

International Academy of Mediators
Fall 2019 Conference: Deconstructing the Mediation Process
Scottsdale, Az, Nov. 7-9, 2019
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Junto 5: “Golden Harvests Begin with Diligent Planting: Pre-Session Tips for Success”

I. THE MEDIATOR IN THE PRE-MEDIATION CAUCUS/CONFERENCE CALL

Develop a **routine** of establishing a time to mentally and physically collect yourself prior to the pre-mediation call or the mediation. This may include a scheduled break; a quick meditation or mental affirmation; or settling yourself in a place away from others/things which may be a distraction. **Breathe**. If available, **Read** the incoming papers, **WRITE THE NAMES DOWN ON A PAPER AND IDENTIFY WHO IS WHO**, e.g., NAME OF PARTIES, TITLES, PLAINTIFF/DEFENDANT, COUNSEL/CO-COUNSEL, REPRESENTATIVE, SUBJECT MATTER, TIME CONSTRAINTS, ETC.

Jog your **memory** about any thought which arises after you made the list. What comes up: Known habits and patterns of one counsel; Saw incident on tv or on social media; Unique information known to you about the matter; Personal experience with the subject matter, etc.?

In the **attached** presentation on **Inside/Out**, there are other suggested approaches for developing the mental, spiritual and physically available mediator.

II. MEDIATION/NEGOTIATION CHECKLIST: HAVE ONE!

Mediation is a negotiation between the parties and then a negotiation between you and the parties. Know how to negotiate. Use negotiation tools and principles to be prepared for the shifts which occur in the mediation. Have a mediation checklist which you use in the pre-mediation session and also in the mediation. Suggestions:

People: Parties involved; Communication Style; Communication (Oral and later Non-verbal in the Session); Perceptions; Behaviors; Negotiation; **Emotions**; Perceived Power; Hesitancy/Skepticism, if any, about reaching agreement; Familiarity with the process

Preparation: Actions; Status; Timing; Ripeness

Diversity and Culture: Language; Age; Power Imbalance; Power Perception; Race; Gender; Marital Status; Education (where appropriate)

Authority to Resolve: Who; Availability; Prior approach to settlement

III. THE MEDIATOR ON THE CALL

Frame the conversation. **Make your “asks” matter.** Keep your questions open, short, curious. Then **LISTEN, OBSERVE, ACKNOWLEDGE, CLARIFY.**

Consider three or four questions that predictably open the door to a more important conversation later during the mediation. Here are a few starters:

How can I be of help to you?

How are you thinking about resolving this issue(s)?

What is going to be most difficult for you/your client?

What is most important for us to talk through today and at the mediation?

Mediation (Assisted Negotiation)Matters:

This can be used as a checklist of information which you seek. It is helpful when the information was not forthcoming during the asking stage.

Logistics: Location; Time; Persons Attending; In-person/Telephone; Duration; Audio Visual Needs (system); Fees; Agreement to Mediate, all to be confirmed in a follow up email. These should be reviewed with the Party even though an assistant/assignment officer may have accepted the mediation or made the appointment.

Special Considerations/Needs: Frequent Breaks; Number of sessions/days anticipated; Moderate room temperature; Sabbath Observations; Ambulatory needs

Special Issues: Difficult Persons; Interpreters

Documents: Contracts; Ordinances

Discovery: Complete; Needed; Custodian; Other

Confidentiality: Process and Documents