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Quick tip: Visual aids should be used at mediation, not just trial

Lawyers should use visual aids and key evidence during mediation to clarify their cases early and increase the likelihood of early settlement by helping all sides realistically assess trial risk.

By Dennis J. Landin

When I was on the bench, I saw some very creative and persuasive visual aids that piqued the interest of everyone in the courtroom. What I did not see then and don't always see now as a mediator is their use during settlement discussions.

Attaching a timeline, glossary of terms, or a photo to your mediation statement will go a long way toward getting the mediator to better understand your case at an early stage. If a brief is not required, bring it to the session or learn how to "share" it on screen when appearing remotely. At a minimum, it will show the other side you are getting ready for trial.

I understand why one would be reluctant to start creating a PowerPoint presentation or detailed drawing when the trial is months away. On the other hand, there is usually something that you have received in discovery or drafted while working up the case that you can show the mediator.

When I ask attorneys if they have a chart or snippet of deposition testimony that zeros in on the best part of their case, they often say they don't want to make the session part of the discovery process. I remind them that whatever they show me will be for my eyes only. But as the mediation progresses, they come to understand that the opposing party may become less adamant about "putting twelve in the box" when he or she sees what



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will be put before the jurors' eyes before deliberations begin.

Also, sharing a summary chart, a drawing or whatever you think will get the jurors to go your way also helps if and when a party wants to know what the settlement officer really thinks about the strength of the case. Why not run it by a neutral party who has been around the block a few times? It may not be as convincing as you think.

We all know that there is more than a 90% chance that your case will be settled rather than presented

to a jury. Sadly, in some cases this does not happen until the jurors are assembling outside of the courtroom and after many late nights of work. Showing more of your cards at a mediation or settlement conference increases the chances of a resolution well before then.

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