Managing expectations in mediation

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Mediation can be a challenge for clients to understand, especially those who have never before experienced it. It looks nothing like the adversarial process that they see in television courtroom dramas, which is the only thing they may have to compare it to—"Perry Mason" moments just do not happen in mediation. It does not necessarily have the finality of the courtroom or arbitration, either. This makes managing client expectations all the more difficult.

Two of the more important expectations to address are those concerning what the results of the mediation might be and what behavior to expect from the mediator. The following checklist should help manage these critical expectations for a first time mediating party, which should lead to a more comfortable party, which should lead to a better result:

1. Be prepared to compromise. Compromise is the fuel that drives the mediation engine.

2. Do not go into mediation with a drop-dead settlement number. This leads to a near certainty of either settling for too much or too little. Let the process work. The result will be much more palatable.

3. Be prepared to be disappointed in the short term and for buyer's remorse. Rarely does everybody come out of a mediation smiling. Any pain will pass—usually quickly.

4. The mediator is being just as hard on the other side in the breakout sessions as he or she is being on you.

5. The mediator's job is to settle the case, not necessarily to do justice. If you feel you are being pressured, or things are moving too fast, speak out.

6. Listen carefully to the other side's side of the dispute—you may learn something valuable.

7. Do not underrate stamina and patience. Mediation is a marathon, not a sprint.