

Mediation Advocacy CLE

Presented by:

Hon. Joseph P. Spinola (Ret.)

Defense Association of New York - October 21, 2015



Joseph P. Spinola is a former Justice of the New York State Supreme Court. Since leaving the bench in 2010, Judge Spinola has become one of the most popular and successful mediators in New York. He was voted the #1 Mediator in New York by lawyers in the *New York Law Journal* annual survey for five consecutive years (2011-2015), and has developed a reputation for settling difficult cases.

Judge Spinola has the unique perspective of trying cases as a defense attorney, plaintiff's attorney, and judge – which gives him the ability to understand all sides and aspects of the cases he mediates.

This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of one credit hour, of which one credit hour can be applied toward the Skills requirement. This course is approved for newly admitted and experienced attorneys.

jspinola@resolutesystems.com

212.967.6799

Mediation Advocacy CLE

1. Introduction and background
2. Mediation versus Trial and Settlement Conference
 - a. No time limit
 - b. Preparation and incentive of judge versus mediator
 - c. Pre-conference submissions
 - d. Mediation can be completed early in litigation process
3. Top tips of a successful mediation
 - a. Never agree to mediate without a formal demand
 - b. Try and make sure plaintiff is going to be at mediation
 - c. Always consider venue for case evaluation
 - d. Research jury verdicts prior to mediation
 - e. Never negotiate backward
 - f. Make big moves early and small moves later
 - g. Have sufficient authority
 - h. Civility during the mediation process
 - i. Give yourself and the mediator room to move by your offers
 - j. Be patient during the process
 - k. Never put a time limit on a mediation
 - l. Don't get frustrated by ridiculous demands, it's the offers that drive the mediation
 - m. Decision maker should attend or always be available by phone during mediation
 - n. Structured settlements help
 - o. Consider litigation costs
 - p. Make sure the co-defendant pushing for the mediation is a liable party who wants to pay money
 - q. Other than venue, coverage, and injury; The life expectancy charge is the biggest factor, other than invasive medical treatment, in the size of the jury verdict
 - r. The value will also be influenced by invasive treatment and the life expectancy charge
 - s. At mediation, attorneys on either side make the mistake of trying to let the other side know early on that the case will never settle for the number they want. There is no reason to do that. In fact, you should do the opposite. Make your opponent believe that the case can settle for what they are looking for, except you never get to that number
4. Questions and Answers