MAKING AN EFFECTIVE PRESENTATION AT MEDIATION:
A Guide to Crafting and Presenting Your Preliminary Remarks

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A date has been set for your mediation. As a party to the dispute you have an opportunity to start the process by sharing your perspective through preliminary remarks spoken directly to the other side. Below you will find suggestions for preparing your presentation.

1. **Prepare, prepare, prepare:** This is a crucial day in the history of your dispute. By the end of the mediation process, you may well have negotiated a final and binding settlement agreement on terms acceptable to you. In fact, resolution is highly likely. Only a tiny minority of cases actually go to trial. Less than 1%. Accordingly, you want your opening presentation to be as effective and persuasive as can be. Experience teaches that the more you prepare, the better your presentation will be.
2. **Be sincere and true to yourself:** The goal of your opening remarks is to present yourself, explain your perspective and outline how you would like the matter to be resolved.
3. **Who is the audience:** Direct your remarks to the decision maker on the other side, not the mediator. The mediator does not make the decision nor impose a solution. Mediation settlements are entirely voluntary. To achieve an acceptable result, therefore, the parties must persuade each other, not the mediator. Let your opposing party know how the dispute has affected you and others. Only you and they decide whether the case settles and on what terms.
4. **Be concise:** Limit yourself to no more than 6 – 8 minutes. Practice delivering your remarks. If your presentation runs longer, shorten it.
5. **Make notes:** Some people find public speaking stressful. Notes, especially a list of bullet points, will help organize your thoughts, keep you steady and prevent you from forgetting important topics you plan to cover.
6. **Content - your "agenda":** What should you say? What is the essence of your side of the case? Your dispute has a story. Perhaps it is what you say to family or friends about what has happened. Confine yourself to a few key points at this stage. There will be ample time for details later. Your presentation should be a summary, an overview or preview, the big picture. Select a few significant thoughts you want the other side to take away from your remarks.
7. **Do not read your notes:** Deliver your comments and present yourself as you would if doing an interview or presentation. The goal here is to demonstrate your best self to the other side emphasizing your credibility and sincerity. Reading from your notes will not accomplish that goal.
8. **Make eye contact:** Look the person to whom you're speaking directly in the eyes. There's a reason we say, "the eyes are a window to the soul." We want to be believed.

We want to make a connection. Yes, even with the opposing party. Establishing a connection can help reach agreement. That requires eye contact. In this age of social distancing, of course, face-to-face eye contact is impossible. If you are mediating by Zoom, therefore, look directly into the camera on your computer.

9. **Use "I-words**": "I-words" describe how you feel about things. "I-words" are listened to and considered. No one can quarrel with how you feel. "I felt I was falsely accused," for example. "You-words" are received as accusations. "You knew I didn't do 'X'; but you wrote me up anyway." "You-words" trigger antagonism and escalate emotions. Escalated emotions hinder resolution efforts.
10. **Conflicting perspectives:** In most disputes, each side has its own perspective and will not be persuaded to change it. That limits your ability to persuade the other side that your story is more accurate, credible or true. Sometimes parties question each other's version of the story, suspecting a lack of honesty and good faith. That's one reason honesty and credibility are so important at the mediation table. That said, if your story is plausible and you appear credible, the other side is more likely to recognize the risk your version of the matter will be believed. Most people prefer to manage their risk than roll the dice and gamble on how a judge or jury might decide. The greater a party recognizes their risk, the greater the likelihood of resolution.
11. **The role of your attorney:** Your attorney may also make an opening presentation. Attorneys play a different role in mediation than the traditional zealous advocate you are accustomed to seeing. For purposes of mediation, each attorney approaches the process as a joint problem solver. Joint problem solvers try to learn all they can from the process. They seek to better understand where the other side is coming from. They do not try to score every point or refute everything with which they disagree. Joint problem solvers make reasonable concessions. They act diplomatically. Don't be surprised if your attorney appears more collaborative than you expected. They have not lost faith in your claims or defenses; they are being good mediation advocates.
12. **Listen, listen, listen:** One of the great benefits of the mediation process is the exchange of information concerning evidence, the plausibility of claims and defenses, recognition of legal hurdles, orientation of judge or jury, importance of documentation, the facts and risks, and more. If the dispute does not resolve, there is great value in knowing the other side's perspective on each subject. Do not dismiss what you hear out of hand. Listen carefully and consider what you hear thoughtfully. Learn all you can about what you're up against. If the dispute does not resolve, your attorney will be better prepared to present your claims and defenses. During mediation you may also learn what the other side is really after, which may be the most valuable information of all.
13. **Making use of what you learn:** Whether your dispute settles and on what terms is entirely up to you. You, that is, and the decision maker on the other side. The more information you have, the better able you will be to exercise good judgment. If you should learn what the other side really wants, you can determine whether you are ready to offer it and on what terms. You will also have a better appreciation of the risks your claims or defenses present. The more you know and understand the better able you will be to decide, in consultation with your attorney, whether to manage your risks and reach an agreement with which all sides can live.