



7th Annual State Bar of Michigan
Business Law Symposium
“Mediation Mastery”

MARK ROSSMAN
ROSSMAN, P.C.

Presenter, Co-Chair, Privately Held Businesses Forum

February 13, 2025
5:00 PM – 9:00 PM
The Gem Theatre, Detroit

Learn more & register: bizsymposium.com





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*Produced by the Privately Held Businesses
Forum, a committee of the Business Law
Section of the State Bar of Michigan.*

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The Gem Theatre



The Gem Theatre is a performing arts complex that is actually comprised of two theaters: the cabaret-style Century Theatre, built in 1903, and the Spanish Revival style Gem Theatre, built in 1927.

The Gem Theatre is included on the National Register of Historic Places and, after a record shattering move to its current location in 1997, is also listed in the Guinness Book of World Records for the farthest known relocation of a sizable building (1,850 ft.).

Source: forbesdetroit.com/gem-theatre.php

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Roster of Speakers

- Mark Rossman (Rossman, P.C.)
- Tom McNeill (McNeill ADR)
- Charles “Chip” Brower (Wayne State Law School)
- Daniel McCarthy (Butzel)
- Hon. Denise Langford Morris (Ret.) (JAMS)
- Hon. Julie Nicholson (Ret.) (MI-JADR)
- Jerome Rock (Jerome Rock Law)
- Moderator: Thomas Cranmer (Miller Canfield)
- Megan Bonanni (Pitt McGehee)
- Ilan D. Scharf (Pachulski Stang Ziehl & Jones)
- Moderator: Maxwell Goss (Litigation War Room)

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Minding Others' Business



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The Necessity of Mediation

- Ease Conflict
- Save Time and Resources
- A Two-Sided Solution
- Confidentiality
- More Predictable Outcomes
- Preserve Relationships
- Narrowing Issues
- High Rate of Success

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The Fine Line



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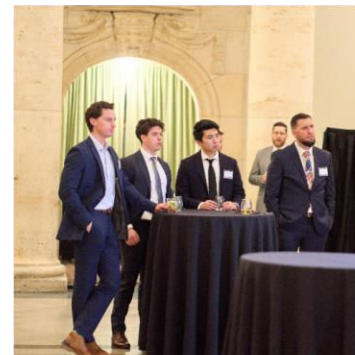
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Symposia Through the Years

- Corporate Oppression
- The Business of Running a Law Firm
- Trial Practice
- Expert Work
- Negotiation



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Fatherly Advice



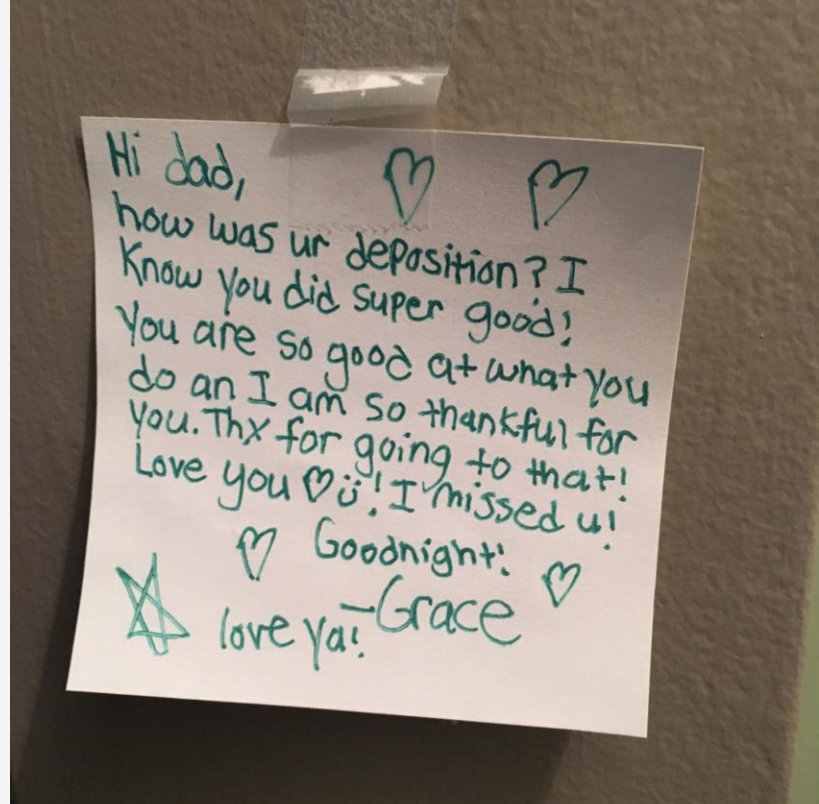
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An Almost Thankless Job



