



# MANAGING THE MULTIPLE PERSONALITIES OF CONSTRUCTION DISPUTES

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# CONSTRUCTION CASES ARE ABOUT PEOPLE

## A SMALL COMMUNITY

The same attorneys, adjusters, contractors, experts, and claims professionals appear repeatedly. Many arrive with pre-existing relationships, assumptions, and reputations — and attorneys often know who the difficult personalities are before mediation begins.

## THE MEDIATOR'S PERSPECTIVE

Cases rarely arrive in mediation solely because of legal issues. Usually there is a communication breakdown, a trust issue, an emotional component, or competing business objectives. The mediator's role is to soften messages, mitigate unproductive conflict, and build strategic alliances.

- ❏ Use your mediator and stay focused on your own goals. Do not take the bait when personalities threaten to derail negotiations.

# EMOTIONAL OWNERS AND HOMEOWNERS

- Single-family & multi-family disputes
- Commercial, industrial, and public works
- "Dream home" expectations
- Personal investment in the project
- The desire for accountability rather than resolution
- HOA and insurance



# BUSINESS AND RELATIONSHIP CONFLICTS

- Contractors versus owners
- Architects versus contractors
- General contractors versus subcontractors
- Repeat-player disputes within the construction community
- Insurance



# CULTURAL AND COMMUNICATION CHALLENGES

- Language barriers
- Different communication styles
- Assumptions and misunderstandings
- How communication failures escalate disputes



# THE REALITY OF WITNESS PRESENTATION

- Jurors evaluate people, not just opinions
- Getting stuck on your own expert's tunnel vision
- Difficult witnesses and their impact on case value
- Why mediators pay close attention to personalities during joint interactions



# WHEN YOUR OWN CLIENT IS THE PROBLEM

- Emotional decision-making
- Unrealistic expectations
- The client who wants to "teach someone a lesson"
- The client who has effectively taken over the litigation
- Who is really making the decisions here? Are there other people involved?



# FAMILY DYNAMICS AND HIDDEN STAKEHOLDERS

- Spouses
- Business partners
- Investors
- Extended family members or friends
- Other interested parties influencing settlement decisions behind the scenes
- Insurance
- Fraud claims create another layer of complexity regarding exposure and coverage



# SO WHAT DO I DO?

## PRACTICAL DO'S AND DON'TS

# IDENTIFY THE DECISION MAKERS

1

## WHO HAS SETTLEMENT AUTHORITY?

Distinguish formal authority from informal influence. Not everyone at the table controls the outcome.

2

## WHO INFLUENCES THE DECISION?

Family members, silent partners, and claims professionals with internal approval structures all shape what gets accepted.

3

## WHAT DOES EACH STAKEHOLDER WANT?

Understanding each party's true interests — not just their stated position — is essential to finding a path to resolution.



# SHARE INFORMATION EARLY AND OFTEN

## EXCHANGE BRIEFS BEFORE MEDIATION

Information moves negotiations forward. Exchanging briefs with sufficient lead time forces parties to confront the other side's arguments and weaknesses. Surprises create distrust and stall progress. Share the opposing brief with your client to develop realistic expectations.

## TELL THE MEDIATOR THE REAL STORY

What isn't in the brief matters just as much. Give the mediator context on:

- Client-control issues and personality conflicts
- Bad relationships with opposing counsel
- Missing documents or coverage concerns
- Hidden obstacles to settlement

*"What isn't in the brief that would help me help you settle the case?"*

# CIVILITY, FOCUS & JOINT SESSIONS



## CIVILITY MATTERS

Construction litigation is a repeat-player environment. Reputation follows everyone. Don't take the bait — let the mediator deliver difficult messages and focus on resolution, not winning arguments.



## KEEP EYES ON THE GOAL

Common distractions — personality conflicts, historical grievances, the desire to punish — increase litigation costs and impede settlement. Don't give up too early; you may be closer than you realize.



## JOINT SESSIONS: PROS & CONS

Joint sessions humanize participants and allow witness assessment, but risk escalation, grandstanding, and entrenched positions. Difficult personalities can dominate and derail progress.

# BE CAREFUL WHAT YOU SAY — AND WHAT YOU PROMISE

"Be careful what you tell me — I might believe you."  
— *The Randy Wolfe Principle*

Overstating your position, setting artificial settlement ceilings, and making commitments that limit flexibility all undermine your ability to reach resolution. Mediation is fluid — positions evolve as information develops.

## THE KENNEDY RULE

"Don't hold out for your best deal. You'll miss a lot of good ones along the way."

Recognize a good settlement opportunity when it appears. Balance principle against practicality and avoid the dangers of over-negotiating.



# MANAGING EXPECTATIONS & NON-MONETARY SOLUTIONS

## PROACTIVE CLIENT EXPECTATION MANAGEMENT

- Share opposing briefs with your client
- Discuss weaknesses as well as strengths
- Explain litigation risks realistically
- Avoid falling in love with your expert
- Start pre-mediation communications early

## BEYOND DOLLARS

Non-monetary solutions are often overlooked but can unlock resolution:

- Repairs and warranty work
- Future project involvement
- Business accommodations

The Right to Repair concept offers creative paths to settlement — though repair solutions can succeed or fail depending on the parties involved.

# FIVE RULES FOR SUCCESSFUL RESOLUTION

**01**

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## IDENTIFY THE PERSONALITIES EARLY

Know who is in the room and what drives them before mediation begins.

**02**

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## KNOW WHO ACTUALLY MAKES DECISIONS

Formal authority and real influence are often different people.

**03**

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## GIVE THE MEDIATOR THE REAL STORY

What isn't in the brief is often what matters most.

**04**

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## MANAGE EXPECTATIONS BEFORE & DURING MEDIATION

Realistic clients make better decisions at the table.

**05**

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## STAY FOCUSED ON RESOLUTION

Construction disputes are ultimately disputes between people. The attorneys who understand those dynamics achieve the best outcomes.

# THANK YOU. QUESTIONS?



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