

## Mediator's Corner



[Malcolm Sher](#)

# MEDIATING FEE DISPUTES GRACEFULLY

by [Malcolm Sher](#)

When a fee dispute arises, your response is critical to the outcome. First, fee disputes can be expensive, especially if you need to report the dispute to your professional liability insurer because the client has alleged malpractice, something that will happen in almost every fee dispute situation. That can increase your premiums or impact coverage, even if the fees are ultimately adjudged fair. Second, the dispute may interfere with your actual practice, does not generate income, and instead, generates stress. Moreover, successful law practices depend on relationship building. An unhappy client is a pipeline to other clients, can damage relationships, and no longer is a source of income.

If a fee dispute arises, first offer to meet with the client in your offices, making clear that there will be no charge for the meeting. Try to resolve the dispute. If this proves unsuccessful, offer mediation, either with a private mediator experienced in mediating fee disputes, or through BASF's Mandatory Fee Arbitration program, recognizing that if mediation fails, mandatory arbitration is still available, usually without an additional filing fee.

Before mediation, counsel yourself as you would any client. At mediation, listen and respond to the client's concerns, even if you disagree. Let the client get it all out. Hear the client politely...without a patronizing half-smile! For clients, "perception is reality." Ask yourself if

someone else might see the dispute differently. Did you or an associate, learning at a lower rate, take an unusually long time on a given task? Can you justify a “learning curve”? Clients don’t want to pay for training! Small write-downs or write-offs may really not be “lost money” to you, but show good faith to a client. Don’t necessarily capitulate; just use common sense, business judgment, and courtesy, and always appreciating the risk of an adverse outcome to you and your firm.

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