



Pre-Mediation Tips for Attorneys

Thoughtful preparation can help maximize the value of mediation and improve the likelihood of a productive resolution. The following suggestions are intended to assist counsel in preparing construction and complex civil disputes for mediation.

Ensure Settlement Authority Is Available

Individuals participating in mediation should have authority to negotiate and resolve the dispute, or immediate access to those who do. Delays often occur when key decision-makers are unavailable or authority must be obtained after significant progress has been made.

Identify the Key Issues Driving the Dispute

Construction disputes frequently involve multiple parties, competing theories of liability, contractual obligations, insurance considerations, and technical issues. Identifying the primary obstacles to resolution before mediation can help focus negotiations and improve efficiency.

Discuss Expectations with Clients

Parties often enter mediation with different assumptions regarding risk, exposure, and potential outcomes. Meaningful conversations regarding strengths, weaknesses, costs, and litigation uncertainty can help prepare clients for productive negotiations.

Coordinate Attendance Early

Confirm attendance of all necessary parties, insurers, adjusters, experts, or corporate representatives well in advance. Resolving participation issues before the mediation date can avoid unnecessary delays and interruptions during negotiations.

Consider Providing Key Materials in Advance

While not required, parties may wish to provide the mediator with documents that would assist in understanding the dispute and identifying potential paths to resolution.

Depending on the matter, helpful materials may include key contracts, change orders, schedules, expert reports, prior settlement discussions, or concise summaries of the primary issues.

Any materials submitted in advance will be reviewed by the mediator.

Reserve Sufficient Time for Meaningful Negotiations

Complex construction disputes often involve multiple stakeholders and significant financial exposure. Allowing adequate time for discussion and negotiation can improve the likelihood of a productive mediation and meaningful progress toward resolution.

