

Effective Mediation Advocacy

The dynamic between counsel and the Mediator is a key component of effective mediation advocacy. Thus, I thought I would share some valuable insights on that subject as presented by David Hoffman and Boston Law Collaborative, LLC in *Mediation: A Practice Guide for Mediators, Lawyers and Other Professionals*. Far from an aloof spectator who simply relays demands and offers, the Mediator must be an engaged, creative communicator who impartially guides the parties to the resolution that they choose. These authors point out several ways the effective advocate makes proper use of the Neutral's toolbox:

1. **The Mediator as a Sounding Board:** In private caucus the Mediator can be a sounding board for proposals.
2. **The Mediator as a Reality Check:** Counsel may ask, "What do you think is our weakest point?" Or, "Are we missing something?" etc.
3. **The Mediator as a Source of Solutions:** The Mediator can provide creative solutions if the parties are at an impasse.
4. **The Mediator as a Communications Coach:** If emotions are high and negotiations tense, the Mediator, as a keen observer of interpersonal dynamics and patterns of communication, can provide guidance about how communication can be improved.
5. **The Mediator as Process Coach:** Mediators can be an excellent source of ideas regarding the process and assist in steadily guiding the process toward resolution.
6. **The Mediator as Buffer:** The Mediator is by design a proper messenger for bad news, a challenging negotiating position, etc.
7. **The Mediator as Closer:** Every party to a mediation shares a common desire – to resolve the dispute on fair and reasonable terms. When the parties are so close, but can't quite seem to get there, counsel may ask for a mediator's proposal. Or, better yet, the Mediator may have ideas that will help the parties "get to yes."¹

The theme underlying each of these concepts is that (an excellent) Mediator is expert in communication, the negotiation process and "getting to yes." And skilled advocates welcome those talents of the impartial Neutral to help them accomplish their mutual goal: self-determined resolution.

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¹ Citing Dwight Golann, *Borrowing the Mediator's Powers*, 30 *Litigation* 41 (2004).