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REASONS FOR USING MEDIATION BESIDES SETTLEMENT

1. Persuasion may be a trial lawyer's most important job skill. Never pass up a chance to make an opening statement at mediation that will (unfiltered by the opposing party's lawyer) illuminate the strengths of your case, and perhaps the weakness of theirs. The tone is different from trial. Make it compelling, persuasive, but non incendiary. Offer conciliatory remarks. Some of the issues you address may be the non legal ones that often lurk below the surface. The form should set out a story or narrative. Use visual aids as necessary.

2. Resolve part of the case, if not all. Sometimes during mediation parties understand that the plaintiff will be able to establish liability, but they disagree on the amount of damages, or which defendant will pay what damages. The door is open for negotiation.

3. Nobody loses in mediation. There is no verdict. You win if you resolve it; you win if you close the gap. If you attempt to address your client's concerns quickly in mediation to try to save costs, even if there is no agreement, you win.

4. Mediation puts everyone's creative talents to the test. Find out what your client really wants and focus on those goals. It might mean they want the money fast, or an apology; it may mean they do not want a trial, or they are too fragile to handle one.

5. Avoid bad stuff. That would be bad precedent, bad results, bad juries and bench trials, bad disclosures, bad hair days.

6. Get to the heart of it. Litigation can bog everyone down in procedure. Mediation gets things moving. At the table, you can narrow or focus issues with an opponent that has proposed every theory of recovery imaginable. Filing motions for more definite statement, etc. are time consuming for everyone.

7. Insulate yourself from bad faith claims. If you engage in mediation without a settlement, and a bad verdict appears down the road, you have proof that you attempted to resolve the case in the best interest of your client.

8. You can "discover" in mediation, especially helpful for small cases so they settle early. You will learn information that will assist in a proper assessment of the relative merit of the parties' positions, and the settlement value of the case. Most of the favorable and unfavorable information will surface in discovery and at trial anyway, so there is no real advantage to delay. In many cases there is too little money at stake to warrant the expense of full discovery. You can observe how the other party will impress the judge or jury, and with the mediator, you can get an independent assessment of your own client as a convincing witness.

9. Resolve real discovery disputes, especially e-discovery questions. Motions and memoranda can be expensive to research and produce, and may sit for months before a ruling. Plus, all the rules say, "Cooperate." You look competent to the court if you resolve these issues on your own.

10. Work out a procedural schedule in a complex case: experts, depositions, timing.

11. Use the mediator. A neutral can help communicate creative proposals, disclose bombshells, filter information. Know your mediator. You may want to have a discussion with her or him prior to the mediation to enhance time at the table.

12. Who are the parties in interest in multiple party cases? Mediation may help to determine additional parties and how to bring them in. Mediate to determine what percent each defendant will pay in a multi party case where there is little question about liability.

13. Parties like to tell their stories. To some, this is the most important mediation ingredient. Talking helps parties get out a lot of what might have settled in: anger, revenge, sadness. It can help them move toward the future instead of staying stuck in the past.

14. Nobody has to give in first. With mediation, the give and take can be smooth, simultaneous, and presented at the same time. A mediator's proposal is an option. All this saves face.

15. There is no doubt that mediation in the early stages of litigation, or before litigation is initiated, saves time, money (in experts, document preparation, accident reconstruction, research, trial time), and stress. This is true for both clients and their lawyers!

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