

STANCER GOSSIN ROSE LLP

LAWYERS • MEDIATORS

WINTER 2017 – MEDIATION NEWSLETTER

MEDIATION *WILDCARDS!*

I am writing this article about the *unexpected* on Super Bowl Sunday. So, it's appropriate that I mention legendary 49ers coach Bill Walsh's famous line: "If you want to sleep at night before the game, have your first 25 plays established in your own mind the night before that. You can walk into the stadium and you can start the game without that stress factor."

Not surprisingly, many legal professionals are well prepared for mediation – which is laudable – but, suddenly, the unexpected happens: An event or a piece of information is revealed by the other side, the mediator or even by your own client, and you suddenly feel like a sacked quarterback.

I am referring to "Mediation *Wildcards*", which require you to change (or throw away) your gameplays and rely on your improvisational skills. Here are some real life examples:

- The other side is not paying their lawyer. They are a family friend – or dedicated to the clients cause (or both).
- An unnamed party (or lawyer) is controlling the litigation.
- Your opponent has legal expense and/or costs insurance.
- An apology is given, or refused.
- One side threatens to walk-out....actually, they are now on their way out.

Like life (or sports) anything can happen at mediation. By all means, have a game plan going in. However, you need to be adaptable. Your mediator can and should help – but they are more like a referee and commentator than a quarterback or coach for one team.

One thing that can help is to engage in communication prior to the mediation. In other words, pick up the phone and ask your counterpart questions. Not only can it help avoid surprises, but it can lead to a more effective mediation.

-[Mitchell Rose](#), mediator

To book a mediation date, please contact laurie@sgrllp.com

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- The other side serves a new expert report, or some other critical piece of evidence, late in the game,
- You assumed the other side's strong position on a key issue was bravado or posturing – but you learn that they actually mean it!
- A client (maybe yours, maybe the other side) loses confidence in their lawyer, or vice versa,
- Perceived insults.

Our mediators: [ERIC B. GOSSIN](#), [MITCHELL ROSE](#) and [RAYMOND STANCER](#)

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