PREPARING YOUR CLIENT FOR MEDIATION

Once, when President Ulysses S. Grant was visiting Scotland, his host gave him a demonstration of a game, new to Grant, called golf. Carefully, the host placed the ball on the tee and took a mighty swing, sending chunks of turf flying but not touching the ball. Grant quietly watched the exhibition with interest, but after the sixth unsuccessful attempt to hit the ball, he turned to his perspiring, embarrassed host and commented: "There seems to be a fair amount of exercise in the game, but I fail to see the purpose of the ball." Like President Grant, a Cox, Castle & Nicholson client who is inadequately prepared for what to expect at the mediation, in terms of the process, the players, the ground rules, and the potential results, may fail to fully comprehend its purpose and consequently may be unable to participate in it actively, meaningfully, and profitably.

We explore here several topics that you should cover when preparing your client for mediation:

(1) The nature of the mediation process;

(2) The roles of the mediator, the advocate, and the client; and

(3) Miscellaneous logistical items.

4.1 ADVISING THE CLIENT ABOUT THE NATURE OF THE MEDIATION PROCESS

When preparing your client for mediation, you should describe the mediation process and the roles of the various participants in detail and encourage your client to ask questions if he does not understand something. This statement and other guidance provided in this chapter also apply of course to anyone who accompanies your client to the mediation, including corporate officials, experts, and interested nonparties. In particular, you should advise your client whether the mediation is voluntary or court-mandated, and you should also describe the purpose and stages of the mediation process with a special emphasis on the nature, purpose, and benefits of caucusing and the importance of confidentiality. Your client should know that mediation is not a trial and that any party has a right to request that the mediation be discontinued at any time. You should also explain who is going to be present at the mediation and that the objective of the mediation is for the parties to arrive at a voluntary agreement—a joint decision—on how the dispute should be resolved fairly. Also point out the mediation process may not accomplish that objective, but that other, secondary objectives may be accomplished by experiencing the process, including acquiring a more accurate sense of the merit of the claims or defenses.

Further, be sure to advise your client of the differences between facilitative and evaluative mediation and specify the particular type of mediation that the mediator will be

conducting. Inform your client that he will be asked to sign a mediation agreement at the beginning of the session, which will cover such matters as confidentiality, immunity of the mediator from a lawsuit or subpoena to testify, and the manner and timing of the payment for the mediation services.

In addition, do not forget to explain the informal atmosphere of the mediation, the casual give-and-take discussions, and the lawyers' banter that may occur during the sessions. Emphasize that at some point during the mediation it may be appropriate and beneficial for the parties and their counsel to negotiate directly, without the presence of the mediator; for the mediator to meet with opposing counsel without the parties being present; and with the agreement of counsel, for the mediator to meet privately with the parties.

4.2 ADVISING THE CLIENT ABOUT THE ROLE OF THE MEDIATOR

In premediation discussions with your client, describe the mediator personally, by explaining the mediator's general qualifications, background, practice experience, and style. Explain further that the mediator has an ethical duty to be impartial and neutral in the proceeding, with respect to the parties and the subject matter of the dispute. If the mediator is a lawyer, you should emphasize to your client that, when serving as a mediator, the mediator is not practicing law. She will give no legal advice, and in fact, the mediator's ethical code prohibits it. Stress that the mediator's role is not to decide which party is right or wrong. Rather, the mediator is a facilitator of the parties' joint decision making. The mediator will assist the parties in identifying their issues, needs, and interests; exploring alternative solutions; focusing the discussion; and controlling any emotional outbursts.

The mediator will also lend structure to the parties' negotiations by chairing the discussion, clarifying communications, educating the parties, translating proposals into nonpolarizing terms, expanding the resources available for settlement, testing the reality of proposed solutions, insuring that the parties can comply with the proposed terms, serving as a scapegoat for the parties' vehemence and/or frustration, and protecting the integrity of the mediation process. Moreover, the mediator is ethically bound not to disclose information given to her in confidence, either to any other party to the mediation or anyone outside the mediation proceeding.

