

The Mediation Day

Areas to consider

- A. Rooms
- B. Process on the day
- C. The opening session
- D. Caucus sessions
- E. Other tactics
- F. Conclusion of the mediation

A. Rooms

1. The minimum requirement will be for a room that is large enough to take all those attending the mediation from all parties and the mediator, plus a break out/caucus room for each of the parties that is big enough for those attending to sit comfortably with their papers for what could be a long day. The main room should be set up so that the parties can face each other with the mediator at the head. Later in the day the room may be used as one of the caucus rooms.
2. The rooms should have natural light and plenty of refreshments available during the day and evening. Ensure there is no cut off time when you will have to vacate the rooms.
3. Telephone, fax, e-mail/internet access and typing/printing facilities should be on hand.

B. Process on the day

1. The parties will be greeted by the mediator and shown to their own caucus room to settle in.
2. The mediator will have a brief introductory chat to get to know the parties names/faces.
3. The mediator will arrange for the mediation agreement to be signed by all attending.
4. At the appropriate time the mediator will call all those attending to the opening session.

C. The opening joint session

1. The mediator will ask all the individuals present to introduce themselves.
2. The mediator will then give an opening address covering;
 - purpose of the day
 - Christian name terms
 - No interrupting the other speakers

- Any one free to leave at any time but give the mediator 5 minutes to convince them to stay
 - Private and confidential
 - Without prejudice
 - Non-binding until Heads of Agreement signed
3. The mediator will then invite the representative of the claimant to make their opening statement for about five to ten minutes.
 4. The mediator will then invite the respondents representative to do the same.
 5. It is now becoming usual practice for the mediator to invite anyone else who would like to speak to do so.
 6. Depending on how the session has progressed the mediator may decide to try to get the parties to agree to the issues in dispute at this time.
 7. The mediator may also consider it worth trying to pursue some early agreement in the opening session, but this is rare.
 8. At this time the mediator will normally invite parties to go to their rooms.
 9. The mediator will then pass between the rooms, normally starting with the claimant. There could be quite lengthy times when the mediator is away from one party.

D. Caucus sessions

1. The purpose of these is for the mediator to obtain a detailed understanding of the case and issues as seen by the parties.
2. The role of the parties before the day is to decide upon the information that they wish to give to the mediator and at what stage of the proceedings.
3. In the caucus sessions the mediator will progressively and quite strongly reality test the case of the parties and try to ascertain their true negotiating position. It will be apparent that the representatives need to know the case thoroughly, including their side and the other side's likely aims and negotiation points.
4. The mediator will ask at the end of each session what they are permitted to disclose to the other party, what concessions they can make, what questions they should ask and what concessions they should try to elicit from the other side.
5. When leaving the party the mediator will try to give them something to think about or discuss whilst the mediator is with the other party.

E. Other tactics

1. Mediators and indeed the parties sometimes find it useful to arrange for either the lawyers only or the parties only to meet. If the experts disagree it can be productive to have an experts only meeting with a view to getting a joint position.
2. The mediator may even suggest that it would be a good idea to go away and either rethink issues or gather more information and then reconvene at a later date.
3. There really are no hard rules, it is the parties' process and provided they all agree on a course of action then that is acceptable.

F. Conclusion of the mediation

1. The mediator will continue to move between the parties until agreement is reached. At that time the mediator will get the parties together if they think sensible, but certainly the lawyers, in order that they may draft a settlement agreement or at least, heads of agreement.
2. When completed the agreement will be signed or agreement reached on who will draft the final agreement and the process to get it signed and if required agreed by the court.
3. We recommend that you send a draft agreement to the other party before the mediation and try to agree the key points that should be included in it from both parties view point to save time at the end of the mediation day.

In summary it is essential that a great deal of thought goes into: choosing the mediator, organising the date and venue, but even more so into preparing and planning for the actual mediation itself.
