



Increase Your Chances of
Settlement at Mediation:

The Indispensable Value of
the Pre-mediation
Conference

Bernard Morrow, *Morrow Mediation*

ADRIO Annual Conference June 5, 2024

- **What's a PMC?**
- **What's the backstory ?**
- **What are the benefits of holding one?**
- **Why is there resistance to having one?**
- **When should it take place and who should attend?**
- **What topics should be discussed?**



What is a PMC?

- Pre-mediation check-in/run through
- Brief: 30 minutes
- By phone or online (Zoom, Teams)
- Process and logistics focused
- Attended only by counsel (except in certain circumstances)

What is the backstory?

- Concerns with...
 - level of preparedness for mediation
 - maximizing mediation time
- Experience in other jurisdictions and with pre-trial processes
- Offered as a pilot during COVID
- Due to success, PMC becomes a fixture in 2022

What are the benefits?

- Lessons learned from Steve the painter
- Determine preparedness for mediation
- Gain insight into counsel dynamics
- Window into parties' relationship
- Especially useful in multi-party matters
- Identify special needs – e.g. accommodations, cultural considerations
- Identify impediments to a productive mediation (e.g. missing players, missing information)
- Dispute status (e.g. prior negotiation history)
- No surprises!

Why is there resistance to holding one?

- Cost concerns
- Misperception: it doesn't add value
- Resistance to change

When should it take place and who should attend?

- Civil litigation
 - After delivery of briefs
 - 1-3 days before the mediation session
 - counsel only
- Non-litigious
 - Ideally twice
 - at the time of retainer, separately with each party
 - before joint session (separately or jointly, circumstances dependent)
 - parties and counsel

What topics should be discussed?

- Key process-related issues
 - Openings
 - Attendees – role and decision-making authority
 - Signing of Agreement to Mediate by all attending
 - Party dynamics and anticipated level of participation
 - Scope of mediation
 - Exchange of key information
 - Status of dispute
 - Logistics (venue, timing, special needs)
- What's below the surface (e.g.. “what's not in the brief you want me to know”)?
- Save the substance for the mediation session

In closing...

- The PMC is now on the radar!
- Its value is undeniable
 - Increases level of preparedness and focus
 - Enhances the success of the mediation session
- Consider its benefits and how best and when to use it in your practice