In the appropriate case, also advise your client that the mediator is most effective when the *parties* can share with her suggestions for creative settlement solutions that neither the mediator nor the respective counsel may be able to perceive as the process unfolds. Tell your client that, from time to time, the mediator may play devil's advocate in caucuses, which should not be taken as indicative of the mediator's bias, but rather as the application of a useful technique in aid of settlement. Also, inform the client that he may wait as much as an hour or more between caucuses, but that does not indicate that the mediator favors the opposing side. Sometimes one side possesses more information than the other that will be helpful to the mediator in reaching a settlement; in other instances, it takes longer for the mediator to help a party reframe her perceptions so as to accept a settlement proposal or to

respond with a refinement of a proposal. In any event, it is a good idea for you to suggest that your client consider bringing some reading material along with him to the mediation conference to occupy the time during the waiting periods between caucuses.

Share with your client that the mediator, in performing her function, will spend a great deal of time listening to the parties but periodically will be apt to ask all sorts of questions—-probing, clarifying, hypothetical, and open-ended. It may even seem at times that the mediator is cross-examining, ever so gently and deliberately—using a so-called velvet hammer approach. This aids the parties in reality testing—-finding out what the real strengths and weaknesses of their cases are, eventually causing them to arrive at a consensus on fair settlement value.

4.3 ADVISING THE CLIENT ABOUT THE ROLE OF THE ADVOCATE

If the mediation is to be facilitative, you should advise your client that your role will be different than it would be at trial or in an arbitration. Your goal in mediation will be the same as it is at trial or in arbitration—-to obtain the best possible resolution for your client. Your method and manner of obtaining it, however, will be quite different.

If the mediation is to be a facilitative one, you should explain that the mediation will consist of a respectful conversation in an atmosphere of joint problem solving in which you will be expected to disclose, in caucus, the weaknesses of your case as well as its strengths. You will be doing a lot of listening as well as speaking. You may even express empathy toward opposing counsel in joint session, all this with the purpose of encouraging a mutually acceptable resolution. The law pertinent to the case will usually not be discussed at length. Creative solutions, having nonmonetary—-yet valuable—-elements may also be explored.

If the mediation is to be evaluative, stress that your goal will still be to obtain the best possible resolution on behalf of your client, but the relative strengths of the parties' regal positions will be emphasized, and the lawyers may even discuss the appropriate case law. You will be playing the more traditional advocate role in that you will be approaching the problem more legalistically and with the goal of persuading the mediator that her evaluation should favor your client's interests. You may be playing a role similar to an advocate in a mediation conference conducted in a case on appeal.

At times during the mediation, whether facilitative or evaluative, you will be speaking privately with your client to determine what move to make next. You will be seeking your client's impressions, feelings, and input as you proceed through the process. Together you may decide to use a strategy or tactic, to explore a settlement avenue, or to consider and even accept a settlement proposal that you had not previously considered. You should advise your client that flexibility is key to securing the best solution.

You should further advise your client that the ultimate decision on whether to accept a settlement offer or the mediator's evaluation will rest with your client, after taking your legal

advice into account, of course. If the case settles, you will work with opposing counsel in drafting a settlement agreement incorporating the joint decision of the parties.

4.4 ADVISING THE CLIENT ABOUT THE ROLE OF THE CLIENT

It is very important that your client know and be comfortable with his role at the mediation conference. Depending on the particular client, the nature of the case, and the personalities and style of the opposing parties or counsel, you may decide that your client will have an active verbal role, a limited verbal role, or no verbal role whatsoever. If your client is to have some verbal role, then you should advise him regarding the basic ground rules for a client's verbal participation.

4.4.1 Delineating the extent of the client's verbal participation

If your client is credible, likable, and persuasive, you may decide to employ his full and active verbal participation during the opening statement in the initial joint session and in the caucuses with the mediator. You may give an easily confused, unsure, and less-than-credible client, on the other hand, a very small role or perhaps no role in the factual presentation during the mediation session. If the case is complex, technically or legally, and your client is not intellectually sophisticated enough to understand it thoroughly and/or to discuss it meaningfully, then your client should have little or no verbal role. If allowed to speak in such a situation, your client may, at best, give the impression of being incompetent or unreliable, or at worst, do himself serious harm by unknowingly making an admission against his interest. Similarly, if the case involves emotional or sentimental matters that are difficult for your client to verbalize, then you should do most, if not all, of the talking. If the opposing party and/or counsel have aggressive personalities or are bullies and your client is either meek or withdrawn or has a penchant to meet force with force, you should probably do all the talking to keep the conversation on an even keel. Other considerations, of which you may be intuitively aware, may affect your decision on the extent of your client's verbal participation at the mediation.

