



INNOVATIVE ADR

INTERNATIONAL LLC SM

CHECKLIST: SELECTING A MEDIATOR

If your case is important enough for you to hire a private mediator to help you reach a settlement agreement, you owe it to yourself and your client to choose wisely. But how do you select the right mediator for your case?

As mediation has steadily gained popularity over the past 25 years or so, an increasing number of well-qualified, experienced mediators offer mediation services in an increasing array of cases. However, as the demand for mediation has grown, all varieties of attorneys and non-attorneys also now hold themselves out as mediators. Some of these less experienced neutrals are certainly qualified and effective, and others seek to enter the profession perhaps as a bridge to retirement, resume-builder, or part-time experiment.

Although the good mediators can make the process look easy, it often is not. Certain of the skills that make a mediator effective, developed and honed over years in the negotiation trenches, aren't readily apparent to the casual observer. The skill-set of a former judge or a veteran litigator is not necessarily the same as that of the effective mediator, either.

Of course, every conflict is different, and mediator selection can be case-dependent. Besides considering the substantive nature of your dispute, you should focus also on the personalities involved and how they will interact with the mediator. For example, you might be able to foresee a situation in which a "forceful" mediator will butt heads with a belligerent attorney, or perhaps you can predict that a party who is emotionally invested in his or her case will work well with a mediator who is a patient, analytical, active listener. Thinking about these intangibles before embarking upon the mediator selection process will be a valuable investment of your time.

So what do you need to know about potential candidates before engaging your next mediator? It can be helpful to ask around, research, and seek recommendations from trusted colleagues. Resumes, CVs, and bios highlight useful background and special skills. And then don't hesitate to go directly to the source and talk with the mediators themselves.

The following checklist is a good place to start. You should be able to ask your mediator candidates some or all of these questions, and they should have answers for you. If they don't have answers – or, in some cases, don't even understand your questions – you might want to look elsewhere:

Background and Experience:

1. How long have you been a mediator?
2. Approximately how many mediations have you *conducted as a mediator*?
3. Can you please summarize your relevant educational and work background?
4. What specialized mediation training do you have?
5. Of which mediation panels are you a member?
 - a. Is your panel(s) an established leader in the provision of mediation and alternative dispute resolution (ADR) services? How long has your panel(s) been in existence? What services do they provide to mediating parties?
 - b. If you are not affiliated with a panel, how are your cases administered?
6. What percentage of your professional practice is devoted to serving as a mediator or arbitrator?
7. Would you outline your leadership and other roles within local, state, national, and international mediation and ADR organizations?
8. Are you registered as a mediator with the Georgia Office of Dispute Resolution (GODR) or comparable entity of another state(s)?
 - a. NOTE: If a mediator indicates that he or she is “licensed,” or “certified” by the GODR, that isn’t accurate. GODR maintains a *registration* of mediators who meet certain basic criteria, but they do not *license* or *certify* neutrals -- and there is a difference.
 - b. NOTE 2: Mediator registration (and certification, where applicable) requirements will vary from state to state.
9. What are some of the ADR-related articles, podcasts, instructional videos, or other publications you have created or to which you have contributed?

Mediator Style and Philosophy:

10. How would you describe your mediation style and philosophy (facilitative, evaluative, transformative, etc.)?
11. What are your distinctive skills that make you a good choice as a mediator (unique work experience, language skills, specialized legal knowledge, etc.)? Why hire *you*?
12. If you actively practice law:
 - a. Who are your typical clients?
 - b. When acting as a mediator, how do you ensure that parties perceive you as impartial rather than “biased” in favor of the side you’d customarily represent as an advocate?
13. How do you, as a mediator, manage negotiating parties’ emotions underlying the mediated case?
14. In the face of conflict, how do you keep parties calm and focused on resolving their dispute?
15. How do you use the concepts of BATNA, WATNA, or both, to help parties evaluate settlement proposals?

Process Preferences:

16. How should parties prepare to mediate a case with you?
17. Do you like to receive pre-mediation memos or case summaries?

18. Do you use opening statements and joint sessions? Why or why not?
19. What strategies do you employ when negotiating parties are at impasse?
 - a. Do you like to mediate with brackets? If so, how and when do you use them?
 - b. Do you ever use a “mediator’s proposal” to break impasse? How else do you help negotiating parties overcome potential deadlocks?
20. How do you manage the mediation process when one or more of the parties does not speak English?
21. What has your experience been, as a mediator, when insurance adjustors or claim supervisors (or other client/decision-makers) are not active participants at mediation?
22. What is your level of experience and specialized training in conducting online dispute resolution (ODR) processes? How does mediating remotely by video or other technology impact the mediation process, and how does that impact affect how you mediate disputes?

Other Key Considerations:

23. What is your approximate track record, as a mediator, of successfully mediating cases to resolution?
24. What do you do if a mediation session does not result in settlement?
25. What are some of the more interesting and important trends or developments you see in the ADR sphere, and how do you use these to help parties today reach resolutions?
26. Are you keeping up with current and cutting-edge mediation experts or, even better, which innovative processes and techniques do you bring to your mediations?