



# Transitioning to a Mediation Mindset

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**DISPUTE RESOLUTION**



Rapport, Research, Recognize, Risk



Active Listening, Acknowledge, Adapt



Insight, Investigate, Interest



Solutions, Strategies



Evaluate, Evolve, End in Agreement

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# Positions Attorneys Take in Mediation

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## 7 Mediation Sins

1. No Plaintiff at mediation
2. Plaintiff late/surprise disclosing of information; excessively large demand and increasing demand
3. Plaintiff withholding requested information
4. Defendants sending examiner who is unfamiliar with facts/file
5. Defendant not showing up with sufficient authority, making too low an opening offer or undervaluing the case, perhaps having an external pressure to close at unrealistically low number
6. Defendants spending the day arguing contribution with co-defendants instead of working out in advance or not resolving issues of coverage in advance. In the case of an insurance matter, arguing with insured over unresolved coverage issues.
7. Defendant not listening to key issues important to plaintiff/mediator and both giving up too early — not letting process develop





# The Roadmap To R.A.I.S.E. Your Success Rate

## **Preparation**

The secret for settlement success

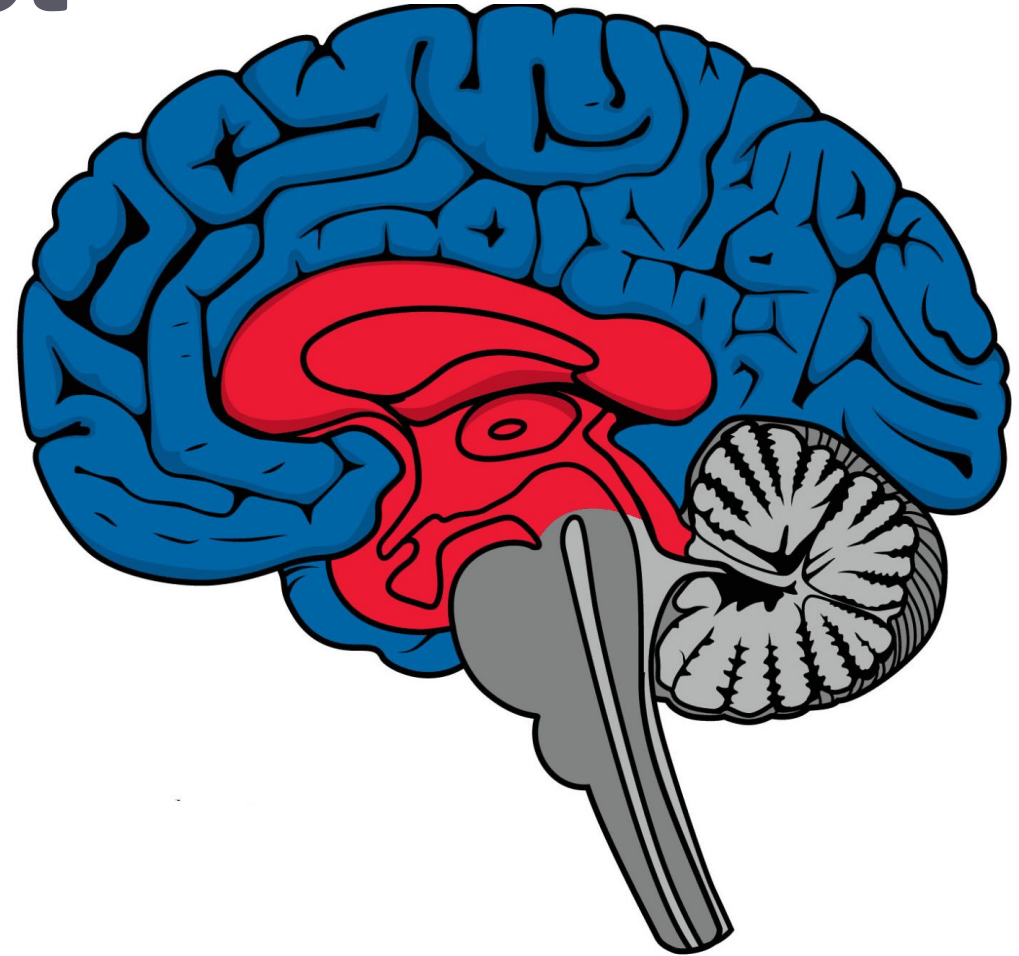
## **Strategy**

Know your strategy ahead of time, not just having settlement authority — R.A.I.S.E. provides a planning strategy and roadmap to success

# Our Brains in Conflict

## The Three-Parted Brain

- **Neocortex (Human)**  
Language, abstract thought,  
imagination, consciousness,  
Reasons, rationalizes
- **Limbic System (Mammal)**  
Emotions, memories, habits  
Decisions
- **Limbic System (Lizard)**  
Fight or flight  
Autopilot



Adapted by The MEHRIT Centre from Paul MacLean's 1960s Triune Brain Model



## Broaden Your Lens

**“We can’t solve problems  
by using the same kind of  
thinking we used to  
create them.”**

**– Albert Einstein**

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## What are the Three Biggest Challenges to Transitioning to a Mediation Mindset

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# Trust

- 1. Trusting the Mediator**  
Mediator competency and impartiality.
- 2. Trusting the process**  
Confidentiality and conflicts of interest.
- 3. Trusting the other side**  
Communicating in an informed way with self- determination.

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# Pre-Mediation Session with a Skilled Mediator

## 5 Steps to Prepare

1. Information sharing — working to fill in information gaps and clarifying misunderstandings that commonly occur in a litigation and reframing issues in a more positive light
2. Request for pre-mediation statement
3. Calendar — managing agenda setting time, date and place for mediation
4. Parties attending with authority
5. How to open up the mediation session — length of joint session?



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# Pre-Mediation Statement: 6 Point Questionnaire

1. A brief summary of the facts and law with whatever documents you need to support liability and damages
2. Client's goals and interests, including economic and unstated non-economic interests
3. Most importantly: What would the other side say are the weaknesses in your case and the risks involved in litigating this issue?
4. What are you at an impasse?
5. Past settlement efforts, if any, and settlement ranges
6. Names of persons with full authority to resolve.

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# Plaintiff Attorney Role

- Managing Emotions
- Educating
- Clarifying  
Misunderstandings
- Evaluating Positions

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# Defendant Attorney Role

- Educating
- Evaluating Risk
- Managing Expectations

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# Evaluate, Evolve, End in Agreement

- Evolve-from adversarial to collaborative
- Evaluate progress
- End in Agreement