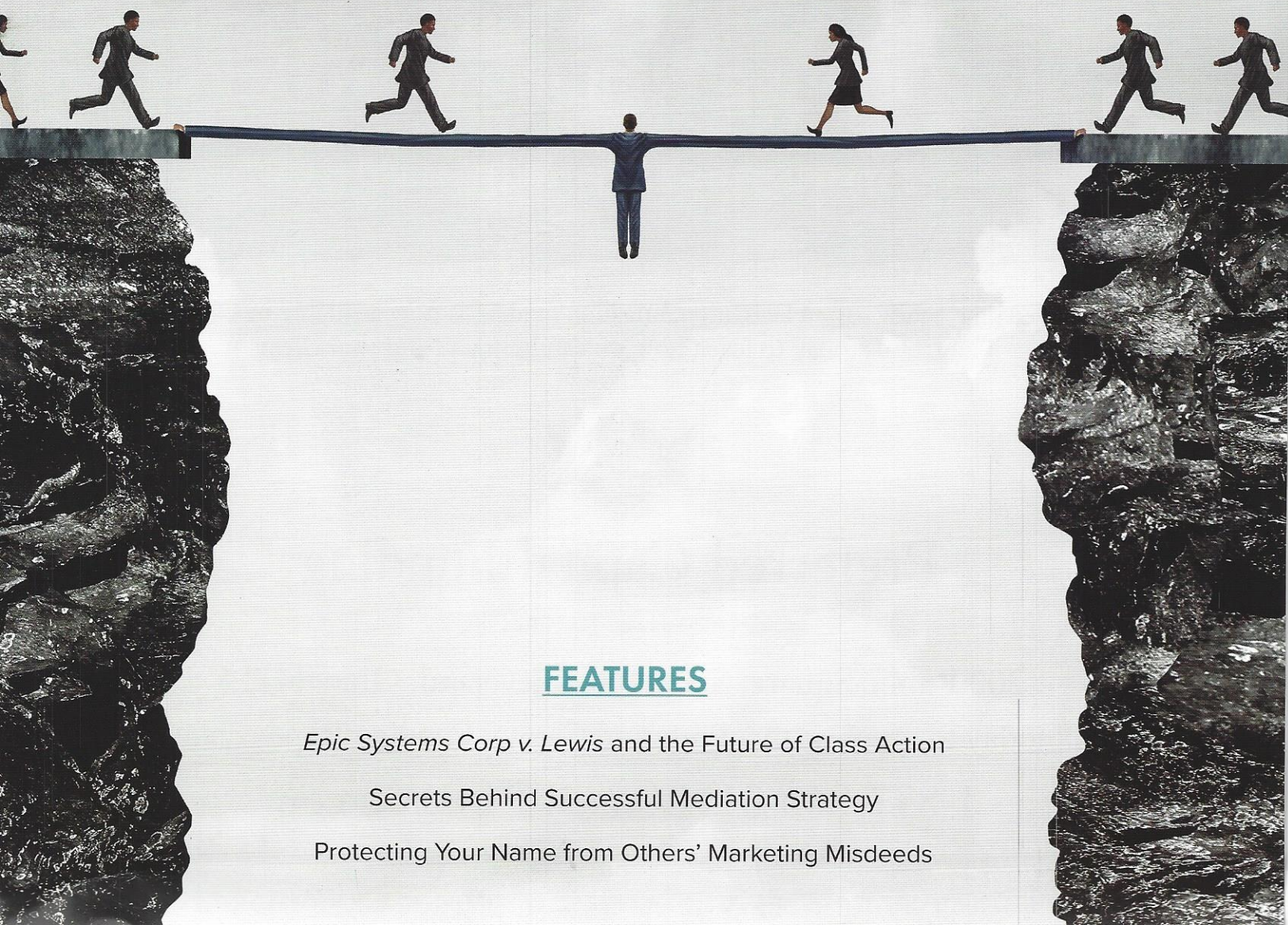


OHIO TRIAL

Ohio Association for Justice

MANAGING LEGAL DISPUTES THROUGH MEDIATION



FEATURES

Epic Systems Corp v. Lewis and the Future of Class Action

Secrets Behind Successful Mediation Strategy

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**SECRETS BEHIND SUCCESSFUL
MEDIATION STRATEGY - -
OHIO ATTORNEYS WEIGH IN**

— BY MICHELLE S. LOYD —
FREELANCE WRITER

THE MOST IMPORTANT BENEFIT OF PREPARING CLIENTS IN ADVANCE FOR MEDIATION IS THAT THE CLIENT IS AWARE OF ALL POTENTIAL OUTCOMES IN THEIR CASE SO THERE ARE NO SURPRISES WHEN THE TIME COMES FOR THE FINAL DETERMINATION.

