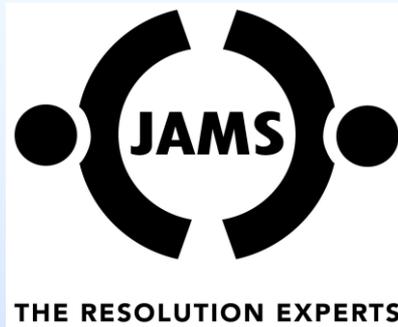


WELCOME!

**Today's ADR Practitioners Lunchtime
Webinar will begin shortly.**

For optimal viewing of the webinar,

- Close any other applications or programs you might have open, such as email, iTunes, instant messaging, etc. This will optimize the bandwidth available for this program.
- If you have any technical difficulties, please type them into the question box, and we'll try to help you resolve them.
- This webinar is being recorded. The link to it will be posted on MACRO's website as soon as it's available.



Mediator's Proposals

Useful Tool
Or Oxymoron



Mediator's Proposal

- Definition: A formal settlement proposal made by a mediator to all parties for the purpose of resolving the matter.
 - Made orally or in writing to all parties.
 - Confidential responses due back to the mediator, who tells the parties that the proposal has been accepted or not.
 - If not accepted, each party knows only what that party has decided.

Mediator's Proposals

- Possible Bases for the Proposal:
 - How a tribunal (court or agency) would decide
 - The mediator's sense of the "correct" answer
 - The mediator's sense of what she believes the parties will accept

Mediator's Proposals

- When Delivered?
 - When the parties request a proposal
 - At impasse
 - When the mediator believes the parties need a corrective nudge
 - When the mediator wants to go home for the evening

THE RESOLUTION EXPERTS

Mediator's Proposals

- How Delivered:
 - Probably best in writing, email or letter. Permits careful construction, and the mediator can ensure that she communicates the same message to all the parties.

THE RESOLUTION EXPERTS

Mediator's Proposals

- Are mediator's proposals always appropriate?
 - Not when other possible avenues remain
 - In a legal dispute, probably not if a party is unrepresented
 - Perhaps not if a party clearly has a weaker, less sophisticated, team

JAMS
THE RESOLUTION EXPERTS

Mediator's Proposals

- Benefits
 - The parties accept the proposal and the dispute ends.
 - Can be face-saving for one or more parties – no one has to confess error, but simply say, “The mediator made us do this.”
 - Can help with superiors not at table.

Mediator's Proposals

- Risks/Downsides
 - Removes some onus from the parties to develop their own resolution.
 - A party may spend the day planning for a 6:00 pm request for a mediator's proposal, and not commit to fully attempting to resolve the dispute without such a proposal.
 - The mediator risks making a proposal that is unworkable for someone or everyone and make things worse.

Mediator's Proposals

- Risks (continued)
 - A party may try to “game” the proposal by not responding to the mediator by the deadline provided and attempting to find out if the other side has accepted the proposal before responding.
 - Simply by making a proposal, the mediator may make it impossible to continue working with the parties if the proposal is not accepted.

Mediator's Proposals

- Ethical Issues

- Should the mediator await a request from one of the parties before raising the issue of making a proposal?
- Is it ethical for the mediator to originate the idea of a mediator's proposal?
- If one party says, “No” to the notion of a mediator's proposal, may the mediator make one anyway?

Mediator's Proposal

- Unanswered Questions
 - Can the mediator continue to work with the parties if her proposal is not accepted?
 - Should she try?
 - What considerations govern the answers?

THE RESOLUTION EXPERTS

Mediator's Proposals

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