



Thinking Outside the Box: The New Mediation Mindset

I. The Root of the Problem Not Just the Symptoms

Understanding Key Mediator Imperatives

More and more cases, across subject matters are being directed to alternative dispute resolution (ADR) because of the backlog of cases on the trial docket. This panel will explore and discuss the many considerations for choosing a mediator... specifically, the value non-attorney subject matter experts bring to the evaluation and negotiation table. Technical subject matter expert mediators can be especially useful in mediation to ensure that different angles are examined when crafting messages for negotiation.

Historically, Mediators were not attorneys...

As we explore ways to better serve policyholders and settle disputes, we are considering how and why dispute resolution professionals are chosen-- or not chosen. As an industry, it is our responsibility to ensure equitable claims handling and resolution. Selection of mediators in all diverse categories is a means to that end. Diversity is no longer seen as only a race, age or gender issue. The reality of the benefits of having mediators who are subject matter experts, diverse in culture, skill set, thought and personal/professional experience is undeniable. Mediators who are subject matter specialists bring skills that enable negotiations and settlement opportunities with knowledge on how to navigate disputes. Specifically, non-lawyer technical subject matter experts bring unique perspectives to the mediation table as dispute resolvers that can bridge the gap to more equitable outcomes.

The Claims Case

The claims world is interdependent with the world of dispute resolution. ADR is evolving and expanding to include diverse thinkers and subject matter experts. Not only is the diversity landscape changing, but so are the backgrounds of these specialized neutrals. The selection of diverse neutrals is a business imperative.

The Mediator Mindset

So, what is a mediator mindset like you may be wondering? What are the top qualities that a mediator might possess? The most successful mediators are **empathetic**, non-judgmental, have

patience and persistence, are optimistic, trustworthy, sharp minded and creative and that they have a good common sense and a good sense of humor. Mediation is not a trial, participants have their own opinion, legal counsel, and have gone through the thought process of their side and the other side.

II. The ADR Solution

A mediator (having a **non-attorney and diverse background**) for example, in the areas of different lines of insurance, are so vast that it holds a unique insight into the mediation case for the parties. Non-attorney mediators are much more open to creative solutions and the thinking is not limited by prior cases.

They are open to more of a creative solution than wanting to “fix” the problem. And the mindset is not limited to the way other cases have been resolved which again, brings a whole new perspective and life experience to the table. Some of the more important skills that non-attorney mediators bring to the table are as follows:

- Trained to resolve conflicts
- Focused on communication and resolution
- Focused on the mediation process
- Prepared for any kind of diversity

Conclusion:

So, in conclusion, who makes a great mediator? Someone who is skilled in dealing with emotions, skilled in getting both sides to trust them. Mediation can supply an arena for parties to talk to each other. Remember, a mediator comes with honesty, integrity and professionalism and above all ethics. Beyond these attributes...