

Effective Advocacy in Mediation

By Leslie A. Berkoff

Mediation is a collaborative process that allows parties to resolve a pending dispute in a manner that is far more flexible than that which can be achieved under a court decision. Advocates play a critical role in ensuring that the process achieves a positive result for the client. Here are some key takeaways that advocates should keep in mind.

The advocate's role begins with the selection of the mediator. This decision should not be taken lightly, as this can be the key in part to achieving a good result. Advocates should interview the mediator, as well as the request that the mediator provide recommendations. It is important to consider the mediator's personality traits to ascertain if they are a good fit for the matter at hand.

During pre-mediation calls, your goal should be to educate the mediator so that they have all the key facts and case law. The more the mediator



knows and understands about the facts, the more effective they can be. It is important to convey any concerns your client has which could impact the process; identifying possible key stumbling blocks or highlighting certain 'personality' issues.

When preparing a mediation statement, be sure it is not simply a regurgitation of the arguments

contained in the pleadings or a brief on the law in the area. The pre-mediation statement should be a settlement-focused document designed to educate the other side on the key strengths of your case, factually or legally, so that they enter the mediation in a settlement-focused frame of mind. This may be the first time the other side is learning your key arguments, your interpretation of the facts or case law. In fact, if the mediation is occurring pre-discovery, the other side has little information to balance their own views of the likelihood of success for their side or yours.

Additionally, be sure that in advance of the mediation that the client is educated as to how the process will work so they are properly prepared for the day's events. While you may have participated in multiple mediations, most likely your client has not.

Finally, prior to the mediation, you should also be sure that your client has crystallised his or her goals or wish list in advance; specifically what the client really wants, or needs to get out of the mediation. You should be certain that the right party or parties are coming to the mediation.

GGI member firm

Moritt Hock & Hamroff LLP

Law Firm Services

Garden City (NY), New York (NY), USA

T: +1 516 873 2000

W: www.morithhock.com

Leslie A. Berkoff

E: lberkoff@morithhock.com



Leslie A. Berkoff

Moritt Hock & Hamroff is a full-service commercial law firm providing a wide range of legal services to businesses, corporations and individuals worldwide. The firm has 19 practice areas and offices in Garden City, NY, and New York City, NY, USA.

Leslie A. Berkoff is a Partner with the firm and chair of its Bankruptcy practice group. She concentrates

her practice in the area of bankruptcy representing a variety of corporate debtors, trustees, creditors and creditors' committees, both nationally and locally.



**Moritt Hock
& Hamroff** LLP
ATTORNEYS AT LAW