

Illustration of Artificial Intelligence (AI) Response About Preparation for Mediation

John Lande

University of Missouri School of Law
Center for the Study of Dispute Resolution
July 27, 2023

Noam Ebner asked Chat GPT: "What should lawyers discuss with their parties in preparation for mediation?" Here's the response he got:

When preparing for mediation, lawyers should discuss several important aspects with their parties to ensure they are well-prepared and have a clear understanding of the process. Here are some key topics lawyers should cover:

1. **Mediation Process:** Explain the mediation process to your client, including its purpose, benefits, and the role of the mediator. Discuss how the mediation session will be conducted, the expected timeline, and the confidentiality of the proceedings.
2. **Goals and Interests:** Identify and discuss the client's goals, interests, and desired outcomes for the mediation. Help the client understand what they hope to achieve and what compromises they may be willing to make during the negotiation process.
3. **Strengths and Weaknesses:** Assess the strengths and weaknesses of the client's case. Discuss the legal and factual aspects of the dispute, potential arguments, evidence, and any legal precedents that may be relevant. This evaluation will help the client understand their position and make informed decisions during the mediation.
4. **Options for Resolution:** Explore different options for resolving the dispute, such as settlement terms, compromises, or alternative solutions that could be proposed during mediation. Discuss the potential advantages and disadvantages of each option to enable the client to make informed choices.
5. **Best Alternative to a Negotiated Agreement (BATNA):** Discuss the client's BATNA, which refers to the alternative course of action or outcome the client can pursue if the mediation fails to reach a satisfactory resolution. Understanding the BATNA will help the client assess the desirability of any proposed settlements during the mediation.
6. **Communication Strategy:** Develop a communication strategy with the client to ensure they effectively communicate their position, needs, and concerns during the mediation session. Discuss potential communication techniques, including active listening, effective questioning, and constructive negotiation.

7. Documentation and Evidence: Advise the client on the relevant documents, evidence, or information that may strengthen their case during mediation. Help them organize and present this information effectively to support their position and increase their chances of reaching a favorable resolution.

8. Emotional Considerations: Discuss the emotional aspects of the dispute with the client and help them manage their emotions during the mediation. Prepare them for potential challenges, such as difficult interactions or intense negotiations, and provide strategies to maintain composure and focus on the issues at hand.

9. Anticipated Counterarguments: Analyze the opposing party's likely arguments, claims, and positions. Discuss potential responses or counterarguments to ensure the client is prepared to address any opposing viewpoints that may arise during the mediation.

10. Mediation Agreement: Explain the potential outcomes of mediation, such as reaching a settlement agreement or the possibility of not reaching a resolution. Discuss the terms and enforceability of any potential settlement agreement that may arise from the mediation process.

It's important for lawyers to have open and transparent communication with their clients to ensure they are well-informed and prepared for the mediation process.

Noam noted that it "forgot" to mention the voluntariness of mediation, and that the response exemplifies at once how incredibly helpful AI can be and its limitations.

Of course, this is a general response to a general query. Presumably, as AI programs become more sophisticated, they will be able to engage in "conversations" with parties and attorneys about specific aspects of particular cases to help them prepare for mediation sessions.

In my post, [Avatar Mediation](#), I speculated that in the not-too-distant future, AI systems could provide mediation by avatars that mediate by video. ODR companies could sell or rent customized mediators with a wide range of features in addition to cheaper, off-the-shelf model mediators with more limited combinations of features at different prices.

It would be much easier to develop mediation (or negotiation) *advisor* avatars. Unlike avatars that would mediate between disputing parties, advisor avatars would deal with only a single "client." To help them prepare for and participate in mediation sessions, these avatars could conduct guided interviews about the issues listed above to elicit relevant facts and the clients' interests.

All systems are fallible, as Noam cautioned. But so are humans – and there could be great demand for advisor avatars.