



Strategies for Successful Mediation



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Judge Alexander H. Williams III of the Los Angeles Superior Court (Ret.) defined a number of strategies for successful dispute resolution leading to settlements. These strategies include: Do no harm. It's not about you, the mediator. It's about them, the parties. Play by the rules. Time – provide it and use it. Maintain confidentiality when separate caucuses are held. Listen, the parties are experts about their dispute. Maintain and reflect impartiality. Ask Questions. Facilitate first; evaluate later (if necessary). Be empathic, not sympathetic. Be optimistic. View the mediation as a dance, where the mediator teaches, coaches, and selects the music. Ask and learn, using the bottom line. If at impasse, consider using a mediator's proposal or bracket. Persevere. Don't give. Follow up. Finally, settlement is a process, not an event.

I understand getting to settlement is a process that requires many stages. One of these stages involves information gathering. I view information gathering as integral to a successful mediation. In fact, I view information acquisition as of primary important to a successful mediation. To get to this information, I usually first ask each party to tell me what is on their minds, what they hope to achieve, and what is thought of the other side's proposals. Often I may allow both sides to negotiate across a table until it becomes necessary to separate them, if ever. I then engage in shuttle diplomacy, with much information in hand.

I like to think my style is similar to the style of Theodore W. Kheel, famed labor negotiator. Mr. Kheel once gave this advice regarding reaching a settlement: "It is like sculpting an elephant. You chip away everything that doesn't look like an elephant, and what's left is an elephant. When you're trying to get a labor contract, you do the same thing. You chip away everything that doesn't belong in the agreement, and what's left is the agreement." I use information gathering not only to help facilitate issue development and to identify and prioritize concerns, but also to chip away at everything that doesn't belong in the ultimate settlement.

In the mediation process, I maintain focus on communication skills. I recognize communication as tantamount to success. I engage active listening to facilitate agreement. Active listening involves four steps: 1) being and appearing both attentive and receptive to what the speaker is saying; 2) expanding and narrowing the communication through open-ended and closed-ended questions; 3) communicating understanding of the message; and 4) encouraging confirmation or clarification of the meaning. I reframe, paraphrase, and summarize the issues among the disputants. Using skilled communication techniques helps me generate, evaluate, and prioritize alternatives. I understand the parties' perceptions of balance, neutrality, sensitivity, and dealing with stereotypes as related to the mediator impart trust in the mediator to

facilitate settlement. Maintaining these qualities allows me to maintain control of the mediation, to deal with emotions, to protect the parties as well as to confront the parties, and to control conflict escalation.

Using specific strategies to handle intense emotions in mediation sometimes becomes necessary. One of the strategies I use to help normalize the emotions is to help the parties understand emotions are a normal part of the process. Understanding this helps reduce the stress level. Another strategy I use to handle intense emotions is to explore emotionally charged situations separately in caucus. Maintaining good emotional boundaries also helps to avoid becoming a victim of one's own emotions. Therefore, I allow parties to vent privately with me in order to assist in de-escalating the conflict. Finally, I ignore some emotions as it makes sense, depending on the party dynamics, to simply ignore some emotions at the table.

On the other hand, sometimes it is necessary to encourage expression of the emotions. This is best done in private session to ascertain why a party is not expressing any emotion. Is the party uncomfortable expressing emotion in front of others? Is it due to cultural influences? A variety of reasons exist. The aim of the mediator should be to find out why.