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Special Thanks



FORTZ
Legal

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Catharsis

Dictionary

Definitions from [Oxford Languages](#) · [Learn more](#)



ca·thar·sis

/kəˈTHɜrsəs/

noun

1. the process of releasing, and thereby providing relief from, strong or repressed emotions.
"music is a means of catharsis for them"

Similar:

purging

purgation

purification

cleansing

release

relief



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Mediation Skills – Another Tool in a Lawyer’s Utility Belt



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Agenda

- ❑ Negotiating Resolution Without Giving In – *Tom McNeill*
- ❑ Panel on Successful Mediation - *Moderator Thomas Cranmer*
 - *Professor Charles “Chip” Brower*
 - *Judge Julie Nicholson (Ret.)*
 - *Jerome Rock*
 - *Judge Denise Langford-Morris (Ret.)*
 - *Daniel McCarthy*
- ❑ Panel on a Mediation Case Study – *The USA Gymnastics Case – Megan Bonanni and Ilan Scharf, Moderator Maxwell Goss*



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TOM MCNEILL
MCNEILL ADR

Lecturer, *The Art of Negotiation*



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Negotiating Resolution Without Giving In

Mediator Tips and Tales
From a Recovering Trial Attorney

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My Four Points of Emphasis

- 1) Mediation is a special, almost sacred opportunity for the clients to end conflict.
- 2) Mediation needs to be centered on the client.
- 3) Advocating the merits of your client's case all day long is not negotiation.
- 4) There is no “best way” to negotiate.

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Tom as a Trial Lawyer:

“I want to “Win” at Mediation”
(and settle sounds like a bad word)



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The Reality:



Most clients do not want to litigate for three years or more.

(Or, at least, not as much as counsel is ready, willing and able to do)

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The Reality:

Resolution IS Winning



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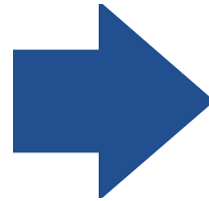
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Tom as Mediator - Circa 2017-2023

I am deeply committed to fair and reasonable resolutions determined through principled negotiations - rooted in factual and legal merits and litigation and business risk, but over which parties and their counsel do not agree.

Translation:



Mediation is all about monetizing risk.

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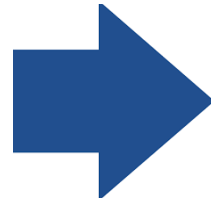
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Tom as Mediator - Circa 2024-2025

I *also* believe in wise resolutions – ones that meet legitimate interests of each side, resolve conflicting interests fairly, that are durable and sustainable, and which preserve relationships wherever possible.

Translation:



Merits-based decision making is frequently overridden by a client's need to meet fundamental interests, not always disclosed to their counsel or the mediator.

