

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*

MEDIATOR'S OPENING STATEMENT

PARTIES' OPENING STATEMENTS

SUMMARY AND AGENDA SETTING

EXPLORATION OF ISSUES

PRIVATE SESSION WITH PARTY A

NEGOTIATION

PRIVATE SESSION WITH PARTY B

SETTLEMENT AND AGREEMENT

*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*

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

JOYCE A TAN &
PARTNERS

Thank you

Lawyers Who **Lead**