If you decide that your client should stay silent during the mediation and that you should do all the talking, realize that keeping quiet may be very difficult for the client. You should discuss this potential difficulty with the client during the premediation preparation, giving him some inoffensive, reasoned basis for your decision to do all the talking. You should also counsel the client on the possible negative impact of nonverbal communication during the mediation. Your client's frowns, grimaces, sneers, scowls, mocking laughter, and the like during the presentations of either side do not advance the cause of a speedy favorable settlement. If your client is to remain silent, he should be counseled to appear interested, objective, and reasonable. A silent face can speak a thousand words.

If you decide that your client is to participate verbally at the mediation, discuss the nature and extent of the participation in detail prior to the session. For example, you may wish to discuss and coordinate with a client in a typical personal injury case the following areas of verbal presentation: the facts of the accident; conversations with the opposing party

at the accident scene or thereafter; initial injuries and treatment; doctor visits and treatment; the effect of injuries on employment; the effect of injuries on family life; residual and long-term pain and health problems, future treatment, future surgery, etc.; preexisting medical conditions; depression, fear, anxiety, embarrassment over injuries; and financial concerns caused by the accident. Clearly delineate for your client which of these topics you will discuss solely, which of them your client should be prepared to discuss, which ones documentary evidence should address, and which should be covered by a combination of your presentation, your client's presentation, and the documentary evidence.

4.4.2 Advising the client on participation ground rules—general

Rehearse your client meticulously on potential routine questions that either the mediator or counsel for the opposing party might ask. At least three reasons make it worthwhile to take the time to do this. First, it will put your client at ease, knowing that he already has had a kind of Spring training" and has had an opportunity to field many of the factual or self-analytical questions that he might be expected to answer in the mediation. Second, it will put you more at ease, knowing what answers he will be giving to those anticipated questions. And third, he will be prepared to make a good impression on opposing counsel, the opposing party, and the mediator. Regrettably, many advocates do not seriously undertake this kind of detailed preparation. Advocates who take the art seriously, however, are concerned about these kinds of details. They know that detailed planning and preparation defines the essence of their skill and competence and eventually pays dividends in terms of their enhanced professional reputation. When the acclaimed Athenian sculptor Phidias was carving the statue of Athena to be placed in the Acropolis and was working on the back of the head, he was careful to bring out with his chisel every strand of hair possible. An observer remarked, "That figure is to stand a hundred feet high, with its back to the marble wall. Who will ever know what details you are putting behind there?" Phidias turned to the observer, looked squarely into his eyes, and said pointedly, "I will know." He then turned back toward the sculpture and continued with his detailed chiseling.

Also be sure to impress on your client that the mediation session is not a trial and that the ordinary courtroom prohibitions against leading questions, narrative answers, and information irrelevant to claims or defenses do not apply. Furthermore, you need to counsel your client on the following eight specific ground rules that clients should observe during the course of the mediation session.

4.4.3 The client should face the mediator when speaking

It is important for you to advise your client to face the mediator when speaking. If your client talks across the table to the opposing party and opposing counsel, it is quite possible that either or both of them 'will interpret what your client is saying as accusatory or demeaning. This may arouse anger in one of them and perhaps cause an outburst and an interruption of your client's story. The opponent's outburst, in turn, may cause your client to react emotionally and perhaps say something in front of the mediator that is embarrassing or even harmful to your case.

