

The background is a solid dark blue color. Overlaid on this are several large, abstract, light blue geometric shapes. These include thick, curved lines that form partial spirals or swirls, and several thick, angular lines that resemble stylized zig-zags or chevrons. The shapes are scattered across the page, creating a modern, geometric aesthetic.

Welcome to Mediation

*A Consumer's Guide
to Peacemaking*

Charles W. Ross, Esq.

WELCOME TO MEDIATION
A Consumer's Guide to Peacemaking
Charles W. Ross, Esq.
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This writing is dedicated to the trial attorneys of Florida, and their clients, who have been leaders in developing mediation as a significant force for peacemaking.

C.W.R.

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Preface

This writing is an introduction to mediation as it impacts the resolution of legal disputes. These thoughts are intended for those who find themselves considering mediation as a potential vehicle for the settlement of lawsuits or who otherwise wish to learn more about the process.

My perspective is that of a fulltime, professional mediator who has had the privilege of mediating thousands of cases. In many of those sessions, I worked with parties who had never mediated a legal dispute before and did not understand the mechanics of mediation. I hope these reflections will inform consumers about the process and will instill individuals with comfort and confidence as they approach mediation.

Some portions of my commentary draw upon my actual mediation experiences. Confidentiality is essential to the process, and all descriptions of such proceedings preserve the anonymity of the parties and counsel and safeguard all private communications and settlement details disclosed during the mediation sessions.

As a “reformed” trial attorney who spent almost three decades litigating cases, before devoting my full energies to mediation, I must confess a strong bias in favor of client-driven settlements. Having lived with the vicissitudes of trial and client unhappiness with the expense and unpredictability of litigation, I am a fully committed disciple of mediation. While acknowledging my bias, I still hope that these observations will motivate you, as a consumer of legal services, to value and believe in your mediation opportunities.

An Overview of Conflict Resolution

Peace and war. Reconciliation and conflict. The history of human dispute resolution has travelled these two paths.

One way is marked by diplomacy—the art of negotiation, communication, and compromise. The other route takes a darker turn towards violence, skirmish, and warfare. Both methods have been effective in entirely different ways. Each presents its own range of benefits, costs, and casualties.

The American judicial system embodies these two models in its approach to dispute resolution. Lawsuits are resolved through either negotiation or litigation.

Negotiations among the parties and their legal counsel are a form of diplomacy which can be an effective means of settling claims. The great majority of lawsuits are resolved through such negotiations, and only a small percentage of lawsuits actually result in trial.

The litigation option is much like combat, with each side free to assert claims and defenses against the other. Lawsuits are akin to intellectual warfare, with each party using pleadings, motions, discovery, and trial as weapons to win in the adversarial process. As with most battles, victory is never certain, and the effort exacts a financial and human toll upon all who enter.

In recent times, jurisprudence has added mediation as a third alternative for dispute resolution. Mediation is a form of enhanced negotiation, utilizing a neutral third party to facilitate the negotiation process. The mediator does not make decisions for the parties or adjudicate the dispute. Instead, the mediator works, in an impartial fashion, to assist the parties in understanding the perspectives and positions of each side. The process examines the human and business interests of the participants and the risks of litigation so that settlement solutions may be developed. Some attorneys refer to mediation as “settlement negotiations on steroids.” When used properly, the mediation process is a powerful settlement tool which can generate creative resolutions for even the most difficult cases.

As both a civil trial attorney and a certified mediator, I have participated in thousands of mediations. These sessions have included lawsuits of every type, from serious tort and wrongful death cases to complex business and contract disputes. Some cases have involved highly emotional litigation between family members over estate and probate matters. Regardless of the challenges of the lawsuits, I have found mediation to be an extraordinary vehicle for the resolution of conflict. Almost every lawsuit can be resolved through mediation, provided the mediator has sufficient skill and commitment to the process, the attorneys give thoughtful legal advice, and the parties are open-minded about their settlement options.

