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IDAHO TRIAL LAWYERS ASSOCIATION – SUN VALLEY CONFERENCE
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Common Mistakes in Mediation

1. Failure to consider having a joint session, possibly with opening statements.
2. Failure to prepare the mediator properly, *e.g.*, telling the mediator about any tough or hidden challenges, submitting a thoughtful mediation brief, etc.
3. Failure to communicate with the other side appropriately in advance of the mediation, including an exchange of *non-confidential* mediation briefs.
4. Failure to make an appropriate (or any) initial demand and responsive offer in advance of the mediation.
5. Failure to disclose material evidence, including expert opinions, in advance of the mediation, in hopes of gaining an “element of surprise.”
6. Failure of attorneys to prepare themselves and/or the client for the mediation.
7. Failure to learn about all available layers of insurance and/or to quantify subrogation issues before the mediation.
8. Failure to understand the requirements, process and decision-makers of the opposing party.
9. Failure carefully to consider timing and timely opportunities for mediation.
10. Failure to “listen” to the opposing party or to place oneself in their shoes during the mediation.
11. Failure to allow one’s client to speak; squashing communication.
12. Failure to “learn” during the mediation; adhering to excessively rigid approaches/expectations during the mediation.
13. Failure to agree to reconvene in the event of an impasse; concluding that a mediation is “over” prematurely.
14. Failure to get a signed term sheet or settlement memorandum before leaving and/or imposing new conditions after a settlement has been reached!