

# DAILY REPORT

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## Preparing your Client for Mediation

MEL WESTMORELAND

Many clients have never participated in a mediation and it comes as a shock when they learn the purpose of the settlement conference is to conclude their case. However, once they understand the process, most clients prefer to end the matter because they have grown tired of the cost and stress associated with litigation. The process works better if clients are told beforehand so they can emotionally prepare. It's also important for the parties to understand they will have far more input into the resolution of their case through the mediation rather than in the courtroom. In mediation, the clients must agree to the outcome of the matter; whereas in trial, a judge or jury decides their fate.

Just as a client should be emotionally ready to proceed with mediation, typically it's best to wait until enough discovery has been completed to insure there is no information disparity. It also helps motivate settlement if the mediation occurs when the trial calendar looms on the horizon, but before the final trial preparation has begun. The

vast majority of cases settle before trial, but the likelihood of that depends upon the counsellors and clients involved. Prepare clients to arrive with the expectation the case is going to be resolved that day. Suggest they listen with an open mind to what the other side has to offer.

Once a client has been sufficiently prepared for what to expect and there has been a realistic discussion about their options for response, it's equally important for the lawyer to prepare for the settlement conference. Arrive with current financial information and the most recent settlement offers. Have a draft agreement on a computer that can be filled in, printed out and signed. If the parties and attorneys come to a mediation prepared to settle, it almost always will.

If the client has unreasonable expectations, ask for a reality check to help them become more receptive to a resolution they can help formulate rather than one that will be dictated to them. If everyone makes a good faith effort to resolve the case it should settle. A good attorney wants the best possible resolution for the client and



an effective mediation can help achieve that result.

*Mel Westmoreland is a neutral with JAMS in Atlanta. He is highly regarded for his settlement skills in a broad range of law, especially business/commercial and family law matters. He can be reached at [mwestmoreland@jamsadr.com](mailto:mwestmoreland@jamsadr.com).*

