MARK CHUMLEY | MEDIATOR

Creative Alternatives to Conflict

Over 25 Years of Front Line Experience

in litigating labor and employment law cases, complex business disputes, trade secret, noncompete and privacy matters has given Mark Chumley a first hand view of what attorneys and clients contend with in the legal system. This along with extensive experience and training in alternative dispute resolution allows him to work effectively with attorneys and their clients to find creative alternatives to conflict that allow all parties to move on.

Mark Chumley's litigation experience is nationwide, providing him with a broad understanding of practice, procedure and substantive law. Jurisdictions in which Mark Chumley has handled cases include:

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin.

ABOUT MARK CHUMLEY

Experience

Partner, Keating Muething & Klekamp PLL, Cincinnati, Ohio 2001-present
Adjunct Professor, Employment Law, University of Cincinnati 2000-2008

Professional Distinctions:

- AV Rated – Martindale-Hubbell
- OSBA Certified Specialist in Labor & Employment Law (2011 – present)
- Best Lawyers in America
- Cincy Leading Lawyers
- Ohio Super Lawyers
- Ohio Rising Star

Training

Advanced Mediator Skills Training – Cleveland Mediation Center (2021)
Certification in Mediation Skills – Northwestern University (2017)

Education

J.D., University of Cincinnati College of Law, 1996
Order of the Coif
B.A. in English, University of Michigan, 1989

THE PROCESS

The mediation process is very flexible, leaving parties and their counsel free to make modifications to fit their needs. In general, the typical process can be separated into three distinct periods.

1. Pre-Mediation

Parties can elect to go to mediation at any time in a dispute; there is no right or wrong time. Often, courts require parties to mediate or at least build the opportunity for mediation into case schedules. Once the parties decide to mediate, they will be asked to sign an agreement outlining the terms of the mediation, including confidentiality requirements.

In most cases, the mediator will hold at least one pre-mediation call with the parties and/or counsel for the parties to plan the mediation. Prior to the mediation, parties will be required to provide written pre-mediation statements to the mediator to:

(a) identify the names and roles of the individuals who will attend the mediation;
(b) summarize the procedural status of the dispute;
(c) discuss the relevant facts, legal issues, and damages or other relief sought;
(d) summarize any settlement negotiations that have occurred prior to the mediation;
(e) identify potential issues and circumstances that may impact negotiations; and
(f) provide any other material (e.g. documents, pleadings, statements, deposition transcripts, etc.) that the party believes would be helpful.

It is usually helpful for the parties to exchange their pre-mediation statements but this is a decision that may vary from case to case.

2. Mediation

Traditionally, mediation sessions are scheduled in person for a full or half day with the parties and their representatives clearing their schedules to give the mediation their full attention. More modern methods of meeting online have added flexibility to the mediation process and allow parties to mediate remotely or in some instances in multiple sessions. Whatever approach is chosen by the parties, a mediator has no authority to decide the case or even

compel the parties to settle. Mediation is voluntary and non-binding, until all parties agree on a resolution.

The parties are not in the same room for majority of the time spent in mediation – typically, the mediator goes back and forth between the parties, asking questions, clarifying facts and arguments and conveying settlement offers in an attempt to assist the parties in finding a resolution of their dispute. Some mediations begin with a joint session where the parties are together and may even include opening statements, although this is not required and in many instances is not productive.

Parties and their counsel should bear in mind that mediation is not a trial and the ultimate goal is not to persuade a fact finder but to come to a mutual agreement to resolve the dispute. In some instances where the parties have reached a sticking point, a mediator will make a "mediator's proposal," which is a settlement proposal created by the mediator and presented to the parties. The parties are free to accept or reject the proposal but will only be told of the other parties decisions if all parties accept the proposal.

3. Post-Mediation

In some cases, mediation may not be completed in a single session and additional time can be allotted if the negotiations remain productive. Mediators are also available to assist with the resolution of any disputes that arise in the process of finalizing a settlement agreement. If the mediation is not successful in resolving the dispute, the negotiations are confidential and the mediator cannot be called as a witness in the dispute.

Mediation Approach:

You may have heard about various mediation styles such as facilitative, evaluative and transformative. All of these have their place but when it comes to resolving legal disputes, I favor a combination of facilitative and evaluative. Facilitative mediation focuses on reaching an agreement by probing into the underlying interests of the parties. Evaluative mediation focuses on the dispute and assessing the parties' positions to make predictions about possible outcomes. Parties should bear in mind that they may feel challenged at times but this does not mean that I have made any conclusions about the case or who is right or wrong – making such determinations is not the mediator's role. The goal is to clarify the issues and to challenge entrenched ideas that may impede resolution of the dispute – rest assured that the same approach is applied to all parties.

Books that have shaped my thinking on negotiation, risk and dispute resolution include:

- Getting to Yes: Negotiating Agreement Without Giving In – by Roger Fisher
- Getting Past No: Negotiating in Difficult Situations – by William Ury
- The Kremlin School of Negotiation – by Igor Ryzov
- Fooled by Randomness: The Hidden Role of Chance in Life and in the Markets – by Nassim Nicholas Taleb
- Skin in the Game: Hidden Asymmetries in Daily Life – by Nassim Nicholas Taleb
- Never Split the Difference: Negotiating As If Your Life Depended On It – by Chris Voss
- Influence: The Psychology of Persuasion – by Robert B. Cialdiniz

CONTACT US

Please contact Mark Chumley to schedule a mediation:

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