I have witnessed, first hand, how many parties can settle their differences, even when the disagreements are profound and entrenched. I contend that mediation is the single most significant development in our legal system over the past century. No other recent change in the law has had such a dramatic influence on the lives of those involved in litigation and on the lawyer's ability to extend beyond advocacy to a role of counselor and problem solver.

The Elements of Mediation

Just as trial lawyers differ in their methods of presenting argument and testimony in court, mediators also have different mediation styles. While there may be no single agreed definition of mediation, the process is based upon several well accepted principles.

First, the mediator must be neutral and impartial. The mediator should, to the greatest extent possible, treat all parties in an even-handed manner and not favor any party over the other. Only by serving as a neutral resource for all participants can the mediator effectively facilitate the settlement process and gain the confidence and trust of all of the parties.

Second, the mediator should encourage and enhance communications among the parties. This often involves helping the parties identify their goals and interests, as well as the needs of the other litigants, and assisting the parties with a full and fair understanding of the risks and rewards of both litigation and settlement.

Third, the neutral acts to assist the parties in making their own, voluntary agreements to settle conflicts in a mutually acceptable, non-adversarial format. Rather than sitting as a private judge to determine how a dispute will be resolved, the mediator is committed to the principle that the parties should control the outcome of their own disagreements through negotiation.

This is not to suggest that the experience is always pleasant or easy. Indeed, the process is often stressful for the parties because the underlying disputes are emotional and divisive. The compromise needed to achieve settlement requires concessions from all sides. As with most of life's choices, there are no perfect solutions. Each option carries both positive and negative elements.

In the end, mediation's goal is to help the parties develop a settlement alternative that is more attractive than continued litigation. If settlement is perceived by each party as better than the litigation, then self interest directs a negotiated settlement. If this result is not achieved, in the subjective opinion of each party, then the litigants are free to continue their lawsuits.

Protecting the Parties

The mediation process is most effective when the participants feel comfortable sharing their thoughts and feelings. In order to encourage such candor, the law provides protections for parties. These safeguards include the principles of “confidentiality” and “legal privilege.”

Information shared during mediation is confidential, and neither the mediator nor the participants may reveal such information to third parties except as required by law or court order. Generally, the communications are private and are not to be disclosed when mediation is concluded.

The parties’ communications and settlement proposals made during the session are also protected by the doctrine of legal privilege. Such information may only be used for settlement purposes and will not be allowed as evidence in the case after mediation ends. This privilege extends to a party’s admissions against interest, when made during a mediation conference, and such communications are not allowed as evidence at trial.

With the protections of confidentiality and legal privilege, participants should feel free to speak openly and to explore all types of settlement ideas, with no worry that such matters will be disclosed or used against them when the process terminates.

The Mediation Process

Mediation is a dynamic process which utilizes different methods, depending on the nature of the disputed claims, the personalities of the negotiating parties and counsel, and the various impediments to settlement which arise during the session. Having presided over many negotiations, I find that every conference is unique, and no single approach will work for every case. Mediation is more “art” than “science,” and skilled mediators are always alert to the personalities, body language, expressions, cultural influences, and interests of the parties so that the process is shaped to be most effective for each situation. While the parties control their decisions, it is the mediator’s role to facilitate and nurture negotiations so that each party gives settlement a maximum effort.

Most conferences begin with the parties articulating their legal positions. This generally involves a discussion of the factual background of the claims and what relief or benefits may be obtained through litigation. In many instances, the mediator’s first goal is to insure that each party understands the other party’s legal position in the lawsuit. I have found that, while most parties understand their own legal positions, they do not always grasp the other side’s claims, defenses,

and strategies. This is probably because most litigants focus on how they plan to prevail, rather than how the adverse party plans to defeat their claim.

An examination of each party's legal position often leads to improved communications between all sides. By exploring what each party hopes to achieve through litigation, insights are gained into each party's needs and interests. Once these interests are identified, it is easier to develop a successful negotiation strategy.