Apart from avoiding these unpleasant happenings, having your client face the mediator when speaking has other benefits. Your client's eye contact with the mediator will help to make his message more persuasive to the mediator. Persuading the mediator is important because, even though mediators are duty-bound to remain neutral and impartial regarding the parties and the subject matter of the dispute, they are human beings whose perceptions and actions can have a great impact on the quality of the' ultimate settlement. They are constantly vigilant for clues to finding the true heart of the conflict, the relate credibility and/or memory acuity of the parties, and the* essential needs and interests. By maintaining eye contact with the mediator, your client can begin to build trust and rapport with the mediator and convey forthrightness of purpose, desire, and motivation to achieve a joint goal. This kind of bonding with the mediator has the effect of building a type of teamwork atmosphere that can spill over into caucuses and, through the mediator's shuttle pollination, positively reinforce the problem-solving efforts of both sides. Making sure your client faces the mediator also carries with it the added benefit of having the opposing party and counsel actually listen to what your client is saying without feeling threatened. Equally as important, it gives you the opportunity to observe the body language of the opposing party and counsel while your client is speaking. An opponent's frown or a smirk made while your client is giving a factual presentation may communicate the opponent's denial or assent to your client's version of the events giving rise to the dispute.

4.4.4 The client should speak to be understood

When preparing a client for mediation, allow him to rehearse the factual presentation in your presence. Listen very carefully while your client gives this practice presentation. Is it organized? Does it begin at the beginning and touch on all necessary points? Is it a fair, honest statement of what occurred? Does the client use terminology that can be understood by both the mediator and the opponents? This last question is a very important one. Clients with industrial, medical, or technical expertise may use words or expressions that are common to their everyday experience, but that are like a foreign language to others present at the mediation session. In the rehearsal session with your client, listen for such words, and when you hear one, stop your client and have him define it in simple terms. Impress on your client the importance of using words that everyone understands at the mediation conference. Point out to him that big words not only can communicate arrogance and insensitivity, but also can be boring, distracting, and misleading and in the worst case scenario, can precipitate very unpleasant results. When Benjamin Franklin was quite young, he once said to his mother, "I have ingested an acephalous molluscous." Fearful that the young Benjamin had swallowed something poisonous, his mother forced him to take a large dose of castor oil. The next day, the effects of the medicine having subsided, Ben confided to his mother that he "had eaten nothing but an oyster." While recuperating from the resultant vigorous spanking, young Ben vowed never again to use big words when little words would do.

4.4.5 The client should state only facts

In the presentation rehearsal and at the mediation conference itself, your client should state only facts. He should be careful not to confuse facts with exaggeration and hyperbole.

If your client finds it necessary to offer speculation or hearsay regarding a part of his story, he should label it as such when speaking to ensure that no one will be misled. Making these distinctions between fact and conjecture can have a very positive influence on listeners. It communicates that the speaker is making a determined effort to be fair and objective in his recollection of events. It also conveys an openness to have his recollection refreshed by the opponent, thereby imparting to the listeners an attitude of flexibility and an inclination to cooperativeness.

Conversely, a speaker's overstatement, embellishment, or stretching of the truth usually inspires listeners to be apprehensive and cautious about accepting all of the speaker's message. If the speaker misrepresents an important fact—even innocently—a listener may lose complete confidence in the speaker's ability to be truthful, may refuse to communicate with the speaker, or may become vindictive.

4.4.6 The client should never argue

Refraining from arguing is a cardinal rule everyone should observe at the mediation. "Arguing carries at least two connotations. The first type of "arguing" makes a point persuasively with the purpose of convincing a listener to the speaker's point of view. That type of arguing is certainly well within the scope of permissible mediation behavior. What is taboo is "arguing" of the second type making an argument, often anger-based, that is combative and offensive and does nothing but distract listeners from the task at hand. Most such arguments consist of isolated or periodic episodes of seemingly endless blustering and pointless discourse, resulting in a total waste of everyone's time. Admittedly, arguments of the first type and arguments of the second sometimes produce very similar effects. Consider the story of a young lawyer who had been talking for about four hours in court to twelve jurors, who, when he had finished, felt like lynching him. After the young lawyer took his seat at counsel table, his opponent, a crusty old professional, rose slowly to his feet. After glancing quickly toward the jury, then down at his watch, he looked pleasantly at the judge and said, "Your Honor, I will follow the example of my friend who has just finished and submit the case without argument."

