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# DWF Mediation Seminar

*How to prepare effectively for and represent a client in mediation*

Monday, 27 April 2015

***Welcome!***



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# 1. Preparation for mediation

What needs to be done:

*purpose, real needs, risk analysis, BATNAS/WATNAS,*
*multi-faceted matrix, other side's shoes – concerns, needs, options, alternatives,*
*common ground? mutual interests?*

– and how to maximise the impact of your preparation:

*language, communication, documents, summaries, set the tone,*
*be and keep client informed*


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# 2. Engaging with the other solicitor

- Before and during the mediation day:

  *Keep in touch, take initiative, work together, joint summaries?*
  *- see them as partners, openness usually works*

- How to get them to participate at all?

  *understand their situation, their clients, AARREE, explain benefits, interests not positions*


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# 3. Effective representation

- What is good advocacy in mediation?

  *purpose, clarity, precision, non-adversarial, dis-passion, preparation, acknowledgment of risk, two sides, respect, courtesy*

- Whether to do it with or without counsel

  *Pros? Cons?*


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# 4. Making best use of the opening two hours on the day

- Initial meetings
- Breakfast / informal gathering
- Client/client meeting
- Solicitor/solicitor meeting
- Opening presentations?
- Exchange of information
- Use of visuals
- Taking stock
- Combination of private and plenary – different combinations of meetings


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# 5. Engaging with the mediator

- What works and what doesn't?
- Do you need to influence the mediator? If so, how?
- What do you tell him or her?
- *Key: openness, judgment, trust, professionalism, courage, independence*


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# 6. What if the other side's lawyer appears less than competent – or difficult?

"My incompetence will become the basis of your appeal."



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# 7. Use of experts?

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# 8. (Apparent) Impasse?

- Concessions?
- Bottom lines?
- Big picture – balconies and precipices
- BATNAS / WATNAS
- Risk analysis – decision trees?
- Multiple factors


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# 9. Handling difficult situations

- Personality clashes
- Decision-makers not present
- Other side making threats
- Tensions within the team
- Voices outside the room
- Cultural, ethical and gender issues, etc


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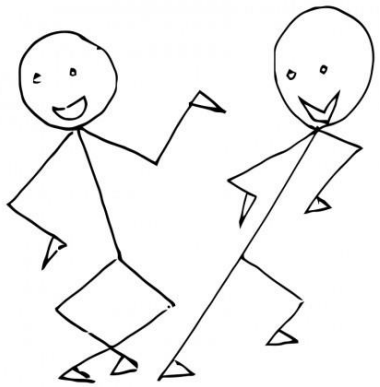
# 10. Making and receiving offers

*The dance……*





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# 11. Persevere, be patient….

*"Patience, persistence and perspiration make an unbeatable combination for success"*

**Napoleon Hill**



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# 12. Drafting the resolution agreement

What to think about:

- *Prepare in advance*
- *Think of all the angles*
- *Don't leave till the end*
- *Draft like any other contract*
- *Take time*
- *Work collaboratively*
- *Don't nit-pick*


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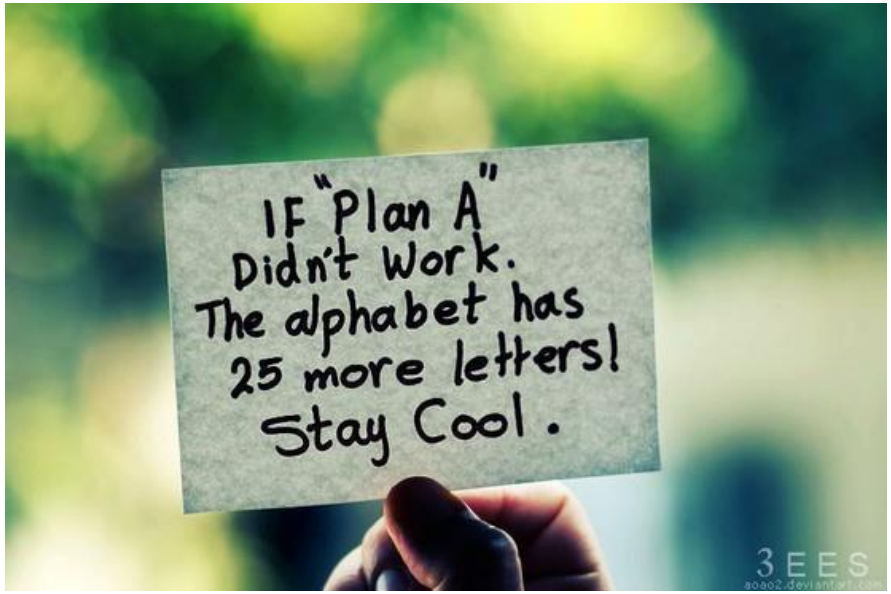
# 13. If there is no resolution….

*Don't give up… persevere*





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# Further Resources

- Core Newsletter
- A Mediator's Log
- Blog
- Resources page
- www.core-solutions.com

Thank you for welcoming me!


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