

December 2017

## A Mediator's Wish List

Now that the holiday season is in full swing, you are probably soliciting and reviewing your holiday gift-giving lists and figuring out the people you need to shop for. As it turns out, mediators are pretty easy to shop for because they all pretty much like the same thing. Here is my Holiday Wish List, which I think works for most any civil mediator (in case you are in a generous mood). *I wish:*

1. Attorneys would call in advance or send me a letter explaining what the case is all about, what the dynamics are between the parties and any other advance information that will help me understand what is going on. I rarely receive more than one position statement, so the early information going into the mediation is almost non-existent or one-sided.
2. When mediations are scheduled, the attorneys would set a time to meet with their clients well in advance to determine if there are unrealistic expectations and settlement control issues.
3. Judges would order the parties and their attorneys to plan for two mediations, not just one, and to set the first mediation relatively early in the life of the dispute. An early resolution increases client satisfaction and improves the public perception of attorneys.
4. The parties would schedule enough time to mediate without time pressures created by arbitrary travel plans. Thoughtful scheduling helps to avoid conflicts.
5. In commercial cases, attorneys would confer on the telephone in advance and talk about what a deal

Brought to you by  
**David W. Henry, Esq.**



Should you have additional inquiries, please contact:

**David W. Henry, Esq.**  
Shareholder  
Professional Liability Department

Florida Supreme Court Certified  
Civil & Appellate Mediator

Member, National Association  
of Distinguished Neutrals

Landmark Center One  
315 E. Robinson Street, Suite 550  
Orlando, FL 32801  
407.420.4418  
[dwhenry@mdwgc.com](mailto:dwhenry@mdwgc.com)

might look like if there are non-monetary components, and if there are non-parties who are not necessarily "in" the lawsuit but whose presence may be needed to create a deal.

6. The attorneys and their parties would remember that upsetting the other side in an opening statement is not conducive to a deal and that, at the end of the day, you have to persuade the other side to go along with you on some level in order to reach a deal. Don't put sharp pinecones on the path to resolution.
7. In multi-defendant cases, the lawyers and insurers, if any, would meet ahead of time to discuss what a deal might look like and to discuss proportional shares.
8. Judges would expedite discovery of key information in advance of mediation and require the parties to share a reasonable amount of information by encouraging written pre-mediation disclosures to one another for the benefit of the litigants, not merely for the mediator. Many times, clients do not really understand their own case, and seeing it through the eyes of the other side is extremely helpful.
9. Damage calculations and items of past or future damage were shared in advance, including in non-contingency fee cases the accrued attorney's fees to date, so each party will understand and have a chance to evaluate before the day of mediation.
10. We would implement changes in our litigation-biased culture to foster more expedient and cost-effective settlements earlier in the life of a dispute and include pre-suit mediation provisions in a wider array of agreements and relationships.

Ending a dispute for a client on satisfactory settlement terms may seem to counsel like just an ordinary day's work, but it is the best present you can give. Harmony, peace and freedom from conflict are intangible presents that may go unseen by the public, but as stewards of dispute resolution those presents are the best gifts we can deliver to litigants.

Visit our Firm's Website

<http://www.marshalldennehey.com>

**MARSHALL DENNEHEY  
WARNER COLEMAN & GOGGIN**

ATTORNEYS-AT-LAW

PA NJ DE OH FL NY

The material in this law alert has been prepared for our readers by Marshall Dennehey Warner Coleman & Goggin. It is solely intended to provide information on recent legal developments, and is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. We welcome the opportunity to provide such legal assistance as you require on this and other subjects. To be removed from our list of subscribers who receive these complimentary Mediation Notes, please contact [dwhenry@mdwcg.com](mailto:dwhenry@mdwcg.com). If however you continue to receive the alerts in error, please send a note to [dwhenry@mdwcg.com](mailto:dwhenry@mdwcg.com).

ATTORNEY ADVERTISING pursuant to New York RPC 7.1 © 2017 Marshall Dennehey Warner Coleman & Goggin. All Rights Reserved.