

The 10 Commandments of Mediation

By Don Gregory

As more lawyers and clients are dealing with mediation on a regular basis, these “TEN COMMANDMENTS” might come in handy when dealing with a problem of biblical proportions.

- 1 Thou shall not wait too long to mediate.**
Many of the advantages of a negotiated resolution dissipate with the passage of time. The sooner you resolve, the sooner the parties can get back to their core business.
- 2 Thou shall expect to avoid legal fees and uncertainty if a settlement is reached.**
All serious disputes involve a lot of legal fees, time and worry, all of which can be terminated when the dispute is resolved.
- 3 Thou shall not forget your people skills.**
A mediation is no time for “table pounding” and offending the other side. You need their respect, and likeability never hurts.
- 4 Thou shall keep an open mind.**
You need to listen to the other side’s concerns, and the mediator’s assessment, and leave preconceived notions behind.
- 5 Thou shall not negotiate with the mediator.**
If you are not “shooting straight” with the mediator, you are only hurting the mediator’s chances of securing a resolution – which is why you are there.
- 6 Thou shall be a problem solver.**
Anyone can take a position and argue why it is right. Real value is provided when one brings experience and judgment together to solve a problem.
- 7 Thou shall not expect to win.**
If either – or both sides – expect to win though capitulation of the other side there will be no reason to settle.
- 8 Thou shall strive to be creative.**
Some of the best settlements involve some creativity. Thinking about what the other side needs that is not too tough for your side to swallow is a good place to start.
- 9 Thou shall not bring a firm bottom line to the mediation.**
You need to have flexibility and reflect the dynamics that occur in the mediation. Having the real decision makers present throughout is the only way to go.
- 10 Thou shall expect a fair settlement “when both sides are equally displeased.”**
A settlement of a tough case typically only occurs when all involved have stretched their comfort zone as far as they can stand.

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