

REPRESENTING A CLIENT AT MEDIATION – THE PERSPECTIVE OF A UNITED STATES LITIGATOR

Date: Monday, November 21, 2016

Location: Tbilisi State University

1. What is my perspective? 5 min
 - a. A Partner at a law firm in Chicago
 - b. Represent Clients in Civil matters
 - i. Mostly in state court
 - c. Need to keep clients happy and resolve matters

2. Short Overview of the Civil Litigation system in the United States 10 min
 - a. Federal and State Court Systems
 - b. Number of Cases filed in 2015
 - i. Increase every year
 - ii. Costs increase every year
 - iii. Type of cases
 - iv. Where they are filed
 - v. Limited resources in the court system
 - c. How long does a case last
 - i. Stages of the case
 - (1) Pleadings
 - (2) Discovery
 - (3) Trial
 - d. Mediation as a manner of resolution
 - i. Required in some systems
 - (1) Federal Required

- (2) Some State Courts
 - (3) What is required
- 3. Are you going to mediate? 5 min
 - a. Is it required?
 - b. When is it done?
 - i. Before or after discovery
 - (1) Cost is the big consideration.
 - c. What does your client want to do
 - i. Need permission to discuss mediation with the opposing side
 - ii. Can this matter be settled without a mediation?
- 4. How will you mediate? 3 min
 - a. Free mediation / settlement conference with the judge
 - i. What does the client want to pay?
- 5. Who will be your mediator? 3 min
 - a. Big consideration
 - b. All parties must pick it together
- 6. What is your strategy for the mediation? 5 min
 - a. You and your client must be on the same page
 - i. Value of the case
 - ii. Hopeful outcome of the case
- 7. What will you provide to the mediator? 3 mi
 - a. A position statement
 - b. Documents
- 8. Managing your client's expectation for the mediation 7 min
 - a. Understanding the logistics of the process

- i. Joint session
 - ii. Opening statement
 - iii. The opposing party will be there
 - b. Understanding how the negotiations will proceed
 - c. Will your client have authority to resolve the case?
 - d. Confidential
 - 9. At the mediation 13 min
 - a. Be prepared for surprises
 - b. Be prepared to wait
 - c. Strategy for negotiations
 - i. Where do you start if you know where you want to end?
 - ii. When do you end the mediation
 - (1) A "final number"
 - (a) How long do you leave it open?
10. After the mediation 6 min
 - a. Did the case resolve?
 - i. Formal settlement agreement
 - ii. Dismissal of the case
 - b. Did the case not resolve?
 - i. Will there be additional negotiation?
 - (1) Who blinks first?
 - (2) Next steps in the case