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