fresher, getting parties to the table when they are less entrenched and minimizing fees when they are still relatively small and less challenging to the account needed to pay any settlement.

Pre-complaint mediations can sometimes take a little more time. However, in every case, once clients understand the significance of their choices and the cost of a litigation budget, they are at least as likely to prefer to end the litigation as to prefer to continue it.

Dave Smullin

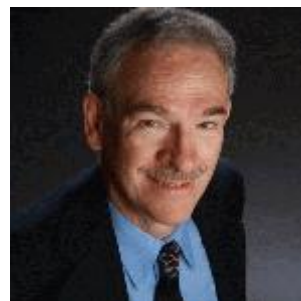
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### Featured Articles

[When Conflict In The Workplace Escalates To Emotional Abuse](#)

by Noa Zanolli

Millions of men and women of all ages, ethnic, and racial backgrounds all



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### Featured Blog Posts

[Pattern Interrupt: Before  
you send that email...](#)

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by Sabine Walsh

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by Joe Markowitz

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### Featured Quotes

across the U.S. hate going to work, gradually fall into despair and often become gravely ill. Some flee from jobs they used to love, others endure the situation unable to figure a way out.

#### **[4 Things You Should Know About Civil Mediation](#)**

*by Chris McHallam*

While you may already be familiar with the process and its benefits there are a few important facts those considering mediation for a legal issue their business is facing should know.

#### **[Avoiding Court in Business Disputes](#)**

*by Richard Gertler*

As a business owner a lawsuit can be a stressful situation. Fortunately, you have options, even when a dispute appears headed for the courtroom. By working with an experienced mediator, you gain hope of steering a business disaster toward an agreeable — and even amicable — resolution.

#### **[Good Communication Starts With Listening](#)**

*by Nancy Foster*

When you are speaking and someone is not paying attention, how do you feel? Annoyed, frustrated, discounted, rejected, anxious or angry? Such feelings usually make communication more difficult. So how can we show someone who is speaking that we really are paying attention to them?

#### **[We Have to Talk: A Step-By-Step Checklist for Difficult Conversations](#)**

*by Judy Ringer*

What you have here is a brief synopsis of best practice strategies: a checklist of action items to think about before going into the conversation.

#### **[Dealing With Defensiveness In High Conflict People](#)**

*by Bill Eddy*

When most people think of high conflict people (HCPs), they think of bad behavior. The goal seems to be to get them to STOP their bad behavior, by verbally motivating them to have insights into how bad they are acting. However, the high conflict behavior of HCPs is not driven by logic and self-awareness.

## **Mediation in the News**

#### **[The Mediation Toolbox: What's at Your Disposal at Every Step?](#)**

If you ask most people, they would likely say that lawyers are a necessary evil. If you ask most lawyers, they would likely say that mediation is a necessary evil.

#### **[Mediation is an effective tool for elder family issues](#)**

Mediation, long considered to be an alternative to lengthy expensive divorce actions, can also be used in other contexts, notably where there is a dispute among adult children regarding frail, disabled and incapacitated parents.

#### **[Family Business Mediation: Solving Legal Issues Without Going to Court](#)**

Mediation is often considered an excellent means of conflict resolution for personal or family disputes, but the benefits of mediation extend to more than just familial problems. In fact, mediation is oftentimes the best conflict resolution tool available for small and medium sized businesses.

#### **[Puffery vs. Lying in Mediation](#)**

Both the common law and the Code of Professional Conduct frown upon lying in the context of the negotiation of a settlement of a dispute. However, not every "lie" is actionable. Some lies are OK. If the misstatement is mere "puffing" by the party or counsel, the law will look the other way.

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*Happiness is not a state to arrive at, but a manner of traveling.*

*Yesterday is a canceled check; tomorrow is a promissory note; today is the only cash you have, so spend it wisely.*

*Nothing is so firmly believed as that which is least known.*

*The man who strikes first admits that his ideas have given out.*



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