



The Last Judgment by Wassily Kandinsky (1912) (public domain)

MEDIATION BEST PRACTICES

Hon. David S. Milton (Ret.) | Phyllis W. Cheng, Esq. | Gideon Kracov, Esq.
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THE SPEAKERS



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OVERVIEW

- I. Introduction to mediation
- II. How to achieve a productive mediation and tips before, during and after the mediation
- III. Examples of mediation in various types of disputes:
 - Employment, housing, and civil rights disputes
 - Tort, false claim, contract and property disputes
- IV. Questions and answers



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I. INTRODUCTION TO MEDIATION



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INTRODUCTION TO MEDIATION

The Model Standards of Conduct for Mediators

- I. Self Determination
- II. Impartiality
- III. Conflicts of interest
- IV. Competence
- V. Confidentiality
- VI. Quality of the process
- VII. Advertising and solicitation
- VIII. Fees and other charges
- IX. Advancement of mediation practice



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II. HOW TO ACHIEVE A PRODUCTIVE MEDIATION



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HOW TO ACHIEVE A PRODUCTIVE PRE-MEDIATION

- Identify the best time to mediate.
- Pick the mediator who is a good fit for your case.
- Participate in a pre-mediation conference with the mediator and opposing counsel.
- Prepare your brief and include relevant documents as requested and on time.
- Include your client and relevant decision-makers.
- Prepare your client for mediation, including discussing the costs and benefits of potential outcomes.
- Federal Rules of Evidence Rule 408 *et seq.* refresher.
- Use of FRCP Rule 68 Offers of Judgment.



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MORE MEDIATION TIPS

DURING AND AFTER THE MEDIATION

- Chit chat.
- Making the first offer.
- The power of “No.”
- Prepare for clarifying questions: How? What? Why?
- The power of reciprocity.
- Be in a problem-solving mode and stay open to different potential solutions.
- Mediation as status conference.
- Momentum and mediation.
- Strategize with your mediator and make the mediator your resource.
- Be patient.
- Follow through if case settles.
- Follow up if case does not settle.





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III. MEDIATION IN VARIOUS TYPES OF DISPUTES



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EMPLOYMENT, HOUSING AND CIVIL RIGHTS DISPUTES

- Case examples in employment disputes.
- Case examples in housing disputes.
- Case examples in civil rights disputes.



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TORT, FALSE CLAIMS, CONTRACT AND PROPERTY DISPUTES

- Case examples tort disputes.
- Case examples in false claims disputes.
- Case examples in contract and property disputes.



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IV. QUESTIONS & ANSWERS



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THANK YOU

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