

The Agitator Mediator

Alan Nelson
Nelson Law Firm, PC

The Mediator didn't ask for our last standing offer and counter offer.

The Mediator didn't ask for a summary of our strengths and weaknesses. The Mediator didn't ask whether a trial date had been set, or any current procedural status. At this point, I make a disclaimer: Due to the procedural facts and my late arrival in the case, I didn't have any input into the selection of the Mediator or the agency that provided the Mediator.

The Mediator merely had us show up and ushered into a tiny room. Then the Mediator sat my client directly across a tiny table from the party she with whom she was aggrieved.

"Tell your story," he said to my client.

"I don't think we want to do that," I interrupted. "And I'd prefer we not do a full opening because I think that will entrench both sides and lower any chance of a meaningful negotiation."

The opposing attorney immediately agreed with me.

"No," the Mediator insisted. "I want to hear the story."

"I'll briefly summarize our position," I said.

"No," he said. "I want her to tell her story."

I gawked as did the other attorney.

"I want to," said my client, and my jaw dropped further.

She then launched into how the other party misspelled her name, a fact which had nothing to do with the case. I halted her. The Mediator began to admonish me. To my surprise, the other party began yelling at my client over a matter also unrelated to the case.

I turned to the other attorney. "This is not going to work."

"I agree," she said. "We have a proposal."

"Not yet," said the Mediator.

"What is it?" I said, ignoring the Mediator. She briefly summarized their offer over the Mediator's objections.

"We're interested," I said, after glancing at my client. "Let's talk."

The Mediator grew frustrated. "We need to clear the air and air our grievances," he insisted, almost yelling. "That's the only way we're going to be able to mend fences."

"Let's break apart," I said to the other attorney, who nodded and grabbed her client by the arm and yanked her from the room.

The Mediator sat still, quite stunned.

"This is not how it's supposed to work," he said.

"How long have you been with this agency?" I asked the Mediator.

"Seven years."

"How many mediations have you done?"

He stared at me.

"This is my first."

I gaped again. "What do you usually do?" I asked.

"Oh, I give seminars in leadership," he said.

"Oh?" I asked.

"Yes," he said. "I pick the top two or three leadership books on the bestseller lists, and build my talks around them."

I'm afraid I merely stared at him.

"Sometimes I work in stories about my wife's dogs," he added. "The personal touch really seems to work."

"Oh," I said. "Well, I think we'd be best served here if the other attorney and I worked this one out."

"But I'm really good at the touchy-feely stuff," he said. The long-ago image of Flounder from *Animal House* flitted across my mind.

"I bet you are," I lied. "But I think that's not going to work here."

Despite the Mediator, the case settled.