

OPENING STATEMENTS IN MEDIATION

*NOTES FROM A PRESENTATION TO MEDIATION SKILLS SEMINAR
AMERICAN ACADEMY OF ADR ATTORNEYS
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DES MOINES, IOWA*

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OPENING STATEMENTS IN MEDIATION

I. TO OPEN OR NOT TO OPEN?

WE BOTH KNOW THE CASE. WHY OPEN?

THIS IS NOT A TRIAL. WHY OPEN?

MY STYLE IS NOT TO OPEN. WHY OPEN?

MY CLIENT IS TOO UPSET. WHY OPEN?

MY CLIENT WON'T SIT IN THE SAME ROOM
WITH YOUR CLIENT. WHY OPEN?

THE ATTORNEYS DON'T LIKE EACH OTHER.
WHY OPEN?

IF YOU OPEN I'M GOING TO LEAVE? WHY OPEN?

BLAIR: WE OPEN TO INTRODUCE AND INVITE; TO PROJECT CALM AND SAFETY; TO EXPLAIN AND EDUCATE; TO SPEAK DIRECTLY; TO SET THE TABLE; TO SYMPATHIZE OR APOLOGIZE; TO EVALUATE RESPONSIBLY AND ARGUE THE MERITS WITH SINCERITY AND PASSION. WE OPEN BECAUSE WE OUGHT NOT FOREGO A REMARKABLE OPPORTUNITY FOR PERSUASION.

II. COUNSEL'S OPENING STATEMENT.

WE ARE HAPPY TO BE HERE.

WE WANT TO GET SETTLED.

THIS IS A GREAT OPPORTUNITY FOR BOTH SIDES.

IT'S RARE IN THE JUSTICE SYSTEM FOR US TO BE ABLE TO VISIT LIKE THIS.

MY CLIENT HAS WANTED TO TALK WITH YOU BUT COULDN'T BECAUSE OF THE LAWSUIT.

I KNOW YOU HAVE SUFFERED. WE HAVE NO DIFFERENCE OF OPINION ABOUT THAT.

I AM SORRY ABOUT YOUR SUFFERING. I TRULY SYMPATHIZE WITH YOU. ALL OF US ON OUR SIDE OF THE TABLE FEEL THE SAME WAY.

WE HAVE WORKED HARD TO UNDERSTAND BOTH SIDES OF THE CASE. OUR TRIAL PREPARATION IS DONE AND WE ARE READY TO GO TO TRIAL. HOWEVER, WE ARE ALSO READY TO NEGOTIATE OUR DIFFERENCES.

NOW HERE'S HOW WE SEE THE CASE....

OUR REAL DIFFERENCE WITH YOU RELATES TO FAIR SETTLEMENT VALUE. WE UNDERSTAND THAT THE WORLD LOOKS DIFFERENT DEPENDING UPON WHERE YOU SIT. YOU SEE IT ONE WAY; WE SEE IT ANOTHER. IF WE GET SETTLED TODAY IT WILL BE BECAUSE WE LISTEN TO EACH OTHER AND MOVE TOWARDS THE CENTER.

THIS WILL TAKE SOME TIME TODAY. GOOD THINGS USUALLY DO. OUR COMMITMENT TO YOU, AND TO THE MEDIATOR, IS TO KEEP WORKING HARD, AS LONG AS IT TAKES, TO GET SETTLED IF WE POSSIBLY CAN.

III. MEDIATOR'S OPENING STATEMENT.

THE GUIDING PRINCIPLE FOR MEDIATORS IS THIS: *COUNSEL MAY WAIVE THEIR OPENING STATEMENTS, BUT THEY CANNOT WAIVE MINE. I WANT TO TALK WITH THE DECISION MAKERS, NOT FOR THE JOY OF LISTENING TO MYSELF BUT TO OPEN RELATIONSHIPS AND BUILD CREDIBILITY. I WANT THE DECISION MAKERS TO TRUST THE PROCESS. I DO THIS BY SHOWING THEM THAT I TRUST IT MYSELF.*

LET'S GO AROUND THE TABLE AND SAY WHO WE ARE AND WHERE WE COME FROM AND WHAT OUR JOB IS TODAY.

NOW LET ME INTRODUCE MYSELF TO YOU....

