

THE TEN COMMANDMENTS OF MEDIATION

Legal disputes are not new. A country lawyer once warned about the perils of litigation:

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser – in fees, expenses and waste of time.”

– Abraham Lincoln

In recent years many have turned to mediation in an effort to avoid the costs and hassles associated with protracted litigation.

As more clients and their lawyers are dealing with mediation on a regular basis, following these “TEN COMMANDMENTS” may help 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 through 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.