It is important to note, however, that the actual interests of the parties are not always reflected in the pleadings and legal positions framed by the litigation. For example, I mediated a lawsuit filed by an employer against his former employee to enforce a non-competition agreement. The employment contract included a provision which restricted the employee's right to start a competing business when he left the plaintiff's employment. The lawsuit sought an injunction to shut down the defendant's new venture and also claimed lost profit damages.

As the negotiations developed, it became clear that the plaintiff's biggest concern was the protection of his specific, long-term customers. Having identified the plaintiff's primary interests, a settlement was developed which required the defendant to refrain from servicing or soliciting the plaintiff's critical customer base, while also allowing the defendant to continue business operations with other, less significant clients. The ultimate solution ignored the lawsuit's claims for injunctive relief and damages. Instead, a "win-win" alternative emerged which met each party's most important interests.

Through communication and preliminary negotiations, each party's goals and interests are usually identified. The task for mediation is to seek a solution which meets at least some of each party's needs, so that the settlement option will appear better than further litigation.

Another important function is the thorough evaluation of the risks posed by litigation. Because most parties enter mediation believing that they are "right," and that they will "win" if the case goes to trial, I often find that participants have not fully considered the ramifications of losing in court. Trial lawyers know that every case has the potential for a bad result. Many attorneys find it difficult to discuss these negative consequences with their clients. The legal system recognizes that trial courts make mistakes because appellate courts exist in order to rectify the errors of juries and trial judges. The risk of an unpredictable outcome, with the possibility of a loss at trial, can be a powerful motivation to explore settlement alternatives.

Modern lawsuits are very expensive, and mediation often examines the costs of extended litigation. Attorney's fees, depositions, court costs, expert witness fees, and related trial expenses can be saved by all parties if settlement is achieved. A comparison of the benefits of victory at trial versus the financial costs of the

litigation is useful because, in many cases, attorney's fees and other trial expenses are not recoverable. In these circumstances, the likely recovery must be discounted by the expenses of litigation to determine the "net" benefit to a prevailing party.

While most lawsuits require financial investments from the parties, they also demand considerable commitments of time as well. The litigants must spend many hours meeting with counsel, attending hearings and depositions, preparing for testimony, producing documents and other discovery, and then devoting days or weeks to the final trial. Once the trial is concluded, post trial motions and appeals are often filed by the losing side. The litigation time line can perpetuate for years and consume countless hours of parties' time and focus. Often, time spent on lawsuits means the parties are distracted from other important life interests, such as family, work, and recreation. If "time is money," then the real costs of litigation must be measured well beyond legal fees and court costs alone.

While a careful analysis of litigation risks and costs will often promote settlement discussions, such is not always the case. In one mediation, I encountered very unhappy homeowners who were involved in an emotional lawsuit with their contractor. The builder claimed a balance due under the remodeling contract and sued to enforce a construction lien against the residence. The owners were uniquely stubborn and insisted that their "principles" prevented them from making any financial offers to the builder. The owners' lawyer was also intractable, as he was convinced that his clients would win at trial.

I pointed out that the amount in controversy was modest—only about \$50,000—and that attorney's fees for the owners to complete a jury trial could well exceed \$100,000. We also examined the Florida lien statutes which provided that the prevailing party could recover attorney's fees and court costs from the loser. The total fee exposure was in excess of \$200,000, to litigate over \$50,000.

Settlement proved impossible. At trial, the jury did reduce the contractor's claim to \$25,000. However, the judge ruled that the builder was the prevailing party under the lien laws, and then awarded the plaintiff a judgment against the owners for fees and costs in excess of \$100,000. The last I heard, the homeowners packed up their "principles," and headed off to bankruptcy court. While this result may seem harsh, it is important to remember that, at mediation, the party's right to self-determination is sacrosanct, even when the mediator may privately question a party's good judgment.

