

MEANINGFUL MEDIATIONS WITH PRO SE PARTIES

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Can you mediate with pro se parties ... meaningfully?

40% of State Court litigants are pro se. (“Pro se” means individuals or corporations who do not hire an attorney to represent them in the dispute) 20% of federal court litigants are pro se. Staggeringly high numbers, right?

I mediate cases with pro se parties and, while some of my colleagues will not, I will. Pro se parties want and need to participate in mediation; it is part of the larger system of justice in our country so I accept mediations directly with the parties. However, my first comment to the pro se parties is that they should consider hiring a lawyer and I give them referrals to the State and local bar associations. Sometimes, the party cannot afford or find a lawyer willing to take the case and yes, this usually means the case is weak. No surprise--good cases are snapped up by good lawyers. Other pro se parties think they do not need legal representation. (Most times they are wrong.)

My second comment is to explain what mediation is and that, as a mediator, I do not legally represent them. This warning is repeated throughout the mediation process. Let’s say we get to an in-person mediation and neither side has a lawyer. I proceed similarly to a regular mediation, just more slowly and with more explanation. As a mediator I try to meet the parties where they are; meaning that if a party needs to talk and relate their story, I do my best to have the decision maker on the other side listen, and if that cannot happen, I step in and actively listen.

But what else makes the mediation meaningful? I like to take the legal terminology out of the conversation and rephrase it using non-technical language. I like to write out on a paper or white board, the points we discuss and, most significantly, the options open to the party. I quickly calculate possible damages—both high and low and give honest assessments to both sides. The parties hear from a neutral about the tough road ahead if they pursue this case without a lawyer. Rational pro se parties can digest the numbers and reach viable settlements. (Sometimes even irrational pro se parties can too!)

There are outliers; I mediated a substantial settlement for a long-term commercial tenant, acting pro se, whose lease had been terminated. Plaintiff had documents, photos and signed affidavits at the mediation; he had done his homework. He impressed me and, more importantly, he impressed the Defendant’s attorney and client rep. No question this was a meaningful mediation.

I am a mediator working as a peacemaker and if I meet the pro se parties where they are, treat the parties with respect and offer workable solutions, pro se parties can also find peace through mediation.