

EARLY NEUTRAL EVALUATION

What is this? It has a nifty acronym (ENE) but what's all the fuss? The attention is because the federal court in St. Louis is now using ENE in selected cases and, just as important, ENE really works. Here is the quick take: ENE provides for a neutral to give all parties an evaluation at the beginning of an ADR session. The evaluation can be in writing or verbal and it can be delivered jointly or separately in caucus. Thereafter, the parties can chart their own course in reacting to the evaluation.

Most mediators make some sort of evaluation of the case and share some, or all, of that evaluation during the later stages of the mediation. But here's why ENE is different—the evaluation is formalized; no tiptoeing around or phrasing the evaluation in soft, equivocating language for fear of offending someone. The neutral is tasked by the court to give an early, honest evaluation presented without apology. For the parties, it can be extremely useful to hear a neutral evaluation, especially from a peer.

Recently, I served as an early evaluator in a case referred through federal court. I wrote about my experience in the Missouri Lawyers Weekly at: <https://molawyersmedia.com/2019/04/16/the-benefits-of-early-neutral-evaluation/>

Once, the evaluation is complete, the ENE can move in a couple of different ways. The neutral can offer these options to the parties: advise the parties the evaluation is complete and before you share it, offer mediation. The parties are anxious for a settlement before any possible bad news. If that is not the wish of the parties, then share the evaluation privately or in a joint session. After sharing the evaluation, offer to adjourn to consider the evaluation; or morph the session into a mediation especially if all the parties, possibly the adjuster, and attorneys are present.

As the mediator I like the hard and fast rule of ENE assigning the neutral to give an early evaluation, but the flexibility thereafter. The case I worked as an ENE neutral did settle and I can see how many cases might resolve earlier and on more realistic terms.