In many cases, an exploration of the other party's ability or willingness to pay an adverse judgment is useful. Individuals, small corporations, and closely held entities often lack the resources to pay significant judgments. Bankruptcy or liquidation scenarios may also frustrate a claimant's effort to collect upon a

judgment. These are additional risk factors which may incentivize settlement, if obtaining actual compensation is important to the litigants.

I recall a mediation which underscored the importance of collection issues. The plaintiff had filed a claim for sexual harassment against a former employer. The grounds for the lawsuit were well-founded, but the defendant's business was in serious decline. The employer made its best effort to settle the case, given its limited resources. However, the plaintiff had accumulated significant debt and refused to settle because the proceeds were insufficient to pay all of the bills. Despite counsel's advice that a judgment might not be collectable, the plaintiff rejected the sums offered, and the case went to trial.

The plaintiff won the case, and the court awarded both damages and attorney's fees. After the verdict, the employer filed bankruptcy, and no monies were ultimately recovered. With hindsight, I am certain that the cash settlement offered to the plaintiff looked better than the paper judgment in court.

While mediation settlements are not immune from risk, I have found that the great majority of such agreements are performed by the principals, because each party has helped fashion the ultimate outcome. We tend to value the things that we create. While parties enter the process as adversaries, the act of settlement requires collaboration and shared sacrifice from all sides. Parties are generally more motivated to pay a mutually agreed settlement, than a judgment imposed upon them by a judge or jury.

Further, mediation settlement agreements are valued by the legal system, and trial judges will not hesitate to vigorously enforce such agreements. If a party breaches a settlement agreement, most judges will award judgment in favor of the non-defaulting party, in an expedited manner, upon proof of nonperformance.

Litigation also carries a huge emotional burden for most individuals. Although not frequently discussed between attorneys and their clients, many people find the adversarial process to be unpleasant and stressful. The accusations made in lawsuits and the hardships of giving deposition and trial testimony can elicit worry and angst. By comparison, the mediation process is consensual and non-adversarial and allows each party to offer ideas and input. Settlement provides an exit from the rigors of litigation, and most clients gain peace of mind when their lawsuits reach a negotiated settlement.

Just as identifying the interests of the parties, improving communications, and evaluating litigation risks and costs are used in various ways at mediation, the actual configuration of the negotiating process also affords choices. Some mediators prefer group sessions involving all of the parties and their counsel to collectively explore issues and promote global dialogue. In many mediations,

work is also done in private caucuses involving conferences between the mediator and the separate parties and their counsel. Ideas and settlement proposals often emerge from such private caucuses, and the mediator is then directed to share these concepts with the other parties in their own individual caucuses. This form of “shuttle diplomacy” allows the mediator to narrow the areas of disagreement without inflaming emotions along the way.

Other configuration options include “lawyer caucuses” where the mediator meets separately with trial counsel and “party caucuses” where the mediator may convene a session with only the parties. All of these techniques may be used at various times during the session to facilitate the goals of better communications and productive negotiations.

I recall one difficult case which raised an unusual configuration dilemma. The dispute involved multiple physician plaintiffs who had joined together to sue a large insurance company. The doctor group was made up of diverse individuals with different cultural backgrounds and divergent settlement expectations. After attempting a group negotiation, it became obvious that the plaintiffs could not agree upon a global strategy, and their interests were not aligned.

In this case, a creative trial lawyer helped me to develop a plan to conduct independent, separate negotiations for each doctor. We started with the most reasonable plaintiff and devised a settlement template which was acceptable to the insurance company. Although the mediation continued for long hours, in multiple sessions, the configuration strategy was successful, and a seemingly impossible case was resolved.

When mediation results in a settlement, the mediator should insure that the terms of the agreement are confirmed in a written document. By memorializing the settlement, the mediator verifies that the settlement is acceptable to the parties and their counsel, and potential confusion as to the deal points is eliminated. The agreement is signed by the parties, approved by their attorneys, and will be enforced by the trial court if necessary.

