



Conducting the Mediation

Alternative Dispute Resolution

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Meet the Faculty

Panelists

[Leslie Berkoff](#) - Moritt Hock & Hamroff LLP

[Byeongsook Seo](#) - Snell & Wilmer

[Elizabeth Shampnoi](#) - Shampnoi Dispute Resolution & Management Services, Inc.

Moderator

[Jeffrey Zaino](#) - American Arbitration Association

About This Webinar

Conducting the Mediation

In this webinar, we review the mediation process itself:

- What are the pros and cons of starting in a joint session and/or caucus, including opening remarks by counsel and/or parties?
- When should you consider asking for a private caucus, or even an attorneys-only session?
- How do you best arm/assist the mediator to facilitate the process?
- How do you ensure your client is prepared for the session, from understanding the process to having the right information or people available to answer questions or guide them?
- Why can creativity be a key element of the process?

We also offer tips on working through impasses, helping you recognize the benefits of mediation even if you don't resolve the matter at that time, and positioning the matter for settlement in the future.

About This Series

Alternative Dispute Resolution 2026

This webinar is part of a series titled “Alternative Dispute Resolution 2026.”

Disputes arise in various business contexts. Examples include contracts, torts, and M&A. Disputes between business partners can lead to the need for a business ‘divorce.’

Not all business disputes, however, need to end in a courtroom. Many companies consider alternatives because they want to keep matters private and resolve disputes faster and cheaper.

This Series reviews both traditional forms of alternative dispute resolution (“ADR”)- Mediation and Arbitration. Among other things, participants will learn:

- The preliminary steps in preparing for a mediation include mediator selection, preparing one’s case, pre-mediation submissions, and risk analysis.
- Presenting one’s case for mediation, understanding the process, how to work with the mediator, how to work through an impasse, and how to achieve a creative resolution.
- The arbitration process, beginning with how to prepare and file claims, picking an arbitrator (or arbitrators), preparing for the preliminary conference, and more.
- Presenting your case and claims to the arbitrator or panel.
- Early-stage discovery options, motions, pre-trial statements, the arbitration hearing itself, and post-arbitration submissions and awards.

Episodes In This Series

1. Preparing for Mediation: From Selection to Presentation of Claims

Premiere date: 4/21/26

2. Conducting the Mediation

Premiere date: 5/19/26

3. Preparing for an Arbitration

Premiere date: 6/23/26

4. Handling the Arbitration

Premiere date: 7/21/26

Episode #2

Conducting the Mediation

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Mediation

- Preparing for the Mediation
- Joint Session v. Caucus
- Opening Statements
- Working with the Mediator
- Risk Analysis
- Finalizing the Deal



Initial Session

- Mediator's Opening (go through what they will say, things that are covered, expectations, confidentiality)
- Joint Session, Caucus and/or Hybrid Approach

Initial Session

(cont'd)

- Counsel and/or Client's Opening Remarks (decide who should say what and how to handle process)
- Making the Most of the Mediator's Approach (how to work with mediator)

Preparing for the Mediation: Pre-Mediation Tasks

- Pre-Mediation Calls with the Mediator
(One-on-One or Joint)
 - Style
 - Case Analysis
 - Analyze the Case from Both Sides
 - Identify the Key Legal/Factual Issues
 - Strengths/Weaknesses

The Art of the Opening Statement in Mediation

- Mediation opening statements are an effective tool when utilized properly.
- There is a trend for counsel to forego opening statements, but this could be a lost opportunity to advocate for your client and set the stage for successful negotiations.

Understanding the Difference Between a Mediation Opening Statement and a Litigation Opening Statement

Goals:

- Settlement focused and collaborative vs. winning
- Designed to persuade the other side

Understanding the Difference Between a Mediation Opening Statement and a Litigation Opening Statement *(cont'd)*

Advocacy skills: conciliatory vs. adversarial

- Common ground, not battleground
- Explaining instead of attacking
- Educational in nature as to law and facts

Strategy: When to Utilize a Mediation Opening Statement

- Set the tone of negotiations
- Case-specific goals
- Risks and rewards
 - Risks: could exacerbate emotion; harden parties' positions; blow up negotiations before begin; credibility assessment of the other side as a witness or effective litigator

Strategy: When to Utilize a Mediation Opening Statement *(cont'd)*

Rewards: express good faith; express what mediation may not be able to portray (i.e. impact on client, personalize the process, etc.); present old information in new context; closure/opportunity to be heard

Strategy: When to Utilize a Mediation Opening Statement *(cont'd)*

- Know your audience
- Understand opportunity to be heard and listen
- Personalize process
- Present old information in a new format

Strategy: When to Utilize a Mediation Opening Statement *(cont'd)*

- Impact on client, adversary, decision maker, etc.
- Educating clients – they hear the case through the other side – not their lawyer's lens

Content: How to Craft an Effective Opening Statement

Who should speak?

Important: Will your client be a good witness? They will be evaluated.

Is it too emotionally charged for them?

Do they need to speak regardless?

Content: How to Craft an Effective Opening Statement *(cont'd)*

Format – Just lawyer, lawyer and client

Message – What do you want to convey?

