

# Five Things to Help Your Mediation Succeed



**GINO BROGDON JR.**

## Try as Many Cases as You Can

I grew up idolizing the legal gladiators who seemed to slay giants endlessly in the courtroom, and as a young lawyer I wanted to “cut my teeth” and reach my maximum potential—financially and intellectually as soon as I could. I had no idea how mediation would become a critical tactic for effectively “trying” any case—even if it meant setting foot in a courtroom less often.

Don’t get me wrong. Whether it’s a new issue for the court, or one side views the case in a totally differently than the opposing side, many cases still and will always need the courtroom. Those of us who dreamed of making the courtroom our home will soon realize that most cases can be resolved through the mediation process. Due to a variety of factors, trial is not as economically sound an endeavor as it used to be, and there is still significant risk involved. Because the trial preparation and the mediation process are “close cousins,” focusing on effective mediation could save you considerable time and costs throughout the litigation process.

## Know Your Numbers

Early in my career, I wish I had taken mediation as seriously as I do now. Going into a mediation with a rough estimate of my client’s special damages was my first big mistake. While you may be able to get through a mediation or two based on your “rough” calculation, you could potentially



do a disservice to the client in multiple ways. First, you lengthen the duration of the mediation (and money spent) as both sides take time to agree on the valuation of the incident. Second, if you do not know the exact value of each component of your case, it is hard to set fair expectations for your client throughout the mediation.

Make sure you not only check your own numbers but confirm them with opposing counsel too. Enter mediation with the attitude that trial is on the horizon. With this in mind, bring with you to mediation a crystal clear understanding of the scope, opportunities and challenges that make up your position just like you would for trial. Knowing the exact valuation of damages and costs associated with your case saves you a ton of time, money and confusion.

## You Attract More Flies (and Money) With Honey

Mediating with a confrontational and uncompromising attitude seemed totally reasonable in my early days. How else could I truly be a zealous advocate? Experience teaches us that the definition of a zealous advocate changes depending on the case, client and circumstances. At mediation, you should be an advocate who fights to get the best results for your client instead of posturing so much it ultimately hurts your client.

At trial, confrontation is often necessary. In mediation, a confrontational disposition generally pushes you further from settlement. Also, it only creates more tension if the case isn’t resolved. It is critical to find a way to hold true to your position with fortitude and a little bit of grace.

## Trust the Process

Mediation can be frustrating! It is easy to get tired of waiting for opposing counsel to just be reasonable. I used to prepare my clients for mediation by saying, “if they don’t come to a fair number by lunch, let’s go.” Once I became a mediator, I was able to see firsthand how the decision to leave prematurely can hurt a case’s chance of settlement from the start.

The time and patience mediation requires is always fruitful. Working through each detail allows a client to think about their options and feel some control in an unstable

situation. The feeling of control is incredibly important in order to appropriately and ethically increase a client’s propensity towards compromise. Working through the details also allows each party to make a cost-benefit analysis on whether to try the case or come to an agreement. Performing that risk analysis with an open mind and in a controlled environment is a major advantage to mediation.

## Prepare, Prepare, Prepare

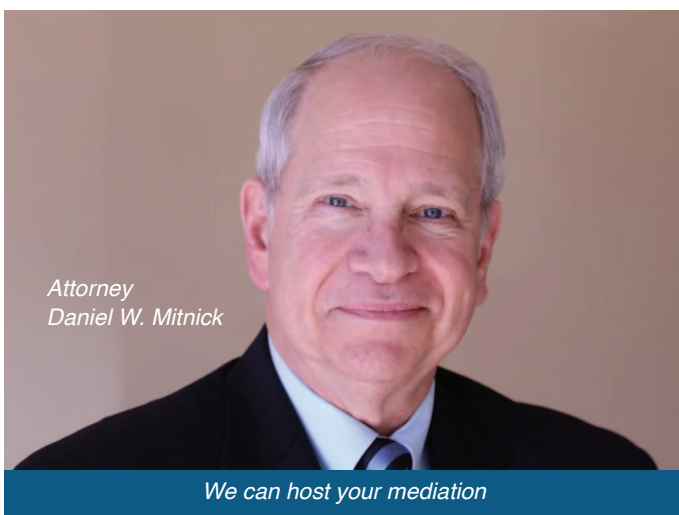
At trial, winning can be singularly defined as a judgement in your favor. At mediation, winning takes many forms. Defining your goal is the first step in preparing an effective mediation strategy. You can have a variety of goals including case resolution, understanding your opposing counsel’s disposition and their arguments, getting a mediator to plant a seed in your opposing counsel’s ear or getting a neutral value for the case. Once you have a goal in mind, don’t forget to select the right mediator and timeline for mediation.

Mediation preparation has two main steps. First, client preparation is purely maintenance of your client’s expectations and understanding your client’s needs. Some clients want you to talk strategy and numbers every time the mediator leaves the room. Others will leave their case in your hands and won’t say a word. Regardless of what type of client you have, ask them what they want and respond to those needs appropriately.

Case preparation is equally important. You must be prepared to prove or disprove each element of the claim because a good mediator will push you on how you intend to ultimately prove your position at trial. Being a good advocate requires you to have a well thought out answer to your mediator’s potential inquiries.

Surely, mediation is a great tool in litigation. And if you have the right mediator, whether the case settles or not, you almost always leave with information to push your case forward. Regardless of side, it is invaluable to come to a mediation in good faith and with fair expectations, especially when the other side is being unnecessarily difficult. Consider these tips in your next fight, whether you pursue justice in the courtroom or in the conference room. ☺

**GINO BROGDON JR.** is a mediator with Miles Mediation & Arbitration Services LLC in Atlanta.



Attorney  
Daniel W. Mitnick

*We can host your mediation*

With over 20 years experience I am well qualified to mediate your domestic or civil cases, with special training in domestic violence. It has always been my goal to reach a fair and equitable settlement in all my cases and now I am available to assist you with yours.



770-408-7000

dmitnick@mitnicklaw.com