

## Considering a Half or Full-Day Mediation Session?

Most parties (between 90-95%) set full-day cases with me. Some cases are suitable for a half-day session—they save time and cost. However, if a case remains unresolved at the end of the session, a party may consider it “failed” and not continue later. The parties also risk losing momentum and efficiency if/when it continues. Consider that the amount of time spent in a mediation is typically both: 1. A small percentage of the life of a litigated case, and 2. Highly productive.

Cases suited for half-day sessions typically have 2-3 parties and limited, potential solutions, such as an amount of money to be paid. Full-day cases may have more issues to solve, such as complex/multiple causes of action, future restrictions on real property, entity dissolutions or injunctive relief. Below are more factors that may be helpful to consider, whatever the case type. Ideally, all factors in the “Half Day” column would be present for a shorter session.

All that said, at times one party will only agree to a half day. And those warrant a half-day session!

### HALF DAY

#### **Factual information exchanged.**

When parties have exchanged and understand all relevant fact information well in advance, they may be ready to negotiate early in the session.

#### **Root cause of impasse is known.**

There is a fact or legal issue that all parties understand is at the core of the dispute. Analysis has been developed and shared, so the basis for positions is generally known.

#### **Known gap and range developed.**

Settlement negotiations have occurred, and the parties understand the gap between their positions. They are also aware of the reasons for the gap and have developed a range in which they are willing to negotiate.

#### **Low level of animosity/distrust.**

High levels of distrust and animosity between parties slow down negotiations. When there is trust, parties are more willing to share information and make settlement moves.

### FULL DAY

#### **Actions do not appear rational.**

This may indicate that the mediator needs more time to discover the cause of the impasse, which may not be readily apparent.

#### **No settlement discussions.**

If parties will learn settlement positions for the first time—either in submissions or during the session itself—more time is generally needed to both analyze, communicate and respond to the same.

#### **Settlement appears unlikely.**

These are tempting to schedule a half-day—check the “ADR box” & proceed to trial! But when proposals are disparate, creative and unique solutions and just more time devoted to the process may develop a zone of possible agreement.

#### **It’s a boundary dispute!**

Kidding aside, real property disputes have many moving parts—multi-party, title and notice issues, detailed historical use, restraining orders, multiple causes of action, insurance coverage & extreme animosity/distrust.