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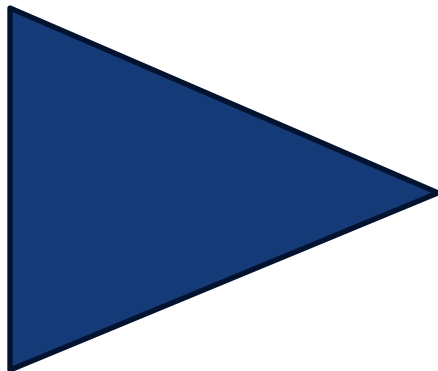
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Mediation is “Triangulation”

Your Client



Their Client

The Problem – common shared goal of identifying a resolution that meets legitimate interests on both sides

“The best mediators and the best lawyers triangulate on solving the problem.”

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Planning for Mediation

ZOPA

The Zone of Potential Agreement

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Planning for Mediation

Preparing the Client for Mediation:

- Discussing the merits and risks – from *each* side
- Spin the Chess Board and play the other side’s pieces
- The Client’s ZOPA – and why?
- Do you and your client differ? – and why?
- Anticipating the ZOPA of opposing parties – why is an “opposing” client in a different place than your client?



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Mediation Day

- ❑ Which side will make the first offer?
- ❑ Opening Settlement Positions
 - Cash
 - Terms and conditions
 - “Anchoring” in relation to the ZOPA
- ❑ What happens when one or both sides start by anchoring too far outside the ZOPA?
- ❑ Results in “positional bargaining”



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Mediation Day – Pitfalls of Positional Bargaining

“Positional Bargaining” is the standard practice of simply trading numeric offers and counters that is:

- ❑ Inefficient, expends energy and leads parties to frustration and anger
- ❑ Seeks to improve the chance that the outcome is more favorable to you, by starting at an extreme position, stubbornly holding it, making small concessions while the other side does the same
- ❑ Conceals real interests that are actual drivers in resolution
- ❑ Results in impasse and stalemate, requiring mediator intervention



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Mediation Day

Moving from Merits Advocacy to
Negotiating Resolution – Shifting to
Triangulation

When to do it?



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Questions



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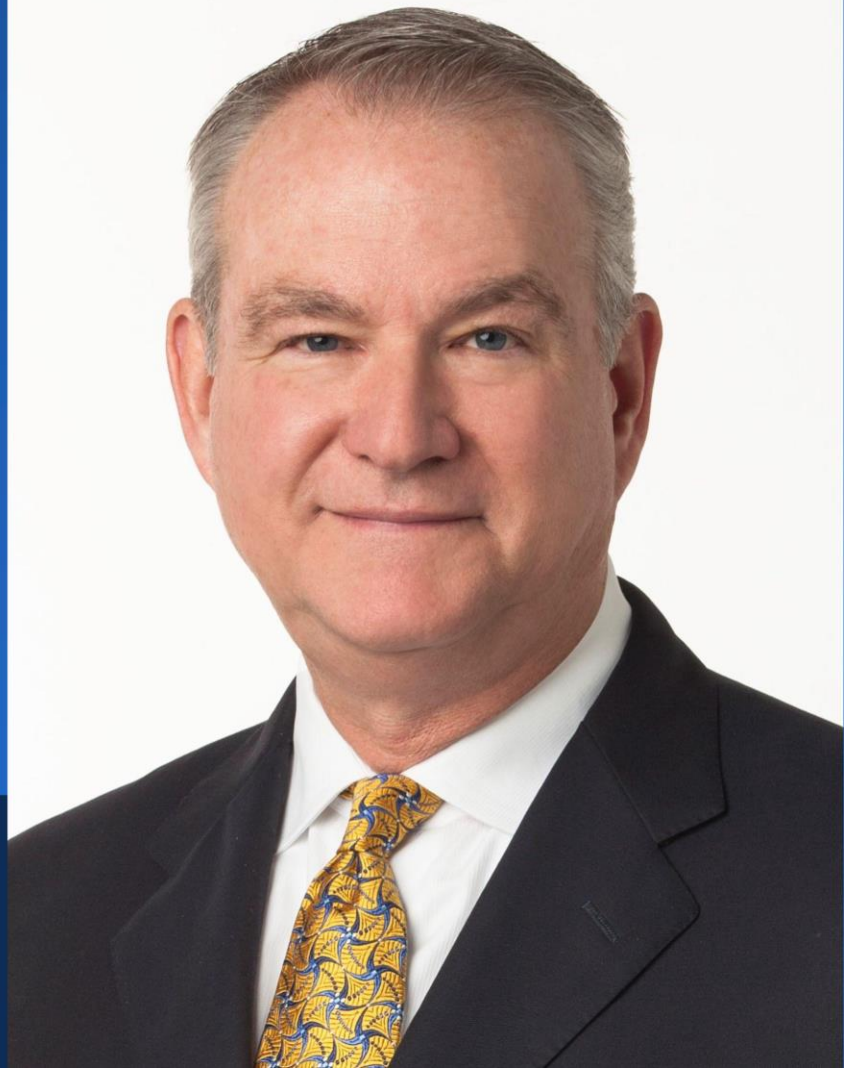
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THOMAS CRANMER
MILLER CANFIELD

Panel Moderator, *Negotiation fundamentals and perspectives*

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CHARLES “CHIP” BROWER
WAYNE STATE UNIVERSITY LAW SCHOOL

Panelist, Negotiation skill and technique

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Setting the Table for a Successful Mediation



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Building Trust

- Information Gathering
- Clearing Obstacles
- Collaboration



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Leading Questions and Answers

- Encountering negative emotions
- Positive Labels
- Delivery and body language
- Illusion of control
- Point of view

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HON. JULIE NICHOLSON

*Retired Judge, 52-3 District Court
MI-JADR*

Panelist, Negotiation skills and perspectives



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Role of the Mediator



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Forms of Mediation

- Mediation
- Facilitation
- Negotiation



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Mediation Trends



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Successful Mediation Considerations

- In-person vs. Remote
- Mediation preparation
- Preparing the client for mediation
- Settlement documents

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Local Solutions.
Global Reach.®

Mediation

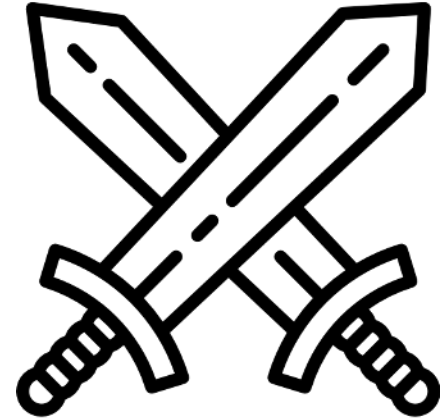
DATE: February 13, 2025

Mastery
PREPARED BY: Denise Langford Morris –
Retired Judge, Oakland County Circuit Court



Mediator Must Do's

- ❖ Ensure all parties are informed regarding the mediator, process, and terms of settlement
- ❖ Remain impartial - protect voluntariness for each party
- ❖ Competence and excellence must prevail
- ❖ Refrain from legal advice - if party is unrepresented by counsel, obtain a waiver
- ❖ Beware of substantive or procedural conflicts
- ❖ Confidentiality in communications is important



Ask yourself - Are you a court appointed neutral with requirements to inform the court of the status of the mediation?

Mediator Must Do's

- ❖ Withdrawal considerations - aiding illegal conduct
- ❖ Maintain integrity of the mediation process
- ❖ Understand the difference between mediation and the courtroom
- ❖ Creativity is definitely O.K.
- ❖ Preparation involves more than writing a brief/summary
- ❖ Emphasize developing a strategy for your client
- ❖ Engage in meaningful conversation on how to resolve matters - *not puffery*



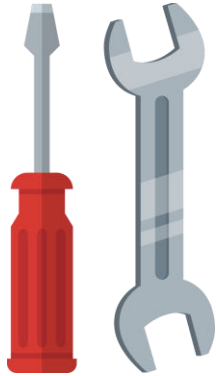
Mediator Must Do's

- ❖ Be reasonable and ethical as the mediator and as counsel with a goal of being totally prepared - do your client, yourself and the legal profession a great service
- ❖ Participate in good faith at mediation:
 - Show up with well prepared client, know what your client is seeking and have person with authority present
 - When client and lawyer are prepared, the success rate of settlement improves



Dealing with Impasse

- ❖ Creating Useful Impasse
Breaking Tools Early in the
Mediation Process



- ❖ Techniques When Impasse
Occurs



Relevant Cases

COURTS ENVIRONMENT STATE GOVERNMENT

State files complaint against mediator in Line 5 case

BY: LAINA G. STEBBINS - SEPTEMBER 16, 2021 3:31 PM

🐦 in f 📧 🌐 📄



■ 'Enbridge eviction' celebration at McGulpin Point Lighthouse | Laina G. Stebbins

Updated, 2:23 p.m., 9/16/21, with new comments from Whitmer's office and MackinawOde

New filings in federal court Tuesday suggest that the court-ordered mediation process between the state of Michigan and Canadian oil company Enbridge has gone awry, just mere weeks away from the late September date they had anticipated the process would be complete.

Attorney General Dana Nessel filed a document Wednesday in federal court arguing that the agreed-upon facilitative mediator between the state and Enbridge, former Judge Gerald E.

AGC, October Annual Meeting 2023

- <https://michiganadvance.com/2021/09/15/state-files-complaint-against-mediator-in-line-5-case/>
- JAMS LINKS
 - <https://www.jamsadr.com/blog/2023/klemmer-joyce-atlanta-lawyer-mediation-effective-1223>
 - <https://www.jamsadr.com/publications/2010/a-comment-on-communication-and-complex-case-mediation>

SCAO Form

Mediation Status Report

Approved, SCAO

Original - Court
1st copy - Plaintiff
2nd copy - Defendant

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	MEDIATION STATUS REPORT	CASE NO.
--	-------------------------	----------

Court address _____ Court telephone no. _____

Plaintiff name(s), address(es), and telephone no(s). _____ _____	v	Defendant name(s), address(es), and telephone no(s). _____ _____
Plaintiff attorney, bar no., address, and telephone no. _____ _____		Defendant attorney, bar no., address, and telephone no. _____ _____

Probate In the matter of _____

The mediator must submit this report within 7 days of completing mediation or of determining mediation is inappropriate.

1. Mediation was completed on _____ Date. Mediation was determined inappropriate.

2. The participants were:

_____	on behalf of	_____
_____	on behalf of	_____
_____	on behalf of	_____
_____	on behalf of	_____
_____	on behalf of	_____
_____	on behalf of	_____
_____	on behalf of	_____

3. This case was:

a. settled. Final documents will be filed with the court on or before _____ Date by _____ Name.

b. not settled.

c. Further alternative dispute resolution proceedings are are not contemplated.

_____ Date _____ Signature
Mediator name (type or print)

MC 280 (3/12) MEDIATION STATUS REPORT MCR 2.411(C)(3), MCR 3.216(H)(6)





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JEROME ROCK
JEROME ROCK LAW

Panelist, ADR viewpoints and technique

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Approach Shaped by Experience

- Construction and Business Attorney
- Mechanical and Civil Engineer
- Business Executive
- Experience Leads to Understanding the Context of the Dispute
- Natural Tendency to act as Problem Solver

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ADR Practice

- Certified as Mediator 2002; Exclusive ADR practice since 2008
- Arbitration 60% of Practice
- AAA Panel for Complex Case, Construction, Commercial
- Technical Background: Confidence for Parties; Leadership to the Panel
- Mediation 40% of Practice
- 50% through AAA Mediate.org
- Subject Matter Qualifications viewed as Desirable
- Evolution of Pre-Hearing Conference with Principals

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Pre-Hearing Conference

- More than an Introduction
- Building a Relationship of Trust with the Principals
- Moderator as Process Leader (Med-Arb, Joint Session, etc.)
- Problem Solving Approach, explore and suggest options
- Address “other issues” not part of present controversy
- Solid Foundation for the Hearing
- Source: www.JeromeRockLaw.com/pre-mediation-a-best-practice

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Adding Value – Expanding the PIE

- Address “other issues” not part of the present controversy
- What are “other issues”?
- Case Study: Warranty Dispute between 3rd Tier Auto Suppliers
- Pre-Hearing Conference
- Planting the Seed – Reach out to Procurement Managers
- Impasse Avoided - Reaping the Reward

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DANIEL MCCARTHY
BUTZEL

Panelist, Negotiation skill and technique

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Cleaning Up



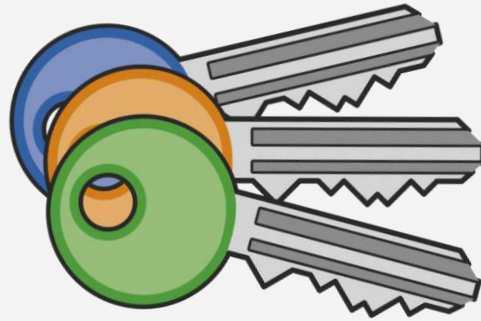
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Key Considerations in Mediation



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Mediation “Do’s” and “Don’ts”



DO'S



DON'T

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A Deal in the Making



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Leveraging Your Position



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Collaboration



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MAXWELL GOSS

MAXWELL GOSS, PLLC

Litigation War Room Podcast

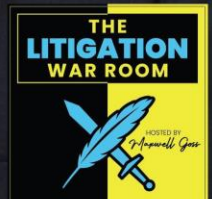
Moderated Discussion: *Negotiating the US Gymnastics Settlement*

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Megan Bonanni

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Best Lawyers



Ilan D. Scharf

Pachulski Stang Ziehl & Jones LLP

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USA Gymnastics Case Overview



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Failures and Lack of Accountability

- Abuse of authority and access
- Dismissal of reports and complaints
- Culture of control and silence
- Coverups and betrayal



USA GYMNASTICS

MICHIGAN STATE
UNIVERSITY



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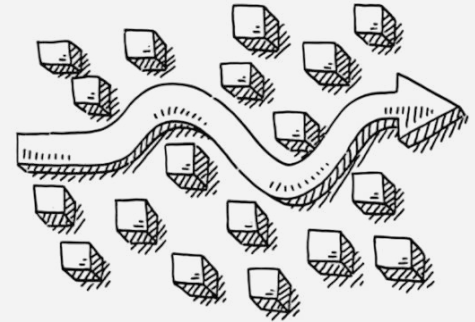
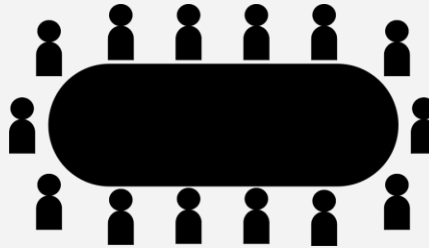
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Negotiation Strategy & Process

- Combined Cases for Impact
- Diverse Volunteer Coalition
- Multiple Parallel Mediations
- Meeting Directly With Adjusters



7th Annual State Bar of Michigan
Business Law Symposium
“Mediation Mastery”

February 13, 2025
5:00 PM – 9:00 PM
The Gem Theatre, Detroit

Learn more & view lineup: bizsymposium.com



Settlement Structure and Resolution



- Balancing Competing Interests
- Navigating Bankruptcy Constraints
- Innovative Allocation Model
- Beyond Financial Compensation



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Non-Monetary Resolutions

- Policy Reforms
- Oversight & Accountability
- Restorative Justice Committee
- Documents for Research



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“Mediation Mastery”

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ILAN D. SCHARF

PACHULSKI STANG ZIEHL & JONES

Moderated Discussion: Negotiating the US Gymnastics Settlement

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