

# Positively Neutral

Arbitration and Mediation for Attorneys and Their Business Clients



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Welcome to the Fourth Quarter, 2022 edition of my newsletter, in which I share hopefully relevant and interesting content pertaining to the arbitration and mediation of business disputes. I discussed in [an earlier article](#) ways in which an experienced mediator can facilitate an attorney's efforts to cement a relationship with a new client. This quarter, I'd like to suggest how, even with established client relationships, attorneys can benefit from a mediator's support.

In recent mediations, I have had the following circumstances arise.

***Example #1. Walking back effective advocacy.***

In one instance, an attorney confided that his efforts to advocate for a long time client's interests perhaps had been too successful. The client apparently enjoyed the Kool-Aid so much that she was now of the view that the case was stronger than the attorney felt it really was. At the mediation, the attorney was challenged to have the client view the case from an appropriately objective position instead of the rosy perspective that the attorney had presented in advocacy efforts. The attorney believed that a mediation resolution was achievable and in the client's interest, however, he was concerned that the settlement opportunity would be lost unless the client was more realistic in her expectations.

The attorney and I agreed that I, as the mediator, would take the lead in discussing with the client the objective realities presented by the litigation. In addition to communicating the substantive message, this provided an opportunity for me to convey to the client just how effective her attorney was as an advocate, helping to cement their relationship.

***Example #2. The unrealistic client.***

In another instance, the parties successfully navigated their competing assessments of the dispute to a point where the remaining gap in settlement figures was relatively narrow. However, a seeming impasse was reached. The attorney for one of the parties confided that he personally believed it was reasonable for his client to go the last mile, but was reluctant to communicate what would be perceived as a painful message because of his ongoing relationship with the client. We agreed that I, in my capacity as mediator, would lead this difficult discussion with the client, which proved successful.

These are but two recent examples of how a mediation can involve more than the relationship between the litigating parties. Attorneys often perceive the merits of a settlement opportunity differently than their clients. While recognizing that, ultimately, their client's wishes prevail, attorneys also understand that they have the responsibility to ensure a client fully appreciates the downside as well as the upside of rejecting a settlement opportunity. Delivering difficult messages can adversely impact the attorney's interactions with the client, both as to the existing

matter (if it does not settle) and the broader relationship. A mediator attuned to this dynamic can alleviate the attorney's burden, by undertaking to serve as the bearer of challenging messages.

--Rob Harris

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