

Working with a Pro Se Claimant: Making Mediation Productive and Peaceful

by Nancy Black Norelli

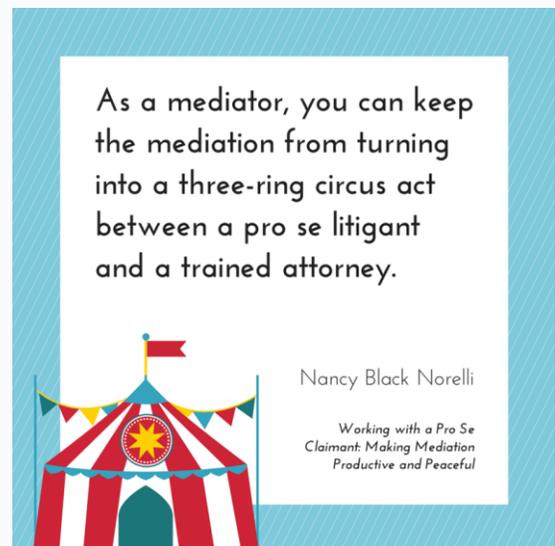
No one ever said practicing law or mediating cases was going to be easy. If it was, then just about anyone could do it and that's emphatically not the case. However, the complexity involved doesn't stop everyone from taking on the legal system pro se with no training or skills, and expecting justice to be best served.

The self-representing claimant certainly has a place in our legal system. Some people cannot afford an attorney and some people simply don't trust attorneys. But at the end of the day, everyone has the choice to exercise his or her legal rights as they see fit. The fact of the matter is your job gets a little bit trickier when you, as a trained mediator, encounter a pro se party.

In my longtime career as lawyer, judge and mediator, I have encountered a variety of pro se parties that I now am able to categorize into several general types. First, there is what I call the "classic pro se" claimant. This person feels beaten up by the system and is both bitter and pessimistic about the outcome regardless of any assurances or additional consideration offered on your part.

You will also come across what I call the "delusional pro se" claimant. This person has watched enough reality TV shows and courtroom dramas to believe he or she is embodying the spirit of Clarence Darrow himself. This person feels equipped to win with style and ease and is largely oblivious to the realities and challenges that the unrepresented face in the court system, even at mediation.

Lastly, there is what I call the "Eddie Haskell pro se" claimant. In popular culture today, the Eddie Haskell character has come to symbolize the insincere sycophant who manipulates those around him in a most cheerful and overly



polite manner. Conniving, sneaky, but ultimately highly intelligent, this party is determined to muck-up the wheels of justice while grinning sheepishly and milking the mediator for legal advice and special favors with his or her "aw shucks" antics.

As a mediator, you can keep the mediation from turning into a three-ring circus act between a pro se litigant and a trained attorney. The theme of my advice is simple: "start on your right foot" and avoid reaching the "end of your rope."

Ten Tips for Mediations with a Pro Se Claimant

1. Explain in the opening conference, and re-state each time you enter a room, that you cannot be the lawyer for the pro se party.
2. Encourage the pro se party to phone a friend for help to evaluate an offer.
3. Provide a calculator and general assistance with math.
4. Maintain conversation and negotiation.
5. Address the cost of litigation in terms of dollars, emotional stress, and lost work hours and recreation time.
6. Help the pro se party articulate what would be a satisfying result. Suggest alternatives such as non-disparagement provisions, avoiding certain contact points and payment schedules.
7. Reiterate the importance of closure.
8. Ask questions to help the pro se party assess an offer. Give offers a chance to be understood, even if rejected at first.
9. Step out of the room and give the pro se party space to think.
10. Take a deep breath, do not give up too soon, and avoid reaching the end of your rope.

The more time and effort you invest during a mediation involving a pro se claimant, the better your rewards will be as you march toward resolution. It is possible to manage the expectations presented by the pro se claimant and the value of patience should never be underestimated. Everyone in the action will appreciate your consideration, and it will go far in solidifying your reputation as a competent mediator.

About the Author:

Nancy Black Norelli is the principal at [Norelli Law in Charlotte](#), a boutique law firm that specializes in elder law issues as well as complex estate planning and fiduciary litigation.

Judge Norelli is a former District Court Judge with more than 30 years of legal experience, and she sits on the Ethics Committee of the North Carolina State Bar. Judge Norelli has been recognized as one of North Carolina's top-rated lawyers and one of the top women attorneys in America.

Judge Norelli is a frequent lecturer on the topic of estate planning and ethics. She recently spoke on ethics at the [Estate Planning Update seminar in Charlotte](#).