The Act of Taking Control

When parties engage the litigation process, they have little ability to control the ultimate outcome. The lawyers and judges run the case and, in many instances, the jury will decide how the lawsuit ends. The parties are spectators to a very expensive drama, with no control over the script. Like passengers on a runaway train, the parties are often powerless to control their final destination.

Mediation takes the opposite view and insists that the parties have the power

to control their own destiny. The right of self-determination is at the heart of mediation. This seems logical because the parties have the deepest insights into their own problems and are best suited to gauge solutions that work best for them. In most cases, the principals have a profound understanding of their businesses and life circumstances. This allows them to develop imaginative settlement options, which may not be perceived, or even understood by others, but which work for them. The process allows for maximum flexibility as parties develop settlement alternatives. Within the negotiations, parties are free to redesign their relationships and to create imaginative solutions which would never be permitted in court.

Litigation is governed by strict rules of evidence and procedure and by statutes and case law precedent. Courts do not develop novel resolutions to disputes. Rather, the legal system decides whether claims are “won” or “lost” and whether damages or other relief should be awarded. In mediation, the negotiations can lead to unique and exciting solutions limited only by the imagination of the parties and their counsel.

I remember one mediation which really tested the creativity of the lawyers and their clients. Two very experienced businessmen had joined forces to create a new enterprise. Each investor owned one-half of the company’s stock. Although both men had considerable skills, their management styles were totally incompatible. Before long, financial disputes arose, and neither man trusted the other. All business decisions were hopelessly deadlocked.

Lawsuits were filed for breach of fiduciary duty, and the judicial remedy sought was a public sale of the corporate assets. Both investors privately agreed that a public sale would yield insufficient sums to pay the business debt and would certainly destroy the company’s future. In the meantime, the company’s banker became very nervous and threatened to shut down the business line of credit.

The legal system was simply not equipped to deal with such a complex problem, and the judicial remedy of public sale was repugnant to both men. The parties needed a business “divorce” where one shareholder would buy out the other’s business interests, thereby allowing the business to survive while maximizing the price for the sale of stock. After hours of negotiations over the buyout terms, a sale of stock was concluded which worked in the best interests of the men and their nervous banker. Through mediation, the businessmen reinvented their relationship in a way that litigation could never accomplish.

Over the years, I have observed that when litigants take charge over their problems at mediation, they often experience a sense of accomplishment. Almost all settlements require compromise and engender some disappointment when

points are conceded to the other side. However, these losses are minimal when compared to the satisfaction achieved by most litigants, who have a direct hand in shaping the final resolution of their own disputes. On many levels, I believe that mediation empowers the individual, while litigation empowers the system.

This point was reinforced with me during a somewhat tragic mediation between an adult son and his father. The son sued the father to obtain benefits under a family trust which designated the father as trustee. The son, as beneficiary, sought additional resources from the trust to pursue education and a new career. The family had immigrated to the United States from Europe, and the father had strong opinions as to what was best for his son. Naturally, the son disagreed.

As the mediation evolved, it became obvious that the real issue was not the trust distributions, per se, but rather the son's wish to be free from the control of a domineering father.

Through patience and careful listening, the process helped the family to reconnect. At the conclusion, the father and son met in a private party caucus to complete their negotiations. It was one of those magical moments where tears were shed and hugs exchanged. And the son got the money he wanted to pursue his dreams.

Tips for Success at Mediation

The mediation experience is designed to help individuals negotiate their own solutions to legal conflicts. Unlike the adversarial aspects of litigation, the mediation process promotes settlement through mutual compromise and collaboration with the opposing party. Settlements emerge through the collective communications and negotiations of the litigants, and effective mediation requires shared effort and sacrifice from all participants. With these objectives in mind, I offer you four common sense tips for productive mediation:

1. **Patience.** Most experienced mediators agree that the single most important quality that individuals can bring to mediation is patience and the willingness to let the process fully evolve. The session typically begins with each party offering an extreme negotiating position. The plaintiff makes an excessive demand, and the defendant offers a minimal response. The “magic” in mediating occurs when this substantial “settlement gap” is narrowed through negotiation and creative deal-making. In order to shrink the gap that separates the parties, mediation requires the patience and commitment of the participants. During the early stages, many parties and their counsel are heard to announce that the case

cannot be settled, only to find themselves executing a settlement agreement at the end of the day.