I'M GLAD TO BE WITH YOU TODAY. I LIKE THIS WORK AND I'M LUCKY TO DO LOTS OF WHAT I LIKE TO DO.

I WANT YOU TO GET SETTLED. THAT'S WHY WE'RE HERE, NOT JUST TO DO THE DANCE BUT TO GET ALL THE WAY HOME.

I THINK WE CAN GET SETTLED TODAY IF WE'RE SMART AND WORK HARD AND STICK WITH IT. THAT'S WHAT WE WILL DO.

I WANT YOU TO KNOW THAT TODAY MY WHOLE ATTENTION IS ON YOUR CASE. I HAVE NOWHERE ELSE I WANT TO BE BUT HERE. I'M THINKING ONLY ABOUT YOU GETTING SETTLED UP AND YOU GOING HOME MUCH HAPPIER THAN YOU ARE RIGHT NOW.

THIS WILL TAKE SOME TIME, MAYBE TWO OR THREE HOURS, MAYBE FIVE OR SIX, MAYBE ALL DAY. IT TAKES TIME TO COOK UP A GOOD FAIR DEAL, AND I'VE LEARNED NOT TO RUSH IT. DO ALL OF YOU HAVE THE TIME NECESSARY TO STICK WITH THIS JOB THROUGH THE DAY?

YOU ARE FORTUNATE TO BE REPRESENTED BY VERY FINE ATTORNEYS. I KNOW THEM AND ADMIRE THEIR WORK. YOUR ATTORNEYS SENT ME SOME BRIEFING MATERIALS WHICH I HAVE STUDIED. I SEE THE DIFFERENCES, BUT I SEE ALSO A GREAT OPPORTUNITY TO GET SETTLED.

MOST CASES SETTLE. THE REASON IS THAT MOST PEOPLE WANT TO GET SETTLED. THEY WANT TO REACH A FAIR DEAL AND GO HOME. THEY WANT TO AVOID THE RISKS AND COSTS OF TRIAL. THEY WANT IT DONE.

TRIAL COSTS ARE NOT JUST MONEY. TRIALS HAVE A HUMAN COST TOO. TRIALS ARE HARD ON PEOPLE, VERY HARD. THEY DON'T CALL IT "TRIAL" FOR NOTHING. IT'S A DIFFICULT THING TO GO THROUGH.

LET ME PUT IT THIS WAY. CAN YOU IMAGINE YOUR WORLD IF YOU DIDN'T HAVE THIS LAWSUIT TO WORRY ABOUT? WHAT WOULD IT FEEL LIKE TO SETTLE THIS CASE TODAY AND WAKE UP TOMORROW MORNING WITHOUT THE LAWSUIT LOOKING YOU RIGHT IN THE FACE? HOW WOULD YOU FEEL? I THINK YOU KNOW. YOU WOULD FEEL GREAT.

BUT IT'S GOT TO BE A FAIR DEAL, FAIR BOTH WAYS. PROBABLY NOT THE DEAL THAT EITHER SIDE WANTED BEFORE YOU GOT HERE, BUT STILL A FAIR DEAL THAT YOU CAN SHAKE HANDS ON AND SAY, "WORKS FOR ME."

SO LET'S GO TO WORK. WE'LL SPLIT UP NOW FOR SOME SEPARATE AND PRIVATE TALK. I WILL KEEP PRIVATE TALK PRIVATE. I'LL GO BACK AND FORTH BETWEEN YOU. I'LL BE YOUR HONEST BROKER AND WE'LL WORK HARD AND GET THIS DONE.

WE WILL HAVE SOME LUNCH BROUGHT IN BETWEEN 12 AND 1, MOSTLY BECAUSE I LOVE A GOOD CHEESEBURGER, BUT ALSO BECAUSE LOTS OF CASES SETTLE RIGHT AFTER LUNCH. SO WE'LL SET THE TABLE THIS MORNING, HAVE A NICE LUNCH, THEN GET SETTLED THIS AFTERNOON. THAT'S THE PLAN.

IV. FIND YOUR OWN VOICE.

CONSIDER THE ABOVE.

THE WORDS NEED TO BE YOURS, NOT MINE.

IT NEEDS TO SOUND LIKE YOU.

DO IT YOUR WAY.