



## **Topic: STICKY ISSUES**

**By: David M. Zacks  
Henning Mediation & Arbitration Services**

There are two purposes for this session:

1. How to deal with sticky issues and ways to address them;
2. How to be a better and different negotiator during mediation.

### **I. Sticky Issues and Ways to Address Them:**

#### **A. Dealing With Offers and Counter-offers**

We know that experienced lawyers, both plaintiff and defense, know the reasonable range (ballpark) for matters within their expertise. The best opening position is in the “parking lot” but with room to move. If the other side is reasonable and opens in a similar position, you will make progress rapidly. If the other side is on the “freeway,” move slowly until they get to the “ballpark.” Opening numbers by both parties in offer and response impact not only where the mediation may head but they also carry a CREDITABILITY issue with them.

Understand the importance of managing your patterns of concession.

The best predictor of the final outcome is the midpoint of the first semi-reasonable offer and counter-offer.

- B. Discussion on How to Handle Parties Who Come Without Adequate Settlement Authority.
- C. Approaches on Handling a Response to a “Bracketed Offer.”
- D. How Do You Make It Through The Rough Time of Day?
- E. What is the Best Response to a “Take it or Leave it Offer”?



## II. **DO IT BETTER**

- A. Value of bringing a Settlement Agreement to the mediation.
- B. Tips on how to build rapport with opposing counsel and parties.
- C. The importance of “why.”
- D. Lower your voice to be heard.
- E. Can you do better than the settlement?
- F. What do you do if the mediation is unsuccessful?
- G. Process is not about Winning.

It is the hope and goal of this session to end the hour with the audience better informed, as well as entertained in a mutual learning experience.