

WILL PRYOR

MEDIATION & ARBITRATION

Mediation of Non-Compete & Non-Disclosure Disputes

**Presented to
UTCLE Non-Compete Program**

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Traditional Mediation Advocacy Issues

Timing . . . should we mediate early or late? Pre-litigation or “courthouse steps”?

Selection of the Mediator . . . do we need “substance expertise” or can we rely on the mediator’s “process expertise”? . . . former judge?

Participation . . . who needs to be present on our side? On their side?

Joint session “yes” or “no” . . . unfiltered communication with other side vs. too emotional, too adversarial, too confrontational? . . . efficient information gathering vs. inefficient waste of time?

Unique Features of Non-Compete / Non-Disclosure Mediations

Most Important Moment of the Game is the 1st Pitch . . .

mediation often at the pre-filing, or TRO, or Temporary Injunction phase . . . like Temporary Orders in marriage dissolution cases, early decisions can determine the outcome . . . the stakes may never be higher, but the dispute is just getting started . . .

Outcome Determinative Decision Must Be Made When Access to Information Will Never Be Lower . . . the two sides may be uninformed as to the other's position and basis for it . . . very possibly no discovery, yet . . . counsel on all sides may be relying on what clients are telling them (oh dear!) . . . misconceptions, misunderstandings and worst-fear scenarios run amok!

Wounds are Fresh and Emotions are Raw . . . “How can you do this after I gave you everything I had?” vs. “I didn't walk away, you let me go” . . . betrayal . . . anger . . . revenge . . . fear

The Stakes Seem Higher Than They Are . . . “I will pay my lawyer whatever it takes before I will let that %\$#@*\$ steal my business” . . . the fees and expenses haven't started to pile up, and justice, righteousness and vindication seem so certain! . . . the customer list = Coke® formula!!!!

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