

Hypothetical for Mediator's Proposal Workshop

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You're mediating a wage and hour case. Plaintiff has presented a damage sheet showing total claimed damages of \$300,000 inclusive of unpaid overtime, liquidated damages of 100%, attorneys' fees and interest. Attempting to "anchor" a high number, plaintiff's opening demand is the full \$300,000, virtually everything plaintiff could win at trial on her best day. Defendant's first settlement offer is \$25,000. The "back and forth" begins. After three hours of discussions and negotiations, plaintiff is at \$150,000, claiming she's made enormous moves by cutting the original demand in half. Defendant is at \$50,000, claiming he also has made enormous moves by doubling the original offer. Experience tells you there is a good chance this case could settle for \$75,000. Both parties have said their demand and offer might be their "best and final." You think a mediator's proposal might result in a settlement.

You go into the plaintiff's room and ask, "If I can get you \$75,000, would you say yes to a mediator's proposal in that amount? Plaintiff says yes.

You then go into the defendant's room and say, "It looks like we may be stuck. We're close enough that I think a mediator's proposal might work. Would it be okay with you if I make one? Defendant says yes, not knowing what the proposal will be.

You make a mediator's proposal to settle the case for \$75,000.