



WHAT ARE THE TOP SIX THINGS TO CONSIDER WHEN HIRING A MEDIATOR?

Erica B. Garay Provides Valuable Input on Mediation Process

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1. What background does the mediator have?

Mediators can be lawyers, accountants, and even social workers. If you have a dispute concerning businesses, employment, or trusts and estates issues, you should consider whether it is important for the mediator to have an understanding of the legal issues that arise if the matter goes into litigation.

2. What training does the mediator have?

There are many different organizations who provide training for mediators. Currently, to be on the court rosters in New York, the state courts and most federal courts require a minimum of 40 hours of training. The current state-court training includes role-playing and an interesting syllabus of materials that includes techniques that a mediator can use to break deadlock.

3. What style of mediation does the mediator use?

There are many different styles of mediation and some mediators incorporate different aspects of these styles during the mediation. Among the types of mediation are "collaborative," "facilitative," and "evaluative." You should feel free to inquire of the prospective what mediation style(s) would likely be used.

4. Is the dispute ripe for mediation?

Some people think a mediation can only be used once a dispute is in litigation, and even then, only after there has been a great deal of effort (and expense) expended on discovery (such as depositions). Others believe that mediation can be used early in a dispute – and thereby avoid the expense of litigation. For a mediation to be successful, however, it is important that enough information (including, sometimes financial information or business records) be available to the parties so that they can make an assessment of their claims and defenses and make an intelligent decision in deciding to settle. Even if the case is not in court, through mediation, you may be able to obtain the information that you need to have a successful mediation.

5. What qualities does the mediator have?

Among the good qualities in a mediator, you should look for patience, intelligence, a good listener, dedication, persuasiveness, creativity, reputation, training, knowledge of the subject area (or a willingness to learn), and a willingness to work with the parties (and their counsel) to find solutions.

6. Does the mediator have experience or knowledge of the subject matter?

While the most important asset is for the mediator to have training in mediation and mediation skills, there may be instances where it is a valuable asset for a mediator to understand the underlying subject area (especially if the case has complicated legal concepts, issues or defenses). However, counsel representing the parties in a mediation, will have the opportunity to educate the mediator. Having experience in a subject area (or type of dispute) may be valuable, as it gives the mediator a substantial knowledge base in how similar disputes can be settled.

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