I recall one very complex case which underscored the importance of patience in the mediation session. The claim involved eight separate negotiating groups who were in litigation over the construction of a condominium building. The plaintiff was the condominium association which sued the developer, general contractor, and architect. These defendants asserted cross-claims against one another and also had joined various subcontractors as third party defendants. About 50 individuals attended the general session, which included the entire condominium board of directors, all of the defendants, and their insurance adjusters. While the group generally agreed that the building evidenced serious water damage and structural failure, each party contended that liability for the problems rested with someone else.

These multi-party mediations always take considerable time to allow the mediator to meet with each group privately and to develop a negotiation strategy which will be productive for all the different parties. This mediation was unusually slow to develop, as the plaintiff's demands were very high, fueled in part by their aggressive expert witness who opined that the only repair solution was a significant tear down and re-construction of the major portions of the building. The estimated costs of remediation to the building exceeded the reasonable fair market value of the entire project. Naturally, the defendants rejected this extreme damages model in favor of more reasonably priced repair options.

The negotiations continued through the day, and little progress towards settlement was achieved. All of the defendants and their counsel were pessimistic about settlement, yet they all agreed that the litigation expenses for attorneys and experts through trial would be huge. Finally, one attorney announced that the efforts were a waste of time, and his group exited the mediation.

Fortunately, the remaining seven parties stayed at the session, which lasted well into the evening. As often happens, a breakthrough in the negotiations emerged which was predicated upon a more reasonably priced repair solution. The patience of the parties and their counsel was rewarded with a global settlement, which put an end to years of litigation. The party who quit prematurely was left to defend a difficult position in a complicated case, and its attorney was amazed that all the other claims had settled. With a little more patience and commitment, I am convinced that this party's problems could have also been resolved.

The mediator's goal is to be helpful. Sometimes this effort takes more time than the participants anticipate. I believe that as long as the mediator sees any hope for settlement, the parties should give the session their time and support.

Because only the mediator knows what is evolving in each private caucus, the neutral is in the best position to gauge whether even the most intractable conflicts can eventually find a path to resolution.

2. **Listen.** Mediation provides the participants a unique opportunity to speak directly to one another and to hear candid evaluations from opposing counsel. During the life of a typical lawsuit, mediation may be the only time that such direct and meaningful dialogue is possible. However, the value of such communication is lost if the parties and their counsel fail to listen.

Most trial attorneys and mediators are trained in the ways of oral advocacy and argument. This usually means we enjoy speaking and being heard. In many instances, our listening skills are not similarly advanced.

Likewise, the parties may find it hard to listen because they adamantly disagree with the message. Nevertheless, I contend that “active listening” at mediation can open great insights into your adversaries’ interests, goals, and litigation strategies. All such knowledge can yield powerful benefits for settlement and even for success at trial if the case is not settled. Such listening does not require that you agree with the speaker; only that you carefully hear the direct and indirect communications.

Mediation also provides a great opportunity for lawyers and their clients to fully engage and to evaluate their lawsuit. No lawsuit is perfect, and every case has its own strengths and weaknesses. Good attorneys educate their clients as to both the good and the bad in litigation. Because mediation is free from the distractions and interruptions of normal life and business, it affords the lawyer an ideal time to discuss all aspects of the case with the client. This only works when the client is prepared to listen to the advice and counsel of the lawyer. Therefore, during the session, I strongly urge that clients listen to their counsel and understand the advice that is offered.

