# Tips for Young Lawyers at Mediation

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The starting point for a successful mediation is preparation. Knowing your client’s goals and the strengths and weakness of your case are just a few of the things to consider in preparing for the mediation. Although each case presents unique considerations, you and your client should go through the following points during your preparation:

1. What are your client’s goals in the litigation?

2. What are the strengths and weaknesses of your case? Be sure to consider the opposing side’s view of the case: What is wrong with it?  What is right with it?

3. What facts and legal issues do both sides agree or disagree on?

4. What points (1) can you concede in the settlement conference and (2) cannot be conceded in the conference?

5. Do pending or prospective motions (for example, motions for summary judgment or motions to compel) make it more or less desirable to settle now?

6. Do deadlines make it more or less desirable to settle now?

7. What are estimates of potential damages? Is nonmonetary relief at issue?

8. Is your client prepared to take this case through trial?

9. What is the downside risk to your client?  To the opposing party?

10. How much is your client willing to pay or accept to settle case?

Beyond these points, once you have reached an agreement with the other side, you will have to draft a settlement agreement. In that agreement, don’t forget to:

**Solidify payment terms**

a. When will payment be made?

b. Will the payment be by lump sum or installments?

c. Will the payment include attorney fees?

d. Will the payment be a structured settlement?

e. How will the payments be treated for tax purposes?

**Consider the breadth and scope of the release**

a. Will it be a one-way release or mutual?

b. Will it include a covenant not to sue?

**Consider confidentiality**

a. Do you need it?

b. If so, what should be designated as confidential and what are the ramifications for disclosure?

c. How much is it worth to your client? To your opponent?

d. Are you willing to give up confidentiality in exchange for more favorable settlement terms?

**Memorialize the agreement in writing**

a. Does you jurisdiction require it?

b. Does it need anything in particular to be binding?

c. What have other parties used to invalidate settlement agreements, and have they been successful? You don’t want the deal to fall through because of an oversight.

**Ensure that the court retains jurisdiction to enforce the settlement**

a. Do you need agreement of the parties?

b. Will the court issue an order dismissing the case and preserving its jurisdiction to enforce the settlement agreement?

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