

LEGAL REPRESENTATIVE CHECKLIST

The role of a legal representative participating in mediation is multi-faceted. While it changes before, during and after, at all stages, your participation in the process can have tremendous impact on reaching the resolution of your client's conflict. This checklist is designed to help legal representatives help their clients make the most out of the mediation opportunity.

This is intended to be an internal document. You need not share your responses with anyone.

What is Important to Your Client?

While your client may look to you to understand what they may be entitled to at law, you can best serve your client by gaining an understanding of what a satisfactory outcomes looks like for your client – within and beyond the law.

- Is your client's relationship with others involved in their dispute important to them?
- Would it help your client to feel that others fully understand how they have been impacted?
- Is there value to your client in remedies beyond what they may be entitled to at law?
(Example: an apology)

In order to help your client assess if any settlement options presented at mediation are worth exploring, it will be important for you to understand what really matters to your client and what would be involved in a satisfactory resolution of their dispute.

Reality Check

For your client to make the right decision as to whether or not they should accept a settlement offer proposed in mediation, it is important that they have a reasonable understanding of the reality of their situation.

- What are next steps if mediation does not resolve the matter? What is the timeline, cost and range of potential outcomes? In what circumstances would your client be prepared to proceed to arbitration or court?
- What are the positions and interests of others involved in the conflict? (While it may not be abundantly clear, it can be helpful for your client to consider the perspective of others involved in their dispute.)
- What does your client expect to take place at the mediation? (In addition to reviewing how the process works, it can be helpful to review practical aspects, such as where to park and where to meet you prior to the mediation getting underway.)

Those unfamiliar with mediation may have misguided assumptions that impact their expectations of what will take place at mediation and what the outcome of participating in the process will be.

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Participation Preparation

The extent that your client is interested in actively participating in mediation can vary. Gaining an understanding of your client's comfort level in this respect is important. There may be something that your client needs to "get off their chest" in order to move forward, or something that is important to them to state – or have you state on their behalf.

- Is there risk of your client's emotions or personal connection to the subject matter of the dispute influencing how they participate in mediation?
- What will take place if you observe your client's actions as potentially being detrimental upon the outcome of the mediation? (Some establish a signal to indicate that a break may be in order.)
- Would it be helpful for your client to prepare anything that they would like to express during the mediation? Practicing in advance may help ease nerves or allow them to consider the best choice of words to use.

Settlement Preparation

While your mediator should encourage any settlement to be captured in writing, it can be important for your client to understand what the path to settlement looks like and be comfortable before signing.

- What are reasonable timelines for next steps that your client may be agreeable to?
- Is a confidentiality clause in a settlement agreement important to your client? What would the terms be and does your client understand the importance of complying with them?
- Do you or your client need anything to enter into a binding settlement agreement? (This consideration can range from the legal authority to settle to the practicality of having a computer and printer accessible.)

Other Participant Preparation

Whether the other party to the dispute has legal representation or otherwise, your role as an advocate for your clients puts you in a position to build rapport with others participating in advance of the mediation that can benefit your client. Reflect on your first hand encounters with other participants and observations of prior communications they have been involved in to select the approach that is most likely going to encourage them to work with you and your client to find settlement.

Whether it be just before the mediation takes place or well in advance of your mediation date, it is important to communicate with your client to ensure that you are both on the same page heading into the mediation.

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