One of the hottest topics buzzing around the Ohio legal community at large, is the topic of Mediation. This is a popular Alternative Dispute Resolution Strategy that employs neutral third parties to resolve disputes in lieu of jury trials and other court proceedings.

According to the **Ohio Supreme Court**, of parties who participate in Mediation **"more than 90% expressed satisfaction with their mediation sessions, regardless of the outcome."**

We interviewed Ohio area experts in the field of Mediation to gain insights on this popular form of Alternative Dispute Resolution. The Attorneys interviewed were: **Craig Scott, John Alton and Frank Ray**. These Ohio attorneys (who also regularly act as mediators) gave us the inside scoop on mediation including: what's important, hot topics, disputes, and mediation strategy.

Here is what we learned.

When it comes to preparing for mediation, the general consensus is that: **preparation is key**. According to the attorneys interviewed, being prepared at the start of Mediation can lead to a better outcome. So how do these attorneys prepare?

How to Prepare for Mediation

Attorney **Craig Scott** focuses on "making the best of the tools that he is provided by participating parties" in advance. Mr. Scott advises that some preparation materials that he receives and studies in advance of mediation are: **Legal Briefs, Expected Damages, Jurisdiction Details, and Potential Case Value**.

John Alton agrees with the above and also requests his preparation documents in advance to "thoroughly review position statements."

Frank Ray relies "heavily on materials submitted by parties and reviews position statements in advance to stay on the pathway to global resolution for the parties involved."

Ready, Set, Educate

Following the trend of being fully prepared before entering into the mediation arena, the attorneys also find value in preparing their clients in advance by educating them on the potential outcomes of the mediation.

Benefits of Preparing Your Client for Mediation

The most important benefit of preparing clients in advance for mediation is that the client is aware of all potential outcomes in their case so there are no surprises when the time comes for the final determination.

How Important is Timing for Mediation

Mediators agree that timing is another crucial factor in preparing for mediation success.

John Alton believes that "timing is important to help set the stage for preparing parties for what is to come." **Craig Scott** advises that since timing is so critically important that he will "never even attempt" mediation until all relevant components of the case are in place at which point he knows it is the right time to proceed with the pertinent facts.

Mr. Scott says that when preparing position statements timing also plays a factor. He indicates the higher the value of a case, "the more hands that case has to pass through." Higher value cases require more prep time. **Mr. Scott** recommends a sample timeline that he uses to prepare for mediation based on the total monetary value of the claim as follows:

6 figure claim = 30 days of prep time in advance of scheduled mediation date.

7 figure claim = 60 days of prep time in advance of scheduled mediation date.

8 figure claim = 90 days of prep time in advance of scheduled mediation date.

Global Benefits of Mediation

Craig Scott asserts that mediations are "definitely less costly than a trial." He also advises that mediation gives the parties involved a more direct impact on the outcome of their circumstances than a traditional jury trial does.

Mr. Scott mentions the fact that being outside of the formal courtroom environment is less stressful for the parties involved in the mediation who may not be comfortable with or familiar with traditional courtroom settings.

Mr. Ray states that: "mediation eliminates the uncertainty that emotional and financial tolls can have on the involved parties" and believes that removal of this uncertainty are direct benefits of mediation.

Flexibility, Position Papers, Opening Statements, Walking Away, Bottom Line Numbers and Open Mindedness

What to Include in a Position Paper

The attorneys are in general agreement when it comes to this topic. Key components that the lawyers include in their position statements are:

OAJ Member Spotlight

Heather Ninni

Willis & Willis Co.,
L.P.A.
Akron, OH

Hometown:
Stow, OH

Law School: The
University of Akron School of Law, 2013

Areas of Practice: Personal Injury, Insurance Company Bad Faith, Tort, Insurance Coverage, Consumer Rights

What is your favorite aspect of being a trial lawyer?

My favorite aspect of being a trial lawyer is all the thinking and investigating that is involved. I love digging in, figuring things out, and coming up with a plan.

What does OAJ mean to you?

