

Opening Joint Meetings

Areas to consider

- A. Planning the opening joint meeting
- B. Who will attend the opening joint meeting
- C. Who will make the opening statement
- D. Key point to remember
- E. In summary

A. Planning the opening joint meeting

1. It is not uncommon for us to hear the comment that opening joint meetings are a waste of time and that there is no purpose in holding them.
2. We disagree with this comment and strongly recommend that you do hold such a meeting.
3. There are a few cases where we would accept that they may be difficult,
 - Where the clients really cannot get on with each other and to get them together may be a hindrance to the process
 - Or where a client is not mentally or physically up to it
 - Even then we would still say consider it seriously.
4. You should view the joint meeting as your opportunity to put your client's case to the other party, both solicitors and clients, in as straight forward and persuasive a manner as possible.
5. Do not just read the mediation case summary.
6. Remember it could be the first time the other parties' representatives has heard your case or it may have been a long time since they did.
7. You are also confirming the strengths of your case and exposing the weaknesses of the other side's case to the mediator.
8. It will therefore be apparent that planning how you and your client will approach the meeting is critical.

Prepare thoroughly before hand:

- What does your client want?
- What are they prepared to pay to get it?
- When do they want it?
- What do they think the other side will want?
- How much are you prepared to pay if going to fight?

- Remember mediation gives
 - o Certainty
 - o Finality
 - o Closure
9. When preparing opening remarks work out which points of your clients case you wish to emphasise:
- Main issues of the case
 - Your stance on the issues
 - Suggest how the issues might be dealt with
 - Key points of your claim or defence
 - What you are looking for from the mediation
 - Answer any points the other party has raised in their opening remarks or mediation case summary
 - Keep it simple

B. Who will attend the opening joint meeting?

1. Plan in advance who will attend the opening session both those who will contribute to it and those who need to be there to listen to what the other party may say.

C. Who will make the opening statement?

1. Decide who will make the opening statement
 - Counsel
 - You
 - Your client
 - An expert
 - Or a combination of all of these
2. Make sure that you all keep it brief, five to ten minutes.
3. Remember the mediator is not a judge or arbitrator.
4. Listen very carefully to what the other side may say and try to work out where they are going to go in the mediation.
5. Ask for points of clarification.

D. Key point to remember

1. What do you want the other side to be speaking about when they go to their room?
2. Consider what the mediator may do when all the statements have been presented
 - Break out immediately to individual rooms
 - Ask for clarification of issues
 - Try to agree the issues jointly
 - Look for some movement or concessions

3. Be ready to respond even if it is only to say that you want to break and take clients instructions based upon what has been said.

E. In summary

- Plan for it
 - Take it seriously
 - Make sure you make the most of the opportunity to influence the other party and to steer the mediators thinking.
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