4.4.7 The client should display no reaction to settlement offers

Because no one really knows what the true settlement value of a case is before the settlement agreement is actually reached, you should counsel your client not to display any reaction to any settlement offer either verbally or nonverbally. If your client is the plaintiff, and the defendant's offer is much higher than anticipated, your client's reaction of shock and elation or statements of "sounds great!" or "hot dog!" may preclude you from later convincing your opponent that your client wants (or needs) more to settle the case. If your opponent makes what she thinks is a reasonable offer to settle, and your client scoffs at it and verbally berates the opposing party, your client's reaction might anger the other side sufficiently to cause them to withdraw from the mediation. If your client is a defendant, impulse reactions could do similar damage to the potential for successful negotiations. It should be emphasized that verbal reactions are not the only type of prohibited reactions to settlement offers. As pointed out in subsection 4.4.1, facial expressions can communicate

what people are thinking. In the proper context, they can be a strong asset. In the wrong context, they can be a devastating liability. Counsel your client to display no body reactions—-even facial reactions—-to settlement offers.

4.4.8 The client should behave as if before a jury

Advise your client that, although he will not be under oath during a mediation session, he should speak narratively and answer questions as if under oath. Your client should make every effort to give the appearance to the mediator and opposing party and counsel alike that he is trustworthy and honest. The best advice to your client is "be yourself—don't try to be the person you think the mediator, or anyone else, wants or expects you to be." Tell your client to tell his story to the mediator "straightforwardly and sincerely," and if appropriate, "emphatically." If your client tries to pretend to be someone he is not, the masquerade will undoubtedly fail, and it will probably adversely affect the success of the negotiations. No one easily tolerates a phony. That statement is as true with respect to mediations as it is with trials, and its truth was aptly demonstrated in an incident that occurred in a Kansas court some years back. A tall, awkward, somewhat timid fellow was called to testify as a witness for the defendant in a civil case. Defense counsel said to him, "Now sir, take the stand and tell your story like a preacher." "No sir!" roared the judge. "I want you to tell the truth!"

4.4.9 The client should neither answer nor ask difficult questions

At times during the course of the mediation, the opposing counsel or the mediator may direct difficult questions to your client. Difficult questions might be defined as those that require some knowledge of the law to answer, seek information beyond the specific expertise of a client, or require a client to make or imply an admission against interest without having available the necessary information to give a full explanation. During the premediation preparation, advise your client that when such questions are posed during the mediation session, your client should defer to you for an answer. You should also have an understanding with your client before you go to the mediation session that when someone asks your client a question during the course of the mediation, your client will pause slightly before answering to permit you to interject, if you think it necessary, to answer the question or to provide a reason why it cannot be answered at that particular time.

By the same token, you should caution your client not to ask the other side or the mediator difficult questions during the course of the mediation. Actually, better advice would be for your client not to ask the mediator or the other side any questions without first clearing the questions with you privately. After you screen the question, you may decide that it is appropriate to ask, and you may determine that your client is the appropriate one to ask it. Or, you may conclude that it would be better if you asked the question. Inappropriate questions posed by a client can sometimes have the effect of undermining a negotiating strategy, exposing a negotiation tactic, revealing the client's gullibility, threatening the other side, disclosing clues to your bottom line, or demonstrating the client's lack of knowledge, skill, ability, or competence. As to the last effect, consider this historical example. Mozart was once asked by a lad how to write a symphony. "You're a very young

man," Mozart replied and then asked, Achy not begin with ballads?" "But you composed symphonies when you were ten years old," the youth urged. "Yes," said Mozart, "but I didn't ask 'how'.

4.4.10 The client should listen carefully to the statements of the opposing party and should not interrupt

It has been said that when you talk you only say something that you already know; when you listen you learn what someone else knows. Perhaps there should be a corollary to that saying, as follows: when you intentionally interrupt another who is speaking, you do violence to everyone's learning Most mediators, early in the mediation, will announce a ground rule requiring all participants to refrain from interrupting each other. They will normally accompany that ground rule with the suggestion that each participant take notes while another participant is speaking for use later in responding to that participant. Before the mediation, you should advise your client of this rule and urge his strict compliance with it during the mediation.

