

## Mediation/Arbitration

### “Victory Can Be Achieved Through Perspective”

By Stanley Zamor



Plaintiff’s Attorney: (after opening presentations) “Mr. Zamor, even though the Defense Attorney presented how we will not be able to have an expert witness because the judge may strike our expert, we feel confident that the judge will not strike our expert. And we are just ready to go to trial, the attorney in charge of this case Mr. LeadAttorney will be there. We are trial ready and will take our chances at trial, if the Defendant did not come ready to settle today.”

Defendant’s Attorney: “I just provided the transcript to you and Mr. Zamor from our last hearing which you did not attend. The Judge was quite clear, starting on page 16 line 18. She said, ‘... Mr. LeadAttorney, I gave strict instructions. Yet you did not file an expert disclosure or report on time. And the document you are presenting now from your engineer, is full of conclusory statements. I will not be accepting anything past the missed deadline. I strongly suggest you go to mediation again.’ Mr. Zamor, I must say, should the Plaintiff lose, he will be responsible for all our fees.

So, Mr. Zamor, we are here because the Judge is kind-of giving the Plaintiff another chance at resolving the case before trial. Because as you know this will be a battle of the experts; and they have missed all the deadlines and will not be able to present one. We are here in good faith to negotiate, and we feel more confident than before that we will win.”

The Plaintiff seemed unaware of what was happening. So, I asked, “Ms. Plaintiff Coverage-Attorney, help us to understand what did the judge mean when she said conclusory? Although I understand the legal term, I want to ensure **we all** have the same understanding.” The Plaintiff leaned in attentively as his coverage-attorney explained that the term means, *an inference that has no proof but is stated none the less*. After the explanation, the Plaintiff’s body-language changed and he requested to speak privately with his lawyer immediately.

“The greatest victory is that which requires no battle.”

– Sun Tzu, The Art of War

#### Take Away - A Victory Begins with Perspective

The above is just a portion of a long exchange with multiple joint/private sessions. At the commencement of mediation, it was clear that the Plaintiff was not prepared to negotiate. And was not informed about the current posture of the case. Decision makers, regardless of legal education, it is paramount that you maintain a clear understanding of your case and possible legal ramifications.

**Stanley Zamor** is a Florida Supreme Court Certified Circuit/Family/County Mediator & Primary Trainer and Qualified Arbitrator. Mr. Zamor serves on several federal and state mediation/arbitration rosters and mediates with the Agree2Disagree (ATD) Mediation Group. As an ADR consultant/professional he regularly lectures on a variety of topics from ethics, cross-cultural issues, diversity, and Family/Business relationships. [ZamorADRExpert@gmail.com](mailto:ZamorADRExpert@gmail.com) ; [www.effectivemediationconsultants.com](http://www.effectivemediationconsultants.com); [www.agree2disagree.com](http://www.agree2disagree.com); [www.Linkedin.com/in/stanlevzamoradr](http://www.Linkedin.com/in/stanlevzamoradr). (954) 261-8600