

Kent Lawrence Mediator Style

At times attorneys will ask me what is my mediator "style" or "orientation" or "philosophy." My straight forward answer is "whatever it takes"* for the resolution of the particular dispute. I view my role as a facilitator of agreement between the parties. If I cannot, with great regularity, obtain that result (for which I am being compensated) I am not doing my job very well.

My obtaining a preliminary (pre-mediation session) understanding of the dispute greatly increases the likelihood of a fruitful and efficient mediation session taking less time than would otherwise be required. I obtain that preliminary understanding through examination of pleadings and other documents. I further my understanding at that time by consideration of issues, facts, and context of that particular dispute, which I (in part) obtain by *ex parte* telephone discussions with the attorneys. In those confidential discussions I attempt to ascertain the attorneys' views of the case, of the settlement posture, and of their clients (in so far as the attorneys can advise me), and the difficulties they foresee may be expected in the mediation session. From this I distill a strategic approach to the mediation session which will enhance the likelihood of reaching a dispute resolving agreement in the mediation session.

Often I am asked whether my "style" in the mediation session is "facilitative" or "evaluative". My answer: I certainly start "facilitative." Somewhere down the line, however, some form of "evaluation" in private caucus usually does occur. It often comes up in relation to "reality checking" as to subsidiary matters relating to the dispute. At times there is direct solicitation of "value." When that occurs, I may give my view of wide "ranges;" I never give my view as to "a number." I will use my substantive knowledge of things relevant to the dispute - whether it be law, the securities industry, the construction industry or otherwise. Again, whatever is useful in moving toward, and obtaining, an agreement. I am committed, as a mediator, to finding a substantive deal which results in settlement. This is in part accomplished by (1) communication which clarifies and focuses the overall situation and (privately with each party/counsel) each party's "problems" in the matter, and (2) orchestration of the mediation process from pre-mediation session *ex parte* communications through settlement conclusion and at least preliminary documentation of it.

**Within, of course, the bounds of confidentiality and honesty. I also require all attorneys, parties, or others at the mediation session to sign a "Confidentiality and Non-Representation Agreement".*