

Focus Group Protocol

Thank you very much for coming to today's focus group. Lawyers play a critical role in making the process work right and so the court asked me to get your perspectives as experienced and respected lawyers.

I am John Lande, a professor at the University of Missouri School of Law.

Note that this is NOT a mediation and the goal is NOT to reach consensus today. If there are differences of opinions, it is important that we understand them. I realize that some of you are probably shy 😊, but it is important that you all express your views candidly, so feel free to disagree with things others say. Of course, if everyone shares the same view about an issue, that's important to know too.

There are a lot of lawyers here and we want to hear from all of you about a number of questions. So if you can make your points concisely, that would be very helpful.

This discussion will be confidential. The views expressed will be summarized in a report but it will not include anyone's name or identifying information.

Do you have any questions before we begin?

I am going to start with some general questions.

- When you have difficulties managing some of your cases in court, what kinds of problems do you have?
- How might the court help you handle these difficulties?
- How might the Mediation Program help you handle these difficulties?
- What is particularly helpful about the program? (Possibly probe for differences between past and current process)
- As you probably know, there have been some changes in the program this year. Some things have stayed the same and some things have already changed. What changes in the Program would help you handle your cases more effectively in the future?

Timing is very important for mediation. If mediation is too early, people aren't ready to settle. If it is too late, the conflict can escalate and take more time and money than necessary. And there may not be a one-size-fits-all procedure that is best for all cases. So I am going to ask some questions to help figure out the best procedure for scheduling mediations.

- When are lawyers in a good position to decide when mediation is appropriate?
- Recognizing the differences between cases, what would be a good policy for getting cases into mediation at the earliest appropriate time?
- Would it be beneficial for you (the attorneys) to have a uniform mediation deadline in all your cases assigned for the mediation (90 days prior to close of discovery, for example)?
 - Would this approach encourage or discourage the parties from mediating the case at the earliest productive opportunity before incurring unnecessary fees and costs?
- Are cases generally best suited for mediation after Rule 26 disclosures, after one round of written discovery, or after one deposition per side?
- Are certain types of cases better suited for very early resolution (Fair Debt Collection Actions, for example)?

- Are certain types of cases better suited for resolution later in the discovery process?

Now I am going to ask some questions about procedures in mediation that you have found to be particularly helpful or unhelpful.

- What have mediators done that you have found to be most helpful?
- What have mediators done that was unhelpful?
- What can mediator do to help your clients make informed decisions about resolving their cases?
 - For example, mediations can:
 - help parties understand their real interests in a case
 - coach on negotiation strategy
 - emphasize benefits of settling and risks of trial
 - identify strengths and weaknesses of cases
 - describe settlements in similar cases
 - predict likely court decisions
 - propose settlements
- What pre or post mediation activities would you or your client find beneficial (mediation statement, pre-mediation phone call, follow up post-mediation)?
 - What is most important to include in the mediation statement?
 - What is least important to include in the mediation statement?
- What technology do you believe would enhance the mediations?