



# When your client is out of control

## This story is for you if . . .

- Your client has seen too many late night lawyer ads and has an inflated value of his case
- You need to move the case or your office will have a meltdown



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### The problem:

The case has been gathering dust on your office floor and you wish you had not taken it into your office. The client tends to harass your staff with phone calls and letters, and you have come to the realization that you will never make the client happy. You need to move the case or your office will have a meltdown. At the same time, the other side is not aggressive in their efforts to settle, and has set up numerous discovery depositions and written document requests that are driving you crazy.

### The solution:

Engineer this case toward a mediator who you know and trust. This mediator needs to be someone you have built rapport with in the past and who will not sell you down the river during a tough negotiation. Call the mediator in advance of the hearing and enlighten him about the difficulties with the client and the case.

Make sure the mediator understands that he will have to be the “heavy” with the client and that you

will be playing a role of aggressive advocate so that the client does not have a sense that you are not going to bat for him. You might want to suggest that the mediator, during the session, do a quote “net to client” analysis which shows the client why a lower settlement on the day of mediation is much better than going to trial. This is a simple analysis in which the mediator lists several outcomes on a white board both before trial and after trial, subtracting the various costs under each scenario which ultimately demonstrates what the client puts in his pocket (*i.e., net to client*).

Discuss with the mediator in advance what appeals to the client from a personal standpoint (*i.e., the client loves music or sports*) so that the mediator can make a quick connection with the client. This will allow the client to feel a sense of confidence with the mediator and feel like they have had their day in court through the mediation process. Remember, *ex parte* communications with the mediator are perfectly legitimate under the Evidence Code and are considered part of the convening process of the mediation. This is the best time for you to give the mediator the heads up on the challenges of your case.