**Checklist of Points for Attorneys to Discuss with Clients Before Negotiation or Mediation**

* **Explain the goals** of mediation/negotiation, i.e., for all parties and attorneys to work together, to explore ways to meet *all* parties’ interests.
* **Explain the process** – that it’s voluntary, and confidential; how the mediator may meet with everyone together and also with each side separately; and that, although a neutral mediator helps, the parties reach their *own* resolution.
* **Explain your role** in the mediation. Help your client understand that your role is different in mediation than it would be in a courtroom; you are more advisor than adversary – a St. Bernard, not a pit bull.
* **Get your client emotionally ready**. Prepare your client for the possibility that the other side may never agree with you, and how to get beyond that. Help your client to think in terms of resolution, not revenge, not avoidance, not extending the conflict.
* **Explain the benefits** of mediation:
	1. this is the clients’ chance to decide – and thus, control – their future;
	2. they can develop unique, creative, flexible outcomes that a judge could never order;
	3. they can spare themselves the time, money and stress of further conflict.
* **Share all communications** related to the mediation with your client, from the mediator and from the other side, as well as items you have prepared and shared with the mediator and/or the other side.
* **Share both the strengths and weaknesses of your case** with your client. Anticipate what opposing counsel might point out, and discuss it. The mediator may ask challenging questions, and you don’t want your client to hear them first from the mediator.
* **Prepare a negotiation strategy** with your client – not just an opening number or “bottom line,” but a series of steps based on what the other side might do. List elements of a final resolution – not just money but other items that would meet your interests, such as a way to restore reputation, or an apology.
* **Encourage your client** to be flexible, patient, and look for ways to make this a win/win.