

## SAFEGUARDING MEDIATION FROM MISLEADING INFORMATION

Mediation & Arbitration Section

Co-Chairs: Amy Tamargo - Tamargo Mediation, PLLC; and Kari Metzger - Metzger Law Group, P.A.



**A**t a time when allegations of “fake news” and “alternative facts” are abundant in the media, it is important to make sure your case does not get influenced by false or misleading information, especially during what is normally a critical point in the case: mediation. Many mediators are not only tasked to handle a large volume of cases for their mediation practice, they are also busy attorneys with a variety of other issues to focus on. So some mediators might not get the chance to learn every detail of your case, particularly the relevant caselaw. In these instances, mediators can potentially be misled by attorneys who simply indicate they have a case that is “on point” without offering further proof.

A few months ago, I observed a mediation where potentially misleading information won the day. Upon arrival, the mediator discussed the facts of the case with me. He indicated that typically he reads the mediation report, but in this particular case, he did not have time to study each case cited at length. The facts of this case were

significant in that the insurance carrier had filed a declaratory judgment action. Because the declaratory judgment action was included in the mediation, there were five attorneys present, each with a party or an adjuster that spent time and resources traveling to the mediation.

We all crammed into the biggest conference room available, and the parties stated their arguments for the mediator. Afterwards each party was separated so the mediator could engage in separate caucuses with each party. Discussions made it clear that all parties wanted to settle — except for one. The mediator cautiously advocated for settlement by discussing the merits of the case at trial, but the dissenting attorney fought back, citing caselaw he insisted was on point and controlling. But the attorney did not recite the facts of the cited case with any specificity and was only able to indicate that it was the “*Williams*” case and that it was “on point.”

This vague and potentially unfounded recital of caselaw ground the entire settlement negotiation to a halt. Regardless of the merits of



**Preparation is the best way to defeat “fake” or misleading arguments.**

the cited authority, the mediator had to go to all of the other parties and indicate there was one party who was not agreeable to the settlement and that it was because of the alleged “*Williams*” case. Each party took the case at face value and assumed that

since a party cited to a case, that it must be real. If the worst is assumed in this situation, the parties and adjusters spent valuable time and resources traveling to the mediation, only to have their time wasted with a misleading citation. To prevent against circumstances like this, it would be advantageous to appear at mediation with a laptop or other mobile device from which a legal research site could be accessed.

Preparation is the best way to defeat “fake” or misleading arguments, and coming prepared

to counter misleading legal arguments is a good way to be prepared.



*Author:*  
*John W. Windle -*  
*Metzger Law*

**Make sure your member profile is up-to-date!  
Log into [hillsbar.com](http://hillsbar.com) today.**