Also, it is very important for you to advise your client to listen carefully to the statements of the opposing party and opposing counsel during the mediation session. Your client, having lived through the events giving rise to the dispute, normally knows much more about the subject matter of the dispute than you do. He may have told you much about the dispute during the course of several interviews, but for a variety of reasons, it is likely that he may not have told you everything. Most commonly clients do not tell the* lawyers everything because they simply forget some of the details, or they do not realize certain details are important, or they do not want to share details that may detract from their litigating or negotiating position. By listening carefully to the statements of the other side during the mediation session, your client will be able to refresh his memory about certain details and will be able to alert you to statements of the other party that are inaccurate or perhaps intentionally false. With this new information, your client might be able to remember previously forgotten relevant events or point you to documents or other evidence that will verify and bolster your client's version of the story. By paying very close attention to the details of what the other party is saying, you and your client may discover that what you previously perceived her account of the facts to be might, in actuality, be something very different indeed. Consider, for example, the story about an old farmer who met with the railroad's young lawyer to file a claim against the railroad. The farmer told the lawyer that he "had noticed that his prize cow was missing from the field through which the railroad passed," and he wanted the railroad to pay the value of the cow. Without making any further inquiry of the farmer, the railroad's lawyer immediately began talking settlement, seemingly to take advantage of the farmer, who was unrepresented at the meeting. The young lawyer talked and talked and did a little arm-twisting, and finally the farmer agreed, reluctantly, to accept half of the value of the claim. After the farmer had signed the release and taken the check, the young lawyer just could not resist gloating over the old farmer a bit, saying, "You know, I hate to tell you this, but actually I put one over on you. The engineer was asleep and the fireman was in the caboose when that train went through your farm that morning. I didn't have a case." The old farmer smiled a bit and went on chewing his

tobacco. Directly, he drawled, "Well, I'll tell you, young feller, I was a little worried about winning that case myself. You know, that durned cow came home this morning."

4.5 REVIEW OF THE CASE, SETTLEMENT GOALS, STRATEGIES, AND TACTICS

Before meeting with your client, you customarily will have considered privately most, if not all, of the topics covered in chapter 3. During that private preparation, you undoubtedly will have reached tentative conclusions in your own mind about the goal, plan, and theme of the mediation presentation; the documents you plan to show the mediator; the format of the presentation; a fair settlement value and reasonable settlement range of the case; and the negotiation strategies and tactics you will employ. It is important that you treat these initial decisions as tentative and retain the flexibility to change them after you have had the opportunity to have a premediation meeting with your client.

Lillian Hellman, the famous American playwright, once said, "People change and forget to tell each other." This saying has direct relevance to preparing your client for mediation. When meeting with your client just prior to the mediation, you may discover that your client has redefined her needs and interests, has found some new evidence that is either favorable or unfavorable to your stance in the negotiations, has thought of some creative solution that will eliminate or minimize the need for a monetary solution, or has realized that other persons have information relevant to the conflict and should be brought into the mediation process. These changed circumstances may cause you to reconsider your whole approach to your case, including your previously contemplated settlement goals, strategies, and tactics. They may also cause you to reconsider whether premediation meetings with the opponents or premediation caucusing with the mediator would be helpful and/or whether the mediation should be rescheduled, for example, to allow you time to interview other persons whom your client believes should be brought into the mediation process. Other changed circumstances may cause you to consider speeding up the mediation process, as in the situation where your client, a plaintiff in a personal injury case, has fallen on bad financial times and needs proceeds from the personal injury settlement to cover basic living expenses.

Regardless of any changed circumstances, however, and the need for you to adjust your negotiation strategies and tactics to them, the premediation meeting with your client will help you both familiarize yourselves with the facts of the dispute and to reconsider the advantages and disadvantages of proceeding to mediation rather than initiating or continuing with litigation. You will also be able to review with your client the probability of succeeding in litigation and the remedies available there in comparison with the potential solutions available in mediation.

