Best Strategies In IP Mediation Mediator’s Perspective

WIPO-LES Webinar
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Purpose - set tone, put parties at ease, manage expectations
Scope - welcome/introduction, role of mediator, rule of the game, explain process, confidentiality, voluntary nature, authority

Presentation of Each Party’s Perspective - consider who goes first, who delivers, whether to interrupt/ask questions/nudge/control, necessary at all?

Summary - reiterate stated information, re-frame in neutral manner/language
Agenda - focus on issues to resolve dispute, parties participation, find common ground

Understand true nature of problem, determine real interests and needs, identify what really matters, direct communication between parties, use in conjunction with private/breakout sessions

Opportunity to make proposals to other party – face-saving/emotional issues in F2F, options for mutual gain, address parties’ interests, choice of words/language, when to commit

Reduce final settlement to writing, question whether to leave formal agreement to another day, drafting on-the-spot? quality of drafting, degree of details

Allows parties to reflect on position, discussion of confidential information, deeper exploration of issues & options, reality testing and consider alternatives (BATNA/WATNA), diffuse strong emotions, preparation/primer for direct negotiations, trust in mediator

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**MEDIATOR’S PERSPECTIVE**

- **Self-Perception of Role – Impact On**
  - conduct of mediator
  - response of parties (and therefore probability of success)
  - focus of proceedings

- **Role and Purpose**
  - not judge nor adjudicator – not to decide nor prescribe
  - effective leadership without domination
  - proper engagement and absorption of details of case
  - objective impartial viewpoint
  - facilitate communication and clarity

- **Considerations**
  - extent of commitment to success; motivations
  - insight into essence, complexity and nuances of disputes
  - operating “on the fly”
  - ethical issues
Thank you

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