

## **GETTING TO THE TRADING ZONE LESSON #4: CHOOSE THE RIGHT MEDIATOR FOR THE RIGHT REASON**

Once you agree with the other side that a mediation is appropriate, the choice of a mediator for the particular dispute can be equally challenging.

You don't need to guess who will be best suited to the mediation of your particular case if you do this.

Many lawyers still don't understand that it is perfectly acceptable to reach out to a potential mediator directly. There is no proscription on ex parte communication. Ask the mediator whether they have experience in the particular type of dispute before you. You may learn a lot more in a telephone conversation than you would by reviewing their website, revealing potential biases or expertise. For starters, you will also learn whether this is the type of mediator who will take the time to return a telephone call and discuss your case with you.

You will certainly want to do a little shopping as to availability, fees and general experience in your field. This can all be done via Internet, as most mediators have a web presence. If not, those that are affiliated with an agency, such as ADR Services, will have a Case Manager who can answer those questions.

Finally, you will want to learn what you can about the reputation of the mediators that wind up on your short list. This can be achieved through list-serves in your field (such as CAALA and CELA) or asking your own network of trusted colleagues. And don't forget to ask whether the mediator has had experience with your opposing counsel. Although you won't be entitled to learn the outcome of those confidential hearings, you can certainly save yourself some embarrassment and explanation to your client if it becomes apparent

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that your opposing counsel is a regular client of the mediator when this is your first meeting.

By the way, don't discount the regular mediator simply because the other side recommends her. Most experienced mediators do have repeat clients. There is still a broad range of how the cases settle, irrespective of how frequently the lawyer engages the mediator. The most important aspect is that you find someone that both parties can trust to get to the desired destination of a reasonable settlement that satisfies your client.