This review process will give your client confidence in proceeding forward with the mediation and in the prospect of obtaining a just and fair result, or it will make her reconsider whether litigation may be the best negotiating tactic for the time being. Either way, your client, with your help, will be making fully informed decisions about her desires for the future. Knowledge of one's desires is the first step toward satisfying them. A

former prime minister of Britain, the late Ramsay MacDonald, once was discussing the possibility of lasting peace with another government official. The official was unimpressed with the prime minister's viewpoint. "The desire for peace," the official said cynically, "does not necessarily insure peace." "Quite true," admitted MacDonald. "Neither does the desire for food satisfy hunger. But at least it gets you started toward a restaurant."

4.6 ADVISING THE CLIENT ON MISCELLANEOUS MATTERS

When preparing your client for mediation, you need to cover several topics of a very practical, logistical nature. The most obvious one is the date, time, and place of the mediation. If the mediation is going to take place out of state or out of the country, make sure you check the time zone and have your client schedule his travel accordingly. Changes from regular to daylight savings time can also cause scheduling confusion. Considerations of jet lag also should be taken into account when scheduling air travel if the mediation is to be held out of the country.

If the place of the mediation is difficult to find or the lack of or similarities in street names is confusing, it is a good idea to provide your client with a map, or at least detailed directions on how to get there. Sometimes it is necessary to explain peculiarities of the building where the mediation is to be held. Large law firms often occupy several floors in a building and can have several reception areas on different floors. You should be very careful to advise your client about the specific floor and reception area to go to. In some buildings, certain banks of elevators service only certain floors; some elevators go to only a certain portion of a floor, and other elevators go to other portions of the same floor; and escalators sometimes provide the fastest route of all. Make sure to advise your client to take into account the effect of rush-hour traffic and/or weather conditions when planning the most direct route to the location of the mediation. Give your client a telephone number to call in case he gets lost.

This all seems like common sense, but as we have more life experiences, we soon discover that common sense is not so common after all. Taking a few minutes to remind your client about these matters may avoid delaying the beginning of a mediation, inconveniencing the mediator, angering the opposing parties, and contending with a flustered, embarrassed client who already seems to be off on the wrong foot in the mediation. Perhaps one way around all this is to meet your client at a known place and then proceed from there to the mediation location together. If you decide to do this, make sure you know how to get to the mediation. Detailed instructions, as just described, are important for any client, but they are imperative for the client who is disabled in some way. If your client is disabled, you of course will want to find out in advance of the premediation meeting with your client the location of accessible entrances to the building and elevators inside the building, so that you can advise her of these things at the premediation meeting and answer any questions.

Aside from these matters, you should also discuss with your client the appropriate dress for the mediation conference. What your client wears to a mediation session will vary from client to client and from situation to situation, and in some cases, it may even constitute

an important aspect of your overall negotiating strategy. For example, if your client is wealthy and is a defendant in a securities case, you might want him to "dress down" to give the impression that he is an ordinary man of ordinary means. If your client is a person who believes that her employer has discriminated against her, you may suggest that she dress in her best business suit to convey a professional appearance that complements her claims of unusual leadership ability, high self-esteem, and quality job performance. These of course will be judgment calls on your part, but the judgments need to be made. There is practically nothing worse than having your client show up in a mediator's reception room in a T-shirt, when you were expecting to see him in a three-piece suit. It is too late then to tell him what to wear.

You should also give your client an estimate of how long the mediation conference will last. Clients who take time off from work to come to a mediation need this information to advise their supervisors of how long they will need to be excused from their jobs. Supervisors need to know this so they can designate a substitute worker for your client. Also, if the mediation conference is going to last beyond the normal workday, your client needs to know this information in advance so that she can make appropriate adjustments in her personal schedule.

In premediation discussions, ask your client to identify any person or persons he might wish to contact before the parties reach a final settlement agreement, such as a spouse, partner, parent, relative, doctor, or banker. Arrangements should be made, if appropriate, to have the person available by telephone during the time the mediation is being held. You should also ascertain who, if anyone, will be accompanying your client to the mediation conference. If your client is not going to accompany you to the mediation, you should ensure that you obtain his written statement specifying the limits of your settlement authority. It is probably a better practice to obtain written settlement authority in advance of the mediation in all circumstances, to cover the eventuality that your client is unable to attend at the last minute but wants you to proceed alone.

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