3. **Openness.** When mediation begins, the mediator is a newcomer to the dispute. The neutral’s job is to grasp, as quickly as possible, the positions of the parties, their needs, goals, and personalities, and the technical and legal claims which comprise the lawsuit. This learning curve is improved when the parties and their counsel are open, honest, and clear in their discussions with the mediator.

Because litigation is adversarial, the litigants usually withhold such candor from the opposing side, often out of a fear of showing “weakness” or revealing a critical trial strategy. However, for mediation to be fully successful, I contend that each side should be as direct and transparent as possible, when conferring with the mediator. Because such communications are privileged, the neutral will

not disclose private discussions intended for the mediator only. This openness assists the mediator in guiding the negotiations in a fruitful direction and avoids false starts and wasted energy.

For example, I recollect a case which involved a claim for injunctive relief against a drug manufacturer, based upon trademark infringement and unfair competition. Prior to mediation, the case had proceeded to a hearing on a preliminary injunction, and a very respected federal judge had denied the infringement claim. Counsel for the plaintiff had filed a motion for rehearing in an attempt to persuade the trial judge to reverse his carefully written opinion and order.

During the session, the attorneys and their clients spent hours debating the merits of the motion for rehearing, to such an extent that it frustrated any effort to address the options for settlement. After much of the day was spent, plaintiff's counsel requested a private meeting with me and disclosed that he actually felt that the motion for rehearing had no chance of success and that he had advised his client accordingly. Had he been open with me on that issue, at the inception of the mediation, much wasted time and distraction could have been avoided, and the negotiations would have improved.

4. *Relax.* As noted previously, litigation presents stress and hardship for most parties. This emotional baggage usually travels with the participants to the mediation conference. It is normal for many litigants to enter mediation with considerable worry and uncertainty about the process, and these concerns may hinder the negotiations.

I urge parties to be as relaxed and comfortable as possible during the mediation experience. The goal of mediation is always to help the parties—to facilitate their settlement efforts. Parties should understand that they are in control, and that no settlement can be forced upon them. Nothing happens at mediation unless the parties consent to it, and no legal rights or litigation opportunities are prejudiced by participation in mediation.

When these concepts are fully understood, the parties can relax and even enjoy the day; and the objectives of patience, listening, and openness have the best chance to emerge.

Conclusion

Mediation is a relatively new phenomenon, and its use will continue to expand in the future. In addition to the mediation of existing lawsuits, the legal system should encourage “presuit” mediation programs which address disputes before litigation is commenced. Other applications for community and public planning, international relations, and the resolution of political discord are likely to emerge.

It is my hope that this introduction to mediation will encourage the consumer to value the process and support its use for all types of conflict resolution. Because the rights of the parties are protected, the procedures are voluntary and non-adversarial, and results are often obtained quickly, this alternative offers many benefits over protracted and expensive litigation.

Mediation also harbingers an exciting opportunity for attorneys and the legal profession. For too many years, lawyers have been viewed by the public as the architects of senseless lawsuits. This perception has harmed the reputation and dignity of the judicial system. Mediation invites attorneys to tap their imagination, creativity, and problem solving talents. By transforming legal warriors into agents for peacemaking, we bring out the best qualities in clients, lawyers, and the entire legal system.

About the Author

Charles W. Ross, Esquire, has practiced civil trial law in St. Petersburg, Florida, since 1979. He received his undergraduate and law degrees from the University of North Carolina at Chapel Hill, earning Phi Beta Kappa honors. Mr. Ross obtained his mediation training at Harvard Law School, where he completed the Advanced Mediation Program for Lawyers. He has been certified as a Circuit and Federal Court mediator under the laws of Florida since 1996.



After a long partnership as a trial attorney in one of Florida's largest law firms, Mr. Ross founded Ross Mediations, where he devotes full time to his mediation practice.

He has been recognized by his peers as one of Florida's leading mediators, with a Martindale Hubbell rating of AV. Mr. Ross was also selected, by the Florida trial attorneys, for membership in Florida's Legal Elite and The Best Lawyers in America 2010.

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