

## **EFFECTIVE MEDIATION TACTICS USING TECHNOLOGY**

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CHAPTER ##?

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## EFFECTIVE MEDIATION TACTICS USING TECHNOLOGY

### I. INTRODUCTION

In El Paso County, the Council of Judges has promulgated a standing order that all non-Family Code civil cases must be submitted to mediation, "...ALL CASES SET FOR TRIAL AFTER SEPTEMBER, 2003, ARE AUTOMATICALLY REFERRED TO MEDIATION. THE MEDIATION PROCEEDINGS ARE TO TAKE PLACE NO LATER THAN 30 DAYS BEFORE TRIAL..."*El Paso County Local Rules, Rule 3.16 (B)*. I am sure other counties have similar requirements.

### II. SPEND SOME MONEY TO SAVE SOME MONEY

Some attorneys and their clients feel mediation is a waste of time and money and object and do not take advantage of a process that could actually save time and money.

#### A. HOW ABOUT JAZZING UP THAT MEDIATION?

Every mediator that I have used allows an opening opportunity for the various sides, usually 2 sides, and gives the parties between 15 and 30 minutes to introduce their perspective of the problem(s). This is where we have a great chance to give a broadside that will set the tone for settlement or continued litigation giving "our side" a psychological advantage.

#### B. PREPARATION.

I prepare for a mediation like I prepare for a trial. I start with my closing argument and I create a video presentation (Microsoft PowerPoint, Corel Presentations and/or

Pinnacle Studio). In this presentation, I install some of my smoking gun evidence, photos, documents, poetry, animations, video footage, etc. I said **some**. I never put all my aces on the table because I know that some lawyers and their clients are using the mediation process for discovery or as a dilatory tactic. So, I give the other side glimpses of what my part of the trial will be like.

Since the mediation process does not require that I strictly follow the rules of evidence I spice up my presentations with video/audio aids that focus the case quickly for my client's advantage. Some of the local mediators have LCD big screen projectors that you can plug your notebook computer into at their office. If enough of us request/use this equipment all mediators will supply it. LCD projectors are coming down in price and a decent one can be purchased for about \$599.00. It is a good idea to go to the mediator's office a couple of days before the actual mediation to make sure your technical tools mesh with hers/his. Make sure the mediator has a screen or take one with you and if you are using audio bring your own speakers.

#### C. "WHERE IS THE MONEY?"

In several mediations that I did in the last couple of years, in my opening presentations, I used dark, dismal scenes in the background with a subtle wind howling as I introduce my client's injuries in a set of photos that zoom and pan from all angles. I have placed the "forged" document in the presentation zooming into the erased and rewritten content comparing the true document to the changed one. Representing

the adult children of “the first marriage” I have beamed onto the screen the court appointed accountant’s report that shows the estate is missing \$178,000 and the next slide shows a motor home the widow owns that has an assumed value of \$200,000, then I show the widow’s sworn inventory that omits that asset. The next slide asks, “WHERE IS THE MONEY?” I have put up portions of a jury charge with the questions slowly being typed on the screen by PowerPoint and the answers that I feel a jury will give me at trial flying or bouncing in as I direct. I have had the Star Spangle Banner playing subliminally in the background as I introduce issues about the constitutionality of a misused statute that has victimized my client

### III. MEDIATION IS NOT TRIAL.

I am sure a judge would not allow all of these audio and visual aids IN COURT but they can be removed for trial use and the same evidence can be effectively presented at trial without the embellished material. But, my purpose at a mediation is to settle the case with the best deal I can broker for my client taking into consideration what I think a judge or jury will render, so, I plant seeds to accomplish this.

### IV. CONCLUSION. MULTIPLE TARGETS.

Of course, the mediation process is designed to draw the parties to the middle, but, besides the opponent, I have another target that I focus on at the mediation, and, that is the opponent’s lawyer. Giving that lawyer a glimpse of what the fact finder will see from our side at trial begins a thought process on the other side as to how they can present their material using technical tools to

respond to our tools. Many attorneys don’t (**DO NOT**) use technology or they purchase it from expensive professionals. Technology is now at a point where it is easy and inexpensive to use. Would you rather point to a small paper image exhibit or have preprogrammed arrows, RED arrows, flying in over and over again from many different angles to the “smoking gun” on the 4 x 8 foot projected image on a screen.

For examples go to <http://www.elpasolaw.com> and click on the **LPM HOUSTON 2009** Tab on the left side of the page and cruise through the content.