I am a new member to OAJ and to the practice of civil litigation. I want OAJ to be a good source of information and assistance to me in my new practice.

List your favorite movie, book and musician.

My Cousin Vinny, A Wrinkle In Time, Garth Brooks

What is a challenging aspect of being a trial lawyer?

It can be challenging to gain trust and respect from people who don't know you – opposing counsel, judges, clients, and the public in general

If you could meet one person dead or alive who would it be and why?

Oprah Winfrey, because she is one of the most influential women in the world and I love and admire her spirit.

What is something about you people would be surprised to know?

I've had two previous careers before becoming an attorney. I began my first year of law school when my daughter began first grade.



- Case Description
- Contested Status
- Procedural Status
- Assessment of Harm Caused by Alleged Wrongdoing
- Economic Evaluations
- Exhibit Sharing

Just Say "No" to Opening Statements

All participants are in agreement that opening statements seem to **do more harm than good**. Alton states that opening statements are "harmful and that he discourages parties from making opening statements whenever possible." Frank Ray suggests that opening statements "tend to produce an exacerbation of polarized opinions when parties hear the possible ways that they can lose the case." Mr. Ray also discourages opening statements whenever possible.

Hot Topic: Not Your Average Mediator

"Who" serves as mediator is definitely a hot topic among those interviewed. When asked the question of "How important is the person serving as mediator?" All of the attorneys unanimously agree that choice in mediator is a pivotal component in building a successful mediation strategy.

Craig Scott indicates that a mediator should be one that is seasoned as they "are able to understand both sides of the mediation and that the concept is not a new or foreign one that can be easily conveyed to the participating parties."

John Alton surmises that mediators who are consistently "booked for months out" may appear at first glance to be the wrong choice for those seeking mediation services. However, as Mr. Alton explained, these mediators would not be "consistently booked" if their previous mediations had been unsuccessful. In other words, in this case, busier is better.

Frank Ray mentions that whether a mediator employs facilitative or qualitative strategy is a key consideration in mediator selection. He advises that, while there is some disagreement in the legal community about whether there is a place for qualitative strategy in the mediation arena, in some cases a qualitative point of view is beneficial and, possibly, even required.

When to Walk Away from Mediation

Is it ever okay to walk away from mediation? Apparently so. The Attorneys agree that if the parties have reached an impasse that is an appropriate time to walk away and consider continuing on with a court proceeding in the interest of saving time and money.

The Bottom Line

When preparing for the financial component of a case the attorneys advise that they generally have a good idea of the range or value for a claim based on research and experience. While bottom line numbers are not usually set in stone, they will stand firm if they feel their clients are being presented with an unreasonable or unfair offer based on the potential case value and legal precedent.

1. The overall goal of mediation is *successful resolution of disputes between parties*. A successful mediation keeps all parties informed at each stage of the process and minimizes emotional and financial strain for all participants.
2. Preparing in advance for mediation is *vital to successful mediation*.
3. A busy mediator may be a good indicator of success.
4. While remaining flexible is important, in some cases walking away from mediation is necessary.

Special Thanks to the Participating Ohio Attorneys: Craig Scott, John Alton, and Frank Ray.

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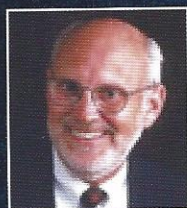


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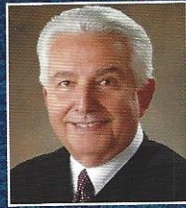
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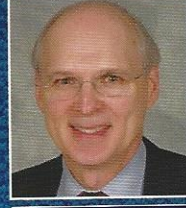
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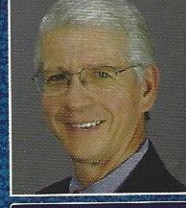
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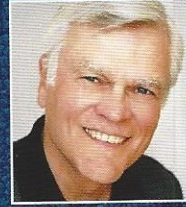
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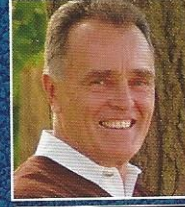
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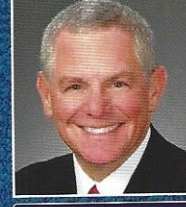
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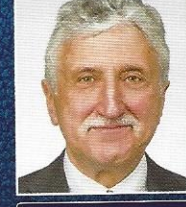
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