

BEYOND THE PRINTER: GOALS AT MEDIATION
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In my opening remarks as Mediator, I invariably roll out my catchphrase: “My goal is to get to the printer.”

What about you as the lawyer: what is your goal at Mediation?

Perhaps your goal is as simple as “settle for as little/much as possible.” Indeed, the vast majority of cases settle at Mediation. However, mediation provides much more than an excellent opportunity to settle your case.

Mediation presents an underappreciated opportunity for a lawyer to accomplish a broader, and arguably more important goal: a client who is thoroughly satisfied with the lawyer’s representation.

How do you use Mediation to improve client satisfaction? I suggest that before Mediation, lawyers should develop a series of goals, ultimately aimed at having a client who leaves Mediation thinking that he or she is lucky to have that lawyer. These milestones will vary according to the case and the client.

Here are a few less obvious goals for your consideration:

- **Show the client what you can do** – Many clients have never seen their lawyer “in action” before. You can show preparedness, attention to detail, eloquence, ability to think on your feet, etc. Just remember that often less is more. To demonstrate a command of the case, a note-free, succinct summary, with an example or two on factual detail, may work better than a 30-minute PowerPoint.
- **Write the opposition’s report** – At Mediation, you have meaningful input into the other side’s case analysis. You can literally hand the opposing party materials, such as your damages calculation. Especially if you think that “home office” makes the call on settlement, why leave it to chance that your points will be conveyed accurately?
- **Firm up the budget** – When the Mediator invites a candid discussion of litigation expense, the purpose is not limited to ascertaining whether the client will add or subtract legal expenses to their offer. The Mediator is trying to help the lawyer and client reach consensus on a realistic budget. Often, my unfiltered reaction is that the proposed budget is low, given how the other side intends to proceed.
- **Prioritize your arguments** – Even in caucus, many lawyers never leave their advocate role. When discussing the issues, they merely banter back their client’s party line. They miss the opportunity to learn which of their points, and those of the opposition, resonate with the neutral. I frequently ask lawyers what they think is the opposition’s strongest point; it surprises me that they rarely ask me the same question.

- **Manage client expectations** – A lawyer may obtain a terrific result, but the client may think the opposite. Heart-to-heart discussions in caucus go a long way toward defining what result a client should reasonably expect. You may “win” or “tie,” but the client may think that you lost. The Mediator can provide invaluable assistance in getting your client to understand reality, in terms of both trial outcomes and settlement scenarios. Let the Mediator earn his or her fee.



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