

Meditate to Mediate: 3 Tips for In-house Counsel to Mediate Better Outcomes

Career Development



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A recent Apple iPhone TV commercial gave me a good chuckle and the idea to write this article about effective mediation for in-house lawyers. The commercial showed an extended long wood table with one party sitting at the one end and the other party sitting at the far other end. An Apple iPhone is seen sliding across the table as the parties share offers and counteroffers through the text on the iPhone. Each side picking up the phone as it slides across and rejecting it as they slide the phone back to the other side with a counteroffer.

While this was an effective advertisement for Apple's scratch resistant phone glass, I thought to myself the mediation was not set up for success. The parties are optically far apart and reflects the visual of how far apart they are in settling. They are in the same room with terrible body language. Most importantly, I did not see any neutral mediator to facilitate.

Brennan Torregrossa and father, Joseph Torregrossa.

Like with this commercial, mediations in the corporate world are also often not set up for success. My father, Joseph Torregrossa, has been a fervent practitioner of Alternative Dispute Resolution (ADR) since the 1970s and well before it was commonplace in our legal practice. He has been the Chief Mediator for the United States Third Circuit Court of Appeals for more than 30 years settling thousands of cases in this court-sponsored mediation program for cases on appeal. I hear from lawyers almost every month who tell me that "your dad settled a case that no one else could."

Here is the wisdom that he has passed on to me to be effective in meditations.

1. Meditate to mediate

My father believes in bringing the parties together and setting aside hostility, past grievances, and negativity. While it is difficult to forget the litigious past, and I am still guilty of it myself from time to time, my father has taught me that getting the best for your client can often mean letting go of that past. There are many mediations of mine that needed to settle and did settle because he taught me that lesson.

I have had mediations settle because I gave a compliment to an opposing lawyer and his or her advocacy. I have mediations settle because I shared with the other side that I am deeply sorry for what they have been through (but not saying it was our fault). I have had mediations settle because my handshake to start the mediation was more friendly than they expected and followed by cheerful small talk. Far from making you look weak, my father has taught me that being your authentic self can make you strong and far more effective when you express what you believe in mediation.

These personal touches to meditation often fail to happen because we are posturing from the first moment. There is plenty of time for that later if you want or need. As my father taught me though, the best settlement is not where both parties are unhappy with the outcome but rather the solution is one of their own making.

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2. Be creative and keep an open mind

My father has also taught me that creativity can settle cases that objectivity and advocacy could not. My father is constantly searching his cases for settlement ideas outside the box. While it often comes down to money and who gets what, he has taught me that this narrow approach can stalemate a mediation. Does all the money have to be paid at once? Can a dispute between two companies lead to a partnership or relationship outside the dispute? Is it truly only about money?

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My father once offered me a beer. As we clinked glasses to drink, he told me why he loved this particular beer. Two craft beer makers sold different beers with the same “Salvation” name. After a public dispute, they resolved their differences by combining forces making a beer called Collaboration Not Litigation Ale. He loves this story and this beer because it embodies the way he thinks about resolving disputes.

You should take your creativity into the mediation. Keep suggesting ideas, even if they are non-starters. It keeps the parties talking and even more importantly thinking about ways to resolve.

3. Draw hard lines authentically

While I encourage a positive open mind to mediation, it is important to draw hard lines at times. The other side is testing you and your limits. They often will not believe your limits. They want to find your “smash the vase” moment for those that follow my articles.

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I choose my moment carefully but authentically. I once told a lawyer on the other side at a mediation: “I never know how firmly you believe in your position because you are always telling me that every position in the litigation is your bottom line in the most hostile way possible. You can’t truly be angry at everything.” In the beginning of this article, I encouraged you to be yourself. This has helped me

be effective in expressing my last and final offer including that I am not afraid to take the case to trial. That is because they see and feel it from me. It feels validated to them and can make you far more effective in convincing them that you truly are at your limit of what you are willing to do.

I hope these tips help your next mediation. If so, perhaps after the mediation, you can celebrate. I recommend the Collaboration Not Litigation Ale.

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