PositivelyNeutral

Arbitration and Mediation for Attorneys and Their Business Clients

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# The Upside of Mediation "Reasonableness" Over "Righteousness"

## Two Familiar Scenes

**Scene One.** You're preparing a client for mediation. He's furious—his former business partner abandoned a real estate project, leaving him holding the mortgage. The property might have real upside, but in the meantime, your client feels betrayed and wants to hit back with everything the law allows: default interest, forced sale, maximum damages. Legally, he's entitled to it all. Strategically? You're not so sure.

**Scene Two.** You're in the mediation itself. Opposing counsel opens by demanding the moon: punitive interest, attorneys' fees, total capitulation. Your instinct is to match fire with fire. After all, isn't zealous advocacy supposed to look like toughness?

If either scenario sounds familiar, you've brushed up against one of mediation's odd truths: in this arena, "reasonable" often outmuscles "righteous."

## “But My Client Expects Me to Fight”

Lawyers often assume their clients want to see a warrior in the chair across the table, not a diplomat. Clients themselves sometimes push for aggressive posturing—*demand everything now, and let the mediator drag us back toward compromise.*

That playbook is common. It also burns hours (sometimes the whole day, or more) on outrage, counter-outrage, and bad-faith theatrics. Best case, the mediator eventually nudges everyone toward sanity. Worst case, the polarization hardens and settlement slips away.

But there’s another approach.

## A Different Kind of Opening Move

Consider a mediation I recently observed.

Two families inherited their patriarchs’ real estate venture. Unlike the original partners—longtime friends—the heirs had no relationship. One side wanted out. The other believed the property would gain value if held.

To complicate matters, the “hold” side had advanced funds secured by a mortgage that had matured. On paper, they were entitled to repayment plus a hefty bump in post-maturity interest. A righteous claim.

Instead, their lawyer recommended something different: ask only for repayment at the original contract rate. Leave the extra interest on the table.

That single move was transformative. This gesture of voluntary restraint—foregoing a modest but legitimate financial claim—created a collaborative atmosphere that caused negotiations to shift from grievance-airing to problem-solving. The mediation accelerated instead of bogging down. The final settlement came relatively quickly, without bitterness—and the “conceding” side arguably made up the modest interest concession in the overall deal.

## Why Reasonableness Works

Gestures like that do more than save time. They unlock dynamics that extreme posturing shuts down.

1. **The Reciprocity Advantage.**
   Psychologists call it the reciprocity principle: when someone makes a concession, the natural impulse is to respond in kind. In mediation, a small voluntary step often sparks a collaborative response.
2. **Credibility Enhancement.**
   Parties who stake out modest, defensible positions are seen as serious actors. Each subsequent proposal carries more weight.
3. **Arming the Mediator.**
   Mediators dislike carrying extreme demands into the other room—it undermines credibility on both sides. By contrast, when the mediator walks in with a reasonable proposal, especially one that includes a unilateral concession, the pressure shifts: *responding unreasonably risks losing the moral high ground.*
4. **Focus on What Matters.**
   Instead of wasting hours on posturing, the parties spend their energy on solving the business problem that brought them to mediation in the first place.

## Leveraging Your Mediator

Attorney resistance to reasonable positioning typically stems from predictable concerns. Here's how mediators can help you address them:

- **"The other side will think we're weak."**
  A skilled mediator reframes the opening as a strategic choice, not surrender. Reasonableness reads as strength when delivered with confidence.
- **"My client expects maximum demands."**
  Mediators can explain directly to your client that mediation is not

litigation. Different forums call for different approaches. Reasonableness isn't weakness—it's strategic.

- **"What if the other side doesn't reciprocate?"**
  Then you've lost nothing but a modest gesture. You'll quickly learn you're facing an unreasonable counterparty—and can recalibrate accordingly.

## The End Game: Results Over Rhetoric

Courtrooms exist for proving who's "right." Mediation exists to solve problems efficiently, preserve relationships where possible, and avoid the cost and uncertainty of litigation.

When you frame opening positions around what your client truly needs—rather than every theoretical entitlement—you create space for faster, better outcomes. Call it strategic restraint: you risk little, but you gain credibility, momentum, and the chance to resolve disputes on favorable terms.

So next time you prepare for mediation, resist the pull of righteousness. Gratuitously offer something of value. You may be pleasantly surprised at the return on this modest investment.

*Rob Harris is a full-time arbitrator and mediator of commercial and employment disputes, often involving business entities and their owners, senior employees, investors and service providers. He is a member of the National Academy of Distinguished Neutrals, and he is a longstanding panelist for the American Arbitration Association, including participation on its Commercial, Employment, Construction and Consumer panels, and its specialty panels for Large Complex Cases, Mergers and Acquisitions and Joint Ventures.*