

Research Findings Support Holding Preliminary Conferences

By Deborah Lynn Zutter, August 2, 2001, Vancouver, B.C.

There is a significant positive correlation between holding a preliminary conference and reaching a resolution of the dispute at mediation.

This is one of the outcomes of mediation research conducted in both Canada and Australia earlier this year in support of my Masters Thesis. Questionnaires for mediators, disputants and their lawyers were distributed. Responses were received from 18 separate mediations. In 13 of the 18 mediations preliminary conferences were held. Each of these resolved. One other mediation resolved without the holding of a preliminary conference. In none of the remaining 4 mediations was a preliminary conference held. Of these 4, one dispute was partially resolved and the other 3 were not resolved. These findings suggest that if a preliminary conference is held, then the dispute will resolve.

Responses were received from Commercial, Personal Injury, Wills/Estates, and Family disputes.

In the three Commercial disputes in which preliminary conferences occurred, the mediator held separate meetings with each lawyer/disputant team. 9 of the 10 lawyer and disputant respondents indicated that they considered the mediator's preliminary involvement "essential" or "important". In describing what participants liked about the preliminary conferences, One individual related what s/he like best about the preliminary conference: *He [the mediator] explained his approach and suggested areas to concentrate on.*

The mediator in the Personal Injury dispute held a separate meeting with each disputant several days before the mediation meeting. This mediator believed that the critical mediator task performed in advance of the mediation meeting was: *Face to face interviews with all participants.* Each disputant described the most helpful mediator activity prior to the mediation meeting. One said: *Talked to me.* The other said: *Talked calmly to me and told me it would be okay.*

To the question "What did you do to build trust and rapport with the disputants?" the mediator for the Wills/Estates dispute replied: *This is a prime reason for the preliminary meetings.* Each disputant expressed the opinion that the separate preliminary communication was the most helpful thing done by the mediator prior to the joint meeting.

Preliminary conferences were held in every Family dispute. The majority of the preliminary meetings were in-person meetings several days before the joint mediation meeting. Most mediators indicated that they met separately with each disputant. Mediators expressed various reasons for holding preliminary conferences. These included: *To get to know the disputants, develop trust, explain process, coach;* and the need to comply Australia's Family Law Act.

I was apprehensive that the practice of holding separate preliminary conferences when combined with treating the contents of these meetings as confidential with the mediator and not to be shared with the other disputant would result in the perception of mediator bias. As only 4 of 25 respondents expressed “some concern” about mediator bias, my fears may be unwarranted. However, 3 of the 4 respondents who perceived mediator bias were family law disputants. For family law matters, there may be cause for concern. It may be important for disputants that separate communications with the mediator be treated as open and not as confidential as between the disputants.

Lawyers and disputants were given the opportunity to describe unhelpful pre-mediation mediator activities. Only one criticism of preliminary conferences was expressed. In this family dispute, the respondent wrote: *In my mediation – prior to joint both parties had to go at same time- spoken to separate. I found this uncomfortable. I think separate appts. for 1st visit would be better.*

These findings are a strong endorsement of preliminary mediation conferences.