Tone, body language, and word choice

What to Expect During Shuttle Diplomacy

- Separate rooms for parties and their attorneys
- Lengthy pauses between meetings with the Mediator
 - Not always a bad sign
 - Clients should bring reading material/work
 - Prepare for next interaction with mediator
 - Client and attorney debrief each mediator interaction

Make Each Mediator Interaction Count

- It's an “art” not a “science” ... theatrics may be involved
 - Consider timing of information provided to mediator
 - Consider direct interaction between client and mediator
 - Consider what information should be conveyed to opposing party through mediator
- LISTEN to every word the mediator uses

The Mediation Session: Exploring The Strengths and Weaknesses

- Understand the operative law or statutes and how that impacts your case.
 - Ask Mediator for guidance.
- How do your facts work under the operative law?
- Would your claims survive motion practice?

The Mediation Session: Exploring The Strengths and Weaknesses *(cont'd)*

- Consider motivations and impediments to settlement
- Analyze from your perspective and the other side's

Revisit the Following Risk Analysis

- Consider BATNA- *Best Alternative to a Negotiated Agreement*
- Consider WATNA- *Worst Alternative to a Negotiated Agreement*
- Consider LATNA- *Likely Alternative to a Negotiated Agreement*

Remember to Consider

- What happens if you don't resolve?
- What are the risks if you don't settle?
- What is the cost of litigation- time, money, emotional toll and business distraction?

What Happens Next? End Sessions Tasks

- If you meet with success during the mediation process – what then?
- Be sure to create a term sheet
- What if don't meet with success, other options?

Questions or Comments?

If you have any questions about this webinar that you did not get to ask during the live premiere, or if you are watching this webinar [On Demand](#), please do not hesitate to email us at info@financialpoise.com with any questions or comments you may have. Please include the name of the webinar in your email & we will do our best to provide a timely response.

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Meet The Faculty

Leslie A. Berkoff - lbarkoff@morittthock.com



Leslie A. Berkoff is a Partner with Moritt Hock & Hamroff LLP where she serves as the Chair of the firm's Dispute Resolution Practice Group, is the former Chair of the Bankruptcy & Creditors' Rights Practice Group, and serves on the firm's Management Committee.

Ms. Berkoff splits her time between these two Practice Groups. In the restructuring space, she concentrates her practice in chapter 11 cases, bankruptcy litigation and corporate workouts where she represents a variety of corporate debtors, trustees, creditors and creditor committees both nationally and locally. Ms. Berkoff's Dispute Resolution practice has her frequently serving as an ad hoc and panel mediator. She is on the Mediation Panels for the Eastern and Southern Districts of the United States Bankruptcy Courts in New York and the United States Bankruptcy Courts in Delaware and the Eastern District of Pennsylvania, as well as the Mediation Panel for the American Arbitration Association.

Ms. Berkoff is a trained arbitrator and serves on the American Arbitration Association's National Roster of Commercial Arbitrators and Mediators including the Large Complex Case Panel, the AAA-ICDR International Panel and is a member of the AAA-ICDR Council. [Read More](#)

Byeongsook Seo - bseo@swlaw.com



Byeongsook Seo is an attorney in Snell & Wilmer's Commercial Litigation practice group. He represents clients in complex business disputes. He has represented high-tech clients in disputes that ranged from patent and trade secret enforcement actions to disputes over the sale of high-tech products. Byeongsook's clients have sought his guidance in disputes related to failed business ventures and disputes among business partners, shareholders and directors. He has defended many officers and directors from lawsuits arising out of their business dealings. He also represents investors in disputes arising out of their private investments.

Many of his cases have involved hearings regarding extraordinary remedies such as injunctions and receiverships. Byeongsook is experienced in all aspects of litigation, including trials and appeals, injunction hearings, receivership hearings and arbitrations.

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Elizabeth Shampnoi - elizabeth@shampnoiadr.com



Elizabeth J. Shampnoi is an attorney, consulting expert, independent mediator, arbitrator and trainer based in New York City with 20 years of experience in the field of alternative dispute resolution.

Ms. Shampnoi's focus on alternative dispute resolution began early in her career when she served as the District Vice President of the New York region of the American Arbitration Association. In that role, Ms. Shampnoi was responsible for overseeing case management; mediator and arbitrator recruitment, training and development; and working with in-counsel counsel and law firms to develop and implement dispute avoidance and dispute resolution programs, including internal employment dispute resolution plans.

Following her tenure at the American Arbitration Association, Ms. Shampnoi joined a litigation boutique where she represented a diverse range of organizations and individuals before state and federal courts, administrative agencies, and arbitration forums. [Read More](#)

Jeffrey Zaino - zainoj@adr.org



Jeffrey T. Zaino, Esq. is the Vice President of the Commercial Division of the American Arbitration Association in New York. He oversees administration of the large, complex commercial caseload, user outreach, and panel of commercial neutrals in New York. He joined the Association in 1990. Mr. Zaino is dedicated to promoting ADR methods and services. His professional affiliations include the American Bar Association (Executive Committee Member of the Dispute Resolution Section, Marketing Committee and Chair of the Arbitration Committee of the Business Law Section), Connecticut Bar Association, District of Columbia Bar Association, New York State Bar Association (Dispute Resolution Section - Executive Committee Member and Chair of the Public Relations Committee and Blog Administrator for the Section and Commercial & Federal Litigation Section - Chair of the ADR Committee), New York City Bar Association (Member of the Arbitration Committee and Affiliate Member of the ADR Committee), [Read More](#)

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