

Making the Most of the Joint Session at a Mediation - 7 Do's and Don'ts

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Here are some do's and don'ts which lead to a more effective joint session of your mediation:

Do engage in a realistic discussion of the strengths and weaknesses of your case.

Do not spend time posturing to impress or intimidate.

Do recognize that every case is unique.

Do not lump your case in with similar matters that may have relevant differences.

Do engage in a give and take of views.

Do not rush the discussion in the joint session.

Do take the time to listen to the other side.

No two cases are the same. The joint session of the mediation is the best opportunity for the parties to speak face to face and engage in a realistic discussion of the strengths and weaknesses of their case. Counsel is best served by engaging in an objective, straight forward discussion of the uniqueness of the case at hand.

It is commonplace for counsel to extol the virtues of their own legal skills in achieving amazing results for their clients in other matters. As always past performance is not predictive of future results and what is telling is that such an advocate never speaks about their losses. Time expended in this manner is usually nothing more than egotistical posturing, often designed to intimidate but more likely to aggravate and impede the process. Engaging in this type of discussion is simply a waste of time. Counsel is better served by engaging in an objective straight forward discussion of the uniqueness of the case at hand.

Sometimes counsel, on an anecdotal basis, develops guidelines with respect to liability and damages in certain types of cases. It is of greater importance to address the application of certain similar facts to rulings on dispositive motions, evidentiary rulings during trial or on other significant legal issues decided on appeal.

The joint session should not be rushed. Many times the parties do not want to engage in a process where their views are exchanged in detail with the other side; or they want to cut the joint session short and move as quickly as possible into caucusing privately with the mediator. What the parties often fail to understand is that the mediation process is about taking the time to engage in a "give and take" and to exchange views with the other side. It is to the benefit of all parties to have a good understanding of the other's position. Often the parties in the joint session will repeat their arguments over and over again in many different ways. While, at times, this process may become

tiresome, in actuality, there can be a lot of value in it. Despite the redundancy, new facts may come out and a better understanding often comes about as to the other party's position.

So take the time to really listen and do not rush the joint session. So if you want to have a useful joint session, turn off the rush to get to the end, and turn on the ability to take the time to mediate.

Hon. John P. DiBlasi is a retired Justice of the Supreme Court, Westchester County, Commercial Division. He is a member of NAM's (National Arbitration and Mediation) Hearing Officer Panel and is available to arbitrate and mediate cases throughout the United States. For the fourth straight year, Judge DiBlasi was voted the #1 mediator in the United States in the 2017 National Law Journal Annual Reader Rankings Survey. He was also named a National Law Journal 2016 Alternative Dispute Resolution Champion, as part of a select group of only 48 nationwide. Judge DiBlasi was voted one of the Top 10 mediators in the 2016 New York Law Journal Annual Reader Rankings Survey for the seventh year in a row. Additionally, he has been designated a Super Lawyer for the fourth consecutive year (2016, 2015, 2014 & 2013) and he holds an AV Preeminent Peer Rating from Martindale-Hubbell in both Alternative Dispute Resolution and Litigation – a distinction given only to those who possess the